Appln.Nos.169 to 172 & 160 of 2015
in
I.P.No.46 of 2012

R.SUBRAMANIAN, J.

The Official Assignee is the applicant in Appln.Nos.169, 170, 171 & 172 of 2015. These applications have been filed by the Official Assignee seeking to declare the transfer of property by the Insolvents made on 01.11.2012 as invalid, to seize the property from the alienee, to direct the alienee to deliver possession of the property and to permit the Official Assignee to sell the property by way of public auction for the benefit of the estate of the insolvents.

2.Appln.No.160 of 2015 has been filed by the transferee to declare the transfer as valid. The sequence of events are as follows:-

The transferee purchased the property from the insolvents on 01.11.2012 under a registered sale deed bearing No.5774 of 2012. The said instrument was presented for registration on the same day. The consideration reflected in the document is Rs.45,00,000/- (Rupees Forty Five Lakhs only). The Insolvents presented an application for adjudicating themselves as Insolvents in I.P.No.46 of 2012 on 15.11.2012 and an order of adjudication came to be passed by the learned Master of this Court on 22.11.2012. Thereafter, the learned Official Assignee in whom the estate vests has come up with these applications. In the course of these proceedings, evidence was let in and the Section Officer in the Office of the Official Assignee was examined as P.W.1 and Exs.A1 to A4 were marked. On the side of the transferee, he was examined as R.W.1 and Exs.R1 to R11 were marked. A Chartered Engineer was examined on the side of the transferee as R.W.2 and his report was marked as Ex.R12.

3.I have heard Mr.C.Ramesh, learned counsel appearing for the Official Assignee and Mr.R.Munusamy, learned counsel appearing for the transferee.

4.The main contention of Mr.C.Ramesh is that the transaction is a loan transaction, which has been camouflaged as a sale and therefore, it will be hit by Section 56 of the Presidency Towns Insolvency Act as a fraudulent preference. In support of his submission, the learned counsel appearing for the Official Assignee would submit that a perusal of the sale deed marked as Ex.A1 and Ex.R4 would show that the sale consideration has been paid much prior to the date of the sale deed without any independent receipt. This, according to the learned counsel would lead to suspicion on the bonafide nature of the transaction. He would further submit that this is actually a loan transaction, which has been converted into a sale transaction at the instance of the transferee.

5.Contending contra, Mr.R.Munusamy, learned counsel appearing for the transferee would submit that the sale consideration has been paid through bank in three installments prior to the date of the registration of the sale deed. He would also point out that the insolvents, after having received the sale consideration from the transferee had repaid the debt due to the bank and got the mortgage discharged and handed over the documents to the transferee. Therefore, according to him, the entire transaction was a bonafide transaction and the very insolvency petition has been presented within 15 days of the execution of the sale deed, with a view to avoid the sale deed.

6.Mr.C.Ramesh, learned counsel appearing for the Official Assignee would take me through the evidence to draw support for his submissions. The sale deed, Ex.R4 shows that out of the total consideration of Rs.45,00,000/-(Rupees Forty Five Lakhs only), a sum of Rs.12,75,000/-(Rupees Twelve Lakhs Seventy Five Thousand only) was paid on 18.09.2012 and a sum of Rs.10,00,000/-(Rupees Ten Lakhs only), each was paid on 11.10.2012 and 22.10.2012. The remaining amount of Rs.12,00,000/- (Rupees Twelve Lakhs only) was paid by way of cheque and Rs.25,000/-(Rupees Twenty Five Thousand only) was paid by way of cash on 01.11.2012. The transferee has also filed his passbook to show that all these cheques, which were issued by him have been encashed by the insolvents. The receipt issued by the Lakshmi Vilas Bank, which has been marked as Ex.R3 would show that the insolvents have discharged the mortgage on 26.10.2012, which is five days prior to the execution of the sale deed in his favour.

7.Mr.C.Ramesh would attempt to draw support from the fact that a sum of Rs.35,176/- has been collected as deficit stamp duty to contend that the sale deed has been under valued. The transferee has produced the guideline valuation of the property, which shows that the guideline value was Rs.1,800/- per square feet on the date of the sale. Even, the Engineer examined by the transferee namely, R.W.2 has adopted a valuation of Rs.2,000/- per square feet for the land on the date of the alienation. The Engineer has however adopted a value of Rs.2,000/- per square feet for the constructed area as on the date of the sale namely, 01.11.2012. In his calculations, he has not adopted any depreciation. Annexure 1-A filed along with the sale deed shows that the age of the building as 5 years therefore, the building should have been constructed sometime in the year 2008. The Engineer should have adopted the cost of construction of the year 2008 or should have adopted depreciation. His report does not reveal that he has adopted any depreciation. However, in his evidence, he has said that he has adopted a depreciation of 1%. I am unable to accept the said evidence as evidence of proof of under valuation by the transferee.

8.Section 55 of the Presidency Towns Insolvency Act invalidates alienations, made two years prior to the order of adjudication. Section 56 deals with fraudulent preference. Section 57 protects bona fide transactions. Section 57 of the Act reads as follows:-

> *"57.Protection of of bonafide transactions:- Subject to the foregoing provisions with respect to the effect of*

insolvency on an execution and with respect to the avoidance of certain transfers and preferences, nothing in this Act shall invalidate in the case of an insolvency:-

a) any payment by the insolvent to any of his creditors;

b) any payment or delivery to the insolvent;

c) any transfer by the insolvent for valuable consideration; or

d) any contract or dealing by or with the insolvent for valuable consideration: Provided that any such transaction takes place before the date of the order of adjudication and that the person with whom such transaction takes place has not at the time notice of the presentation of any insolvency petition by or against the debtor. Realization of property."

The proviso to Section 57 may not apply to the case on hand, I am therefore, convinced that this case would fall within a transfer for valuable consideration made under Clause 'c' of Section 57 of the Presidency Towns Insolvency Act and therefore, it will be protected as a bona fide transaction.

9.It is claimed that an agreement was entered between insolvent and the transferee for a sum of Rs.83,75,000/-(Rupees Eighty Three Lakhs Seventy Five Thousand only) but the sale deed was only for Rs.45,00,000/-

(Rupees Forty Five Lakhs only). There is no evidence of any such agreement. The insolvents have not chosen to appear and tender evidence or produce the said agreement.

10.Even assuming that they could produce such evidence, such evidence cannot be admitted, in view of Section 92 of the Evidence Act, which prohibits evidence contrary to the recitals in a registered instrument by any of the parties to the instrument. Therefore, the claim that there is an agreement for Rs.83,75,000/- (Rupees Eighty Three Lakhs Seventy Five Thousand only) but the sale deed was entered into for a lesser consideration cannot be accepted.

11.In view of all the above reasons, I do not see any merit in the applications filed by the Official Assignee. As already pointed out, the sale transaction will fall within Clause 'c' of Section 57 of the Presidency Towns Insolvency Act as a protected transaction, the payment of Rs.35,156/- (Rupees Thirty Five Thousand One Hundred and Fifty Six only) as deficit stamp fee would only enhance the value of the property by Rs.5,10,800/-. I do not think such a nominal increase can be taken into account as a vitiating factor.

12.Therefore, the applications filed by the Official Assignee in Appln.Nos.169, 170, 171 & 172 of 2015 are dismissed and the application filed by the transferee in Appln No.160 of 2015 is allowed.

12.07.2021

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R.SUBRAMANIAN, J.

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