IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.S.A.No.36 of 2008
M.P.No.1 of 2008

1.A.K.Seenu @ Chenniappan (Died)

2.Vasanthi

3.Vetrivel

4.Prahadeesh .. Appellants

A2 to A4 brought on record as LR's of the deceased sole appellant vide order dated 30.01.2019 made in C.M.P.No.23490 of 2018 in C.M.S.A.No.36 of 2018

vs.

1.K.Rajendran

2.Sivanappan

3.K.Duraisamy(Died)

4.R.Selvaraj

5.P.K.Subburaj

6.D.Mohan

7.D.Bharath

8.Baby

9.Shanthi .. Respondents

RR6 to 9 brought on record as LR's of the deceased 3rd respondent vide court order dated 30.01.2019 made in C.M.P.No.23479 of 2018 in C.M.S.A.No.36 of 2018.

PRAYER : Civil Miscellaneous Second Appeal filed under Section 100 C.P.C read with Section 75(1) of Provincial Insolvency Act against the judgment and decree of the learned Additional District Judge (Fast Track Court No.1) Erode in C.M.A.No.6 of 2006 dated 25.04.2006 confirming the fair and final order of the learned Second Additional Sub Judge, Gobichettipalayam in I.P.No.4 of 1998 dated 30.12.2004.

For Appellants : M/s.J.Prithivi
for Mr.S.Kaithamalai Kumaran

For Respondents : Mr.R.T.Duraisamy for RR1, 2 & 4, 6 to 9
R5-given up
R3-Died-steps taken

O R D E R

The judgment and decree dated 25.04.2006 passed in C.M.A.No.6 of 2006 confirming the Fair and Final order dated 30.12.2004 passed in I.P.No.4 of 1998 is under challenge in the present civil Miscellaneous Second Appeal.

2. The substantial questions of law raised in the appeal on hand are that when it is admitted by P.W.2 that the sale under Ex.A5 is supported by consideration are the Courts below justified in holding that it is not a bona fide transaction; Are the Courts below justified in declaring the 5th respondent as insolvent when the debts alleged are barred by limitation;

3. The second question of law raised by the appellants is unconnected with the issues involved as the insolvency petition was filed and adjudicated. Thus, the second question is based on the factual disputes. Even the first substantial question of law raised is also relatable to the facts. A mere admission that the sale was executed based on the consideration is not sufficient to hold that the sale is valid. Beyond offer and acceptance of the consideration, the parties must establish that the transaction was bona fide and done in the interest of the creditors in order to satisfy the Section 55 of the Provincial Insolvency Act, 1920.

4. In this context, the short facts are that one Mr.P.K.Subburaja was declared as insolvent pursuant to the petition filed by the four creditors in I.P.No.4 of 1998. The petition to declare him as insolvent was filed on 10.06.1998 and the Second Additional Sub-Court, Gobichettypalayam declared the said Mr.P.K.Subburaja as insolvent on 30.12.2004 after adjudication.

5. The contention of the learned counsel appearing for the appellant is that the sale deed was executed in favour of the appellants on 16.03.1998 even three months before filing of the insolvent petition by the creditors. Therefore, the sale is protected under Section 55 of the Provisional Insolvency Act. This apart, the sale deed was executed on receipt of sale consideration. Therefore, there was no infirmity with reference to the sale of the property belongs to Mr.P.K.Subburaja. Thus, the order of the Courts below are perverse.

6. The learned counsel appearing on behalf of the appellants reiterated that the sale consideration was Rs.1,65,500/- and the sale consideration was admitted by P.W.2 through documents marked in Ex.A5. Thus, the sale is protected and the judgments of both the Courts below are liable to be set aside.

7. The learned counsel appearing on behalf of the respondents/creditors objected the said contention by stating that the insolvent Mr.P.K.Subburaj borrowed loan through promissory notes from many persons. Four creditors filed insolvency petition in I.P.No.4 of 1998. Knowing this fact that the insolvency petition is going to be filed, he had executed the sale deed in favour of the appellants and even the sale consideration allegedly received was not distributed to the creditors. Thus, the intention for execution of the sale is not in consonance with the protection clause provided under Section 55 of the Provincial Insolvency Act, 1920. The sale deed was executed in order to protect the property and even if the sale consideration was received by the insolvent/Mr.P.K.Subburaj, the said amount would have been distributed to any of the creditors. Thus, mere receipt of sale consideration would not protect the sale under Section 55 of the Insolvency Act.

8. This Court is of the considered opinion that it is an admitted fact that the said Mr.P.K.Suburaj was declared as insolvent pursuant to the petition filed by the four creditors. Further, it is an admitted fact that the sale deed was executed in favour of the appellant by the insolvent on 16.03.1998. As per the documents, sale consideration was mentioned as Rs.1,65,500/-. However, the appellants are unable to establish that the sale consideration was distributed to the bona fide creditors and the manner in which the sale consideration was dealt with by the insolvent was also not explained before the Court below.

9. The learned counsel for the respondents made a submission that the creditors made a demand to pay the sale consideration to the creditors even at the time of registration

of the sale deed. However, even request made by the creditors was not honoured and the insolvent/Mr.P.K.Subburaj refused to pay the creditors.

10. Therefore, this Court is of the considered opinion that the intention as well as the conduct of the insolvent in order to settle the creditors are not established. Therefore, he cannot seek any protection under Section 55 of the Provisional Insolvency Act. Sub-Clause (a) of Section 55 of the Provisional Insolvency Act indicates that any payment by the insolvent to any of his creditors is protected and sub-clause (c) indicates that any transfer by the insolvent for valuable consideration. Therefore, the entire provision must be read together and the sub-clause cannot be divided separately so as to reach the object of the provision. The object of the provision under Section 55 of the Provisional Insolvency Act is to protect the bona fide transactions. Thus, the Court has to find out whether the transaction of the insolvent with the appellant is bona fide or not? The insolvent admitted that he sold the property for valuable consideration. It is not disputed by the appellant that there was a demand by the creditors to repay the money. Insolvent is unable to establish that he had repaid the money by receiving sale consideration by the appellant. The appellant was also aware of the borrowings by the insolvent who was the owner of the subject property. Thus, if at all the sale consideration received by the appellant is distributed to the creditors, then alone, the transaction of sale is protected and not otherwise. Thus, Section 55(a) and (c) are to be read together and to arrive a conclusion that the transaction was a bona fide transaction. In the absence of any one of ingredients, it is to be considered that a transaction is not a bona fide. In the present case, even after receipt of sale consideration, the insolvent had not repaid the loan amount to the creditors.

11. This being the factum, the trial Court as well as the first Appellate Court in its unambiguous terms held that the transaction was not bona fide. The First Appellate Court also made a finding that the appellant had not purchased the subject property with good intention. The findings of the trial Court as well as the First Appellate Court are certainly candid and convincing and there is no perversity or infirmity as such. This apart, the substantial questions of law raised are also relatable to the factual aspects and the appellant has not raised any acceptable substantial question of law so as to consider the other issues.

12. Accordingly, the judgment and decree dated 25.04.2006 passed in C.M.A.No.6 of 2006 confirming the Fair and Decreetal order dated 30.12.2004 passed in I.P.No.4 of 1998 stands confirmed and consequently, Civil Miscellaneous Appeal

stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

13. In view of the order passed by this Court, the subject property shall vest with the official assignee concerned, who in turn, bound to deal with the sale by following the procedures contemplated under the law.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

SSB

To

1. The Additional District Judge
   (Fast Track Court No.1), Erode

2. The Second Additional Subordinate Judge,
   Gobichettipalayam.

+ 1cc to Mr.S.Kaithamalai Kumaran, Advocate, SR.No.10794
+ 1cc to Mr.R.T.Doraisamy, Advocate, SR.No.10232

C.M.S.A.No.36 of 2008
and M.P.No.1 of 2008

VSN-II(CO)
TE (28/04/2021)