IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 19.07.2021

ORDER PRONOUNCED ON : 29.07.2021

Appln. Nos.229 to 233 of 2017
in
I.P.No.64 of 2011

Appln.No.229 of 2017

Sunil Kumar Adikesavan
..Applicant/ 3rd party

Vs.

1.Official Assignee,
High Court of Judicature,
Chennai – 600 104.
.. 1st Respondent

M/s.Eltech Corporation
Represented by its Partners
2.R.Sundararajan
3.B.Jayavel
..Respondents 2 and 3/ Insolvents

Appln.Nos.230 to 233 of 2017

The Official Assignee,
High Court,
Madras

..Applicant

-Vs.-

1.M/s.Eltech Corporation
Represented by its Partners
i) R.Sundararajan
ii) B.Jayavel

..Respondents/ Insolvents

2.Naresh Kumar Kothari

.. 2nd respondent/ Power of Attorney Agent

3.Bijay Singh Choraria

..3rd respondent/ Transferee

4.Sunil Kumar Adikesavan

..4th respondent/ Subsequent Transferee

Prayer in Appln.No.229 of 2017:- This Application has been filed seeking to direct the first respondent to hand over the property being Plot with Building up to foundation and compound wall bearing No.23, "Raja's Garden Phase II" measuring 1980 Sqft comprised in Survey No.123/1F situate at Noombal Village, Ambattur Taluk, Thiruvallur District within the

Registration District of South Chennai and Sub Registration District of Kundrathur.

Prayer in Appln.No.230 of 2017:- This Application has been filed seeking to declare the transfer of the insolvents' property described in the schedule to the Judges Summons in favour of the 3rd respondent herein and the subsequent transfer effected by the 3rd respondent in favour of the 4th respondent herein as null, void and not binding upon the official assignee.

Prayer in Appln.No.231 of 2017:- This Application has been filed seeking to issue warrant permitting the official assignee to seize the property from the custody or possession of the respondents 3 and 4 or any other person, their men, agents or servants acting under them with the assistance of Police.

Prayer in Appln.No.232 of 2017:- This Application has been filed seeking to direct the respondents 3 and 4, their men, agent or servants or any other person acting on their behalf to deliver the vacant possession of the said property described in the Schedule to the Judges Summons with all documents of title in their possession to the official assignee.

Prayer in Appln.No.233 of 2017:- This Application has been filed seeking to permit the official assignee to sell the property described in the Schedule in the Judges Summons in public auction and sale proceeds rateably divided amongst the General Body of Creditors.

For Applicant : Mr.A.Thiagarajan, Senior Counsel
for Mr.D.Senthil Kumar
for applicant in Appln.No.229/2017 &
for the 4th respondent in Appln.Nos.230 to 233/17

For Respondents : Mr.C.Ramesh
for Official Assignee in Appln.No.229/2017 &
for applicant in Appln.Nos.230 to 233/2017

COMMON ORDER

The prayers in the above applications are as follows:-

Appln.No.229 of 2017:- This Application has been filed seeking to direct the first respondent to hand over the property being Plot with Building up to foundation and compound wall bearing No.23, “Raja's Garden Phase II” measuring 1980 Sqft comprised in Survey No.123/1F situate at Noombal Village, Ambattur Taluk, Thiruvallur District within the Registration District of South Chennai and Sub Registration District of Kundrathur.

<u>Appln.No.230 of 2017:-</u> This Application has been filed seeking to declare the transfer of the insolvents' property described in the schedule to the Judges Summons in favour of the 3rd respondent herein and the subsequent transfer effected by the 3rd respondent in favour of the 4th respondent herein as null, void and not binding upon the official assignee.

<u>Appln.No.231 of 2017:-</u> This Application has been filed seeking to issue warrant permitting the official assignee to seize the property from the custody or possession of the respondents 3 and 4 or any other person, their men, agents or servants acting under them with the assistance of Police.

<u>Appln.No.232 of 2017:-</u> This Application has been filed seeking to direct the respondents 3 and 4, their men, agent or servants or any other person acting on their behalf to deliver the vacant possession of the said property described in the Schedule to the Judges Summons with all documents of title in their possession to the official assignee.

<u>Appln.No.233 of 2017:-</u> This Application has been filed seeking to permit the official assignee to sell the property described in the Schedule in the Judges Summons in public auction and sale proceeds rateably divided amongst the General Body of Creditors.

2. While Appln.No.229 of 2017 is been filed by the transferee for possession of the property of the insolvents, the other applications have been filed by the Official Assignee seeking the prayers stated supra.

<u>The brief facts leading to the filing of these applications are as follows:-</u>

3. The debtors who are partners of a firm viz., ELTECT Corporation had purchased the subject property under Ex.A1 sale deed dated 27.08.2010 for a consideration of Rs.6,96,000/-. They had executed a general power of attorney on 29.11.2010 in favour of one Naresh Kumar Kothari. The said document specifically reads that no consideration has been paid for execution of the same. The document styled as a sale receipt dated 29.11.2010 has been produced as evidence of receipt of a sum of Rs.25,00,000/- by the insolvents from the power agent Mr.Naresh Kumar Kothari. The said instrument also refers to the execution of the general power of attorney in favour of Mr.Naresh Kumar Kothari and a sale agreement in favour of his nominee. Subsequently, a registered agreement of sale is entered into between the insolvents represented by their power of attorney Mr.Naresh Kumar Kothari and one T.Lalith Kumar S/o. Tejraj Jain on 09.07.2011. Under the said agreement, the purchaser viz., T.Lalith Kumar agrees to purchase the property for a consideration of Rs.25,00,000/- and pays an advance of Rs.12,50,000/-. The said agreement is registered as Document No.9809/2011 on 09.08.2011. Soon thereafter, on 25.08.2011, the debtors filed the instant insolvency petition in I.P.No.64 of 2011. Being the debtors petition, an order of adjudication was passed by this Court on 13.10.2011. On 26.08.2011, the agreement dated 09.07.2011 is cancelled by way of a registered instrument of cancellation.

4. Thereafter, the power agent viz., Mr.Naresh Kumar Kothari in his capacity as agent of the insolvents sells the subject property to the 3rd respondent in A.No.230 of 2017 viz., Mr.Bijay Singh Chouraria S/o. Nagaraj Chouraria. The total sale consideration reflected in the said sale deed is Rs.8,00,000/-. On 25.01.2012, the 3rd respondent viz., the purchaser sells the property to the applicant in A.No.229 of 2017 viz., Mr.Sunil Kumar Adikesaven. The said sale is for a total consideration of Rs.11,00,000/-. It is in this back drop, the learned Official Assignee has come up with these applications in A.Nos.230 to 233 of 2017 impugning the sale made by the power agent of the insolvents to the 3rd respondent and the sale by the 3rd respondent to the 4th respondent/ applicant in A.No.229 of 2017.

5. It is the claim of the Official Assignee that the sale having taken place within few days prior to the presentation of the petition and within two years from the date of adjudication is hit by Section 55 of the Presidency Towns Insolvency Act. The Official Assignee would further plead that the transaction is not a bonafide transaction so as to be classified as a protected transaction under Section 57 of the said Act.

6. On the question of limitation the learned Official Assignee would submit that the debtors did not choose to file their statement of affairs and the Official Assignee came to know about the sale transaction only from the letter received from the Sub-Registrar of Kundrathur in reply to the enquiry made by the Official Assignee on 25.03.2014. Therefore, according to the Official Assignee, these applications filed on 17.04.2015 are within a period of 3 years allowed by Article 137 of the Limitation Act.

7. Apart from defending the above applications, the alienee viz., the applicant in A.No.229 of 2017 would seek a prayer for handing over possession of the property. According to him, he is a bonafide purchaser for valuable consideration without notice of the insolvency proceedings. It is the further contention of the applicant in A.No.229 of 2017 that the applications filed by the Official Assignee are barred by limitation as the 3 years period of limitation prescribed under Article 137 of the Limitation Act would commence from the date of order of adjudication and not from the date of knowledge of the Official Assignee of the sale. It is the further claim of the 4th respondent/ alienee that he being purchaser from the alienee of the insolvents, his purchase cannot be impugned invoking the provisions of Section 55 of the Presidency Towns Insolvency Act.

8. I have heard Mr.C.Ramesh, learned counsel appearing for the Official Assignee/ applicant in A.Nos.230 to 233 of 2017, Mr.A.Thiyagarajan, learned Senior Counsel appearing for the 4th respondent in A.Nos.230 to 233 of 2017 and applicant in A.No.229 of 2017 and

Mr.J.Balagopal, learned counsel appearing for the insolvents.

9. Mr.C.Ramesh, learned counsel appearing for the Official Assignee would submit that once it is shown that the alienation is within two years prior to the order of adjudication, Section 55 declares it void as against the Official Assignee. What are saved are only transactions which are exempted or protected under Section 57 of the said enactment. It is for the alienee to show that the transaction was made in good faith and for valuable consideration.

10. Mr.C.Ramesh, learned counsel would also draw my attention to the fact that the insolvents in the case on hand did not filed their statement of affairs and therefore the Official Assignee was left to make a roving enquiry to discover the details regarding the properties of the insolvents. Only in the process of such enquiry, did the Official Assignee came to know from the Sub-Registrar, Kundrathur, that the sale deed has been executed on

26.08.2011. The said information was furnished by the Sub-Registrar, Kundrathur on 23.06.2014. According to Mr.C.Ramesh, the limitation for filing the application would commence only on the date when the Official Assignee became aware of the transfer.

11. Relying upon Article 137, which reads as follows:-

Description of application	***Period of limitation***	***Time from which period begins to run***
137. Any other application for which no period of limitation is provided elsewhere in this division.	*Three years*	*When the right to apply accrues.*

Mr.C.Ramesh would contend that the period of limitation would commence only when the right to apply accrues. According to him, the right to apply in the case on hand accrued only when the Official Assignee became aware of the alienation. Therefore, the claim that the application is barred by limitation cannot be sustained.

12. Mr.C.Ramesh, learned counsel for the Official Assignee would also draw my attention to the evidence offered by the alienee, to show that he has paid much more than the actual sale consideration reflected in the documents viz., the sale deed Ex.A6 dated 25.01.2012. The learned counsel would submit that while the sale deed is for a consideration of Rs.11,00,000/-, the alienee has filed a further proof affidavit stating that he has paid much more than the consideration and has also attempted to produce evidence in proof of such payment.

13. Mr.C.Ramesh, learned counsel would contend that such evidence cannot be looked into as the same is prohibited by Section 92 of the Evidence Act. Pointing out the fact that, in the additional proof affidavit filed by the applicant in A.No.229 of 2019, he has claimed that he has paid a sum of Rs.33,50,000/- to the vendor out of which Rs.11,00,000/- was shown in the sale deed and remaining Rs.22,50,000/- was paid by way of cash.

14. Opposing the submissions of the learned counsel for the Official Assignee Mr.A.Thiagarajan, learned Senior Counsel appearing for the applicant in A.No.229 of 2017 and the 4th respondent in other applications would contend that the applications having been filed in the year 2015 are barred by limitation. He would also point out that the 4th respondent/ transferee is not a transferee directly from the insolvents, he is a transferee from the purchaser from the insolvents, therefore, his purchase being bonafide, should be protected.

15. The learned Senior Counsel would also point out that the valuation report filed by PW2, the Engineer examined on behalf of the Official Assignee itself would show that the value of the property was Rs.13,86,000/- in 2011 and he has purchased the property for almost Rs.11,00,000/- which is not very less. According to him, the difference of about Rs.2,80,000/- is negligible and therefore it cannot be concluded that his sale is without consideration.

16. The learned Senior Counsel would also point out that whatever be the transaction between the power of attorney of the insolvents and others, the purchaser viz., 4th respondent being not a party to those transactions, the same cannot weigh against him while testing his bonafides and validity of his sale.

17. I have considered the rival submissions.

18. Since the point of limitation has been raised, I shall first dispose of the same before proceeding on the merits of the matter. The applications filed by the Official Assignee were filed into Court on 17.04.2015. The order of adjudication is dated 13.10.2011, it is in evidence that the insolvents did not file their statement of affairs. Therefore, the Official Assignee had to make enquiries to find out the details of the properties of the insolvents. In the process of such enquiries, the Official Assignee had addressed a letter to the sub-registrar, Kundrathur and by his reply dated 23.06.2014, the Sub-Registrar, Kundrathur had forwarded the encumbrance certificate for the period from 01.01.1991 to 21.02.2014. The said encumbrance certificate reveals the following transactions:

Sl.No.	***Date***	***Transaction***
1.	*09.08.20211 (09.07.2011)*	*Sale agreement between Naresh Kumar Kothari as the power agent of the insolvents and T.Lalith Kumar*
2.	*26.08.2011*	*The sale deed executed by Naresh Kumar Kothari as the power agent of the insolvents in favour of Bijay Sing Choraria*
3.	*26.08.2011*	*Cancellation of agreement dated 09.07.2011.*
4.	*25.01.2012*	*Sale by Bijay Singh Choraria in favour of Sunil Kumar Adikesavan.*

19. Thereafter, the Official Assignee had written to the Sub-Registrar, Kundrathur seeking copies of the documents. The copies of the documents have been provided to the Official Assignee on 23.06.2014. The instant applications have been filed on 17.04.2015. There is no controversy at the bar that the relevant Article applicable for the instant applications is the residuary Article viz., Article 137. I have already extracted Article 137. Column 3 of Article 137 provides that the starting point of limitation for the purpose of application is the date when the right to apply accrues.

20. The right to apply in the case on hand accrues only on the date when the Official Assignee has knowledge of the alienation. From the documents produced, it can at best be said that the Official Assignee has knowledge of the alienation upon receipt of the letter from Sub-Registrar, Kundrathur on 25.03.2014. The application which is filed on 17.04.2015 is definitely within a period of three years allowed under law. Therefore, I conclude that this application is not barred by limitation.

21. On the merits, the primary contention of the applicant in A.No.229 of 2017 is that he being a purchaser from the transferee, who purchased the property from the power agent of the insolvents, his sale cannot be doubted as it is a bonafide transaction for consideration. I am afraid, such a submission cannot be accepted in the light of the settled law that if the first transfer is vitiated, all the subsequent transfers would also be vitiated.

22. In ***Babubhai Jadavji Thakkar and others Vs. Gangji Jesang Cheda*** reported in ***AIR 1983 Bombay Page 54,*** Hon'ble Mrs.Justice Sujata Manohar, as she then was, while rejecting the claim of the subsequent purchaser had held as follows:-

> *Mr.Makhija, learned counsel for one of the transferees has, however, argued that this is not a case where the Official Assignee is claiming the property from the transferee of the insolvents. In the present case the transferee has herself transferred the property to third parties. He has submitted that these third parties are bona fide transferees for valuable consideration. The*

Official Assignee, he submits, cannot claim the property from such bona fide transferees of the transferee. In this connection it is important to bear in mind that the insolvency law is a Code by itself. Under the Presidency-Towns Insolvency Act, there are express provisions which protect certain kinds of transfers made to persons who can be considered as bona fide purchasers for valuable consideration. Thus, for example, under Section 55 itself protection is given to transfers which have been made by an insolvent in favour of a purchaser in good faith and for valuable consideration. Similarly, under section 57 certain bona fide transactions are protected; for example, the section provides that any transfer by the insolvent for valuable consideration or any contract or dealing by or with the insolvent for valuable consideration will not become invalid in the case of insolvency provided that such a transaction had taken place before the date of the order of adjudication and

> *the person with whom such a transaction has taken place did not have at the time notice of the presentation of any insolvency petition by or against the debtor. Only certain transfers are thus expressly protected under the Presidency-Towns Insolvency Act. In view of these provisions it is not possible to protect other types of transfers not protected by the Act by resorting to provisions of other Acts or by resorting to principles of equity. There is no provision under the insolvency law which will protect transfers made by a fraudulent transferee after the order of adjudication.*

23. After referring to certain judgments referred to at the bar it was further observed that a transfer from a fraudulent transferee is not protected. Therefore, the fundamental contention of Mr.A.Thiyagarajan, learned Senior Counsel that he being second transferee, his transfer cannot be impugned by the Official Assignee has to fail.

24. Adverting to the merits of the contentions, it has to be seen whether the transfer by the power agent of the insolvents to Bijay Singh Chouraria is a bonafide transfer for valuable consideration. As already pointed out, the insolvents had executed a power in favor of their agent Mr.Naresh Kumar Kothari on 29.11.2010. The said power of attorney document specifically states that no consideration has been paid by the power agent to the executants. However, a sale receipt said to have been executed on the same day is produced and that evidences payment of a sum of Rs.25,00,000/- by the power agent to the insolvents. The said document is written on a stamp paper which was purchased on 26.08.2010 and the name of the purchaser is not available in the said stamp paper. The said document also refers to the execution of the power of attorney apart from the sale agreement in favour of the nominee of the power agent.

25. Subsequently, an agreement of sale is entered into by the power agent with T.Lalith Kumar on 09.07.2011. The same is registered on 09.08.2011. The sale consideration shown in the agreement is Rs.25,00,000/-. The agreement also recites that out of the sale consideration of Rs.25,00,000/- a sum of Rs.12,50,000/- was paid by way of a **cheque dated 27.11.2010.** This agreement is cancelled on 26.08.2011 by way of another registered instrument. Though the agreement refers to payment of Rs.12,50,000/- by way of cheque the cancellation document is silent on the return of the advance paid. On the same day i.e., 26.08.2011, Ex.A4, sale deed is executed by the power of attorney agent of the insolvents in favour of the 3rd respondent herein Mr.Bijay Sundar Chouraria, for a consideration of Rs.8,00,000/-. It is the genuineness of this sale transaction that is to be decided in order to find out whether the same would fall within the scope of Section 55 of the Presidency Towns Insolvency Act.

26. The following are the factors which will show that the said instrument is not a bonafide transaction:

i) The power of attorney dated 29.11.2010 specifically states that no consideration has been paid by the agent.

ii) On the same day a sale receipt is executed by the insolvents evidencing payment of Rs.25,00,000/-. I had already pointed out the discrepancies found in the said document.

iii) An agreement of sale is entered into by the power agent, who had paid Rs.25,00,000/- as consideration for sale of his property as per the sale receipt agreeing to convey the property to one T.Lalith Kumar S/o. Tejraj Jain for a consideration of Rs.25,00,000/-. The said agreement is dated 09.07.2011 and the same is presented for registration on 09.08.2011. The said document recites that a sum of Rs.12,50,000/- was paid as an *advance by way of a cheque dated 27.11.2010. i.e., even prior to the execution of the power of attorney.*

iv) This agreement is cancelled on 26.08.2011. The cancellation document is silent about the refund of the advance that has been paid.

v) On the same day, the property is sold for less than 1/3rd of the consideration agreed to be paid under the agreement dated 09.07.2011 at Rs.8,00,000/-.

vi) The 4th respondent/ purchaser has attempted to prove that he has paid a sum of Rs.22,50,000/- by way of cash to his vendor, though the sale deed in his favour is only for a sum of Rs.11,00,000/- . Though he is prohibited from doing so as per Section 92 of the Evidence Act, this will also be a circumstance to show that none of *the transactions reflected the true value of the property.*

27. The above factual scenario leads me to conclude that the transaction viz., sale dated 26.08.2011 is not bonafide and is not supported by true and valuable consideration. Once the sale deed dated 26.08.2011 becomes void as against the Official Assignee, the subsequent sale by the purchaser in favour of the petitioner in A.Nos.229 of 2017 on 25.01.2012 will also have to be set aside as the vendor did not have title to convey on the date of execution of the sale by him.

28. Mr.A.Thiyagarajan, learned Senior Counsel would fault the Official Assignee for not taking immediate steps to inform the Sub-Registrar about the adjudication order. As already pointed out the insolvents did not filed the statement of affairs as enjoined upon them under the provisions of the Act. Therefore, the Office of the Official Assignee had to make its own enquires and get the details regarding the property. Hence, I do not think it will be correct to blame the Official Assignee for not informing the Sub-

Registrar of the order of adjudication.

29. In the light of the above conclusion reached that the sale deed dated 26.08.2011 is declared void as against the Official Assignee and the subsequent sale deed dated 25.01.2012 by the 3rd respondent in favour of the 4th respondent in A.Nos.230 to 233 of 2017 will also be rendered void.

30. In fine A.Nos.230 to 233 of 2017 will stand allowed and A.No.229 of 2017 filed by the transferee will stand dismissed. However, in the circumstances there will be no order as to costs.

29.07.2021

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Index : Yes
Internet : Yes
Speaking order

R.SUBRAMANIAN,J.
dsa

Pre-Delivery Common Order
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