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in

I.P.No.181 of 1997

KRISHNAN RAMASAMY, J.

This Application is filed for the following reliefs:

(i) To declare the sale deed dated 30.01.1996 registered as Document No.425/96 on the file of Sub-Registrar, Kodambakkam for Rs.42,000/- made within two years from the date of adjudication of the insolvent viz., V.Mariammal as null and void under Section 55 of the Presidency Towns Insolvency Act and continue to be the property of the said Mariammal and vest with the official Assignee, High Court, Madras.

(ii) To issue suitable warrant of seizure in favour of the Official Assignee to seize the property

(iii) To sell the same for the benefit of the General Body of Creditor.

2. The learned counsel representing the learned Official Assignee submitted that the insolvent debtor's husband borrowed money from the first respondent from time to time and he had also borrowed money from the second respondent-finance company. At the time of borrowing money, the insolvent debtors mortgaged her property with the second respondent. However, no property has been mortgaged with the first



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respondent. The first respondent funded for the business of the insolvent debtor's husband and for the same, they have executed promissory notes and signed the blank stamp papers from time to time.

3. Under these circumstances, when the property was mortgaged with the second respondent, the first respondent forced the insolvent debtor and under threat, she had executed a sale deed dated 30.01.1996. Further, it was submitted that the insolvent debtor had filed a petition to declare her as insolvent on 02.12.1997 and thereafter, on 11.12.1997, she was adjudicated as insolvent. Therefore, it was contended that the present sale is made under threat and for settling the debtors of the first respondent. The said sale deed was executed on 30.01.1996. Therefore, this sale was made within a period of two years from the date of adjudication of the debtors as insolvent. Hence, he would submit that this is a fraudulent preference and seeks to declare this sale as null and void.

4. The learned counsel appearing for the insolvent debtor would submit that the insolvent debtor's husband borrowed money from the first respondent and the property was mortgaged with the second respondent. Due to the non-payment of the loan by her husband, the first respondent



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compelled the debtor to execute the sale deed though the said property has been mortgaged with the second respondent. The said sale deed was executed on 30.01.1996 and thereafter, she filed a petition on 02.12.1997. Therefore, the learned counsel further submitted that in the present case the sale was made under threat and force.

5. The notice was issued to the respondents. As far as second respondent is concerned, they had filed a counter and supported the case of the learned Official Assignee. As far as the first respondent is concerned, he filed a counter stating that the sale was not executed under force and threat. However, he has not disclosed anything about how the consideration was passed on to the debtor. Though a counsel had entered appearance on behalf of the respondent earlier, none appeared on behalf of the respondent. This matter is pending for the past 20 years and it is adjourned on several occasions.

6. Under these circumstances, this Court is inclined to pass orders upon hearing and based on the counter filed by the first respondent. Heard the learned counsel for the Official Assignee and the debtor and perused the counter filed by both the respondent and other documents



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filed by the respective parties.

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7. On perusal of the documents, it is clear that the first respondent lent money to the husband of the insolvent debtor and towards settlement of the said amount, he had insisted the debtor to execute a sale deed. The said property was already mortgaged with the second respondent and the same was registered. In spite of the registration of the mortgage, the first respondent forced the debtor to execute the sale deed. Though, the first respondent has taken a stand, there was no force or threat, under the said circumstance, this Court is not in a position to accept the same.

8. When the property was mortgaged by way of registration, except the mortgagee, no person is entitled for said property until the clearance of the debt. In the present case, the mortgagee is also before this Court and they have also filed a counter stating that the first respondent executed the said sale deed under threat by depriving the rights of the mortgagee. It is clear that the execution of sale deed was made under threat and the same was also made within a period of two years from the date of debtor being adjudicated as insolvent. Therefore, since it is crystal clear that the preference is fraudulent, the sale is declared as null and



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void.

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9. Accordingly, this Court directs the learned Official Assignee to issue suitable warrant to seize the property and sell the same for the benefit of the General Body of Creditor.

10. With these directions, this application is ordered as prayed for.

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