Application (IP) Nos.104 to 107 of 2022

ABDUL QUDDHOSE, J.

The Official Assignee,
High Court, Madras
representing the Estate of
N.Ekambaram ... Applicant

Versus

1.N.Ekambaram ... 1st respondent/insolvent

2.Mahaveer Chand

3.Dilipkumar Surana ... respondents 2 and 3/purchasers

Application No.104 of 2022 has been filed under Order XIV Rule 2 and 3 of the Insolvency Rules 1956 read with Sections 7, 27, 36, 68 and 90 of the Insolvency Act seeking to declare the Sale Deed dated 06.11.2017 executed by the first respondent (insolvent) in favour of respondents 2 and 3 as null and void as the said sale has taken place within two years prior to the date of adjudication of the first respondent as an insolvent.

Application No.105 of 2022 has been filed under Order XIV Rule 2 and 3 of the Insolvency Rules 1956 read with Sections 7, 27, 36, 68 and 90 of the Insolvency Act seeking to direct respondents 2 and 3 to hand over title deeds belonging to the insolvent N.Ekambaram relating to the property at Old Door No.8 (Previously Door No.2A) New Door No.30, Arumugam Street, Old Washermanpet, Chennai-600 021, which is more fully described in the schedule to the applications to the Official Assignee.

Application No.106 of 2022 has been filed under Order XIV Rule 2 and 3 of the Insolvency Rules 1956 read with Sections 7, 27, 36, 68 and 90 of the Insolvency Act seeking to grant an order of injunction restraining respondents 2 and 3 from alienating the insolvent's property, situated at Old Door No.8 (Previously Door No.2A) New Door No.30, Arumugam Street, Old Washermanpet, Chennai-600 021, which is more fully described in the schedule to the applications, measuring to an extent of 560 sq.ft. with undivided half share.

Application No.107 of 2022 has been filed under Order XIV Rule 2 and 3 of the Insolvency Rules 1956 read with Sections 7, 27, 36, 68 and 90 of the Insolvency Act seeking to permit the Official Assignee to sell the insolvent's share of the property, situated at Old Door No.8 (Previously Door No.2A) New Door No.30, Arumugam Street, Old Washermanpet, Chennai-600 021, measuring to an extent of 560 sq.ft. with undivided share more fully described in the schedule to the application, for the benefit of the general body of Creditors.

2.The brief facts leading to the filing of these applications are as follows:

The first respondent (N.Ekambaram) was adjudicated as an Insolvent by an order of this Court on 01.08.2019 in I.P. No.13 of 2019. The insolvent's parents, namely, S.K.Natarajan and N.Vasantha have settled the property, namely, Old Door No.8 (Previously Door No.2A), New Door No.30, Arumugam Street, Old Washermanpet, Chennai-600 021 in favour of the insolvent's brother N.Pazhani under a Settlement Deed dated 08.07.2011, registered as Document No.2377 of 2011 (441 sq.ft. with UDS in passage). Another Settlement Deed dated 12.03.2014 was also executed by the insolvent's parents in favour of the insolvent under Document No.746 of 2014 (160 sq.ft. with UDS in passage). The insolvent and his brother

Pazhani jointly sold the schedule property to one Mahaveerchand and Dilipkumar Surana under a Sale Deed dated 06.11.2017 for a sale consideration of Rs.25,00,000/-.

3.According to the Official Assignee/applicant, the market value of the property sold by the insolvent and his brother is Rs.86,63,000/- out of which, the insolvent's share is Rs.47,84,000/-. According to the Official Assignee/applicant, the property was sold by the insolvent within two years prior to the adjudication of Ekambaram as an insolvent for a lesser market value. Under these circumstances, the Official Assignee has filed these applications for the aforesaid reliefs.

4.Counter affidavits have been filed by the first respondent (insolvent) as well as by the purchasers (respondents 2 and 3). In the counter affidavits, they would state that the Sale Deed dated 06.11.2017 executed by the first respondent (insolvent) in favour of respondents 2 and 3 is valid as the property was sold only for a valid sale consideration and respondents 2 and 3 are bonafide purchasers. They would jointly state that the property has been sold only for the market value to respondents 2 and 3. Respondents 2 and 3 would state that subsequent to the purchase of the property, they had mortgaged the property with HDFC Bank and had availed loan and they categorically contend that they are bonafide purchasers. They would also state that without impleading the HDFC Bank/ the mortgagee, the present applications are not maintainable. They have also disclosed that the building is 63 years old building and is in a dilapidated condition and further they would categorically contend that only in excess of the guideline value, the land valuation was done and the total sale consideration was fixed under the Sale Deed dated 06.11.2017.

5.Before this Court, the Official Assignee as well as the respondents have filed typed set of papers. The Official Assignee relies upon a Valuation Report, wherein it is found in page 60 of the typed set of papers that in the property sold through Sale Deed dated 06.11.2017, the insolvent Ekambaram was having only half share. In fact, as seen from the Official Assignee's Valuation Report obtained by him, it is an admitted fact that the building found in the property described in the Sale Deed dated 06.11.2017 is 63 years old building and it is in a dilapidated condition. It is also noticed from the Valuation Report obtained by the Official Assignee that the extent of land under the Sale Deed dated 06.11.2017 is 1159 sq.ft. In the said Valuation Report, it is also confirmed by Mr.P.Anbarasan, Chartered Engineer that the Sub Registrar valued (guideline value) on 09.06.2017 for the property, under the Sale Deed dated 06.11.2017 as Rs.1,675/- per sq.ft. If 1159 sq.ft. being the total land extent is taken into consideration, the guideline value of the same will only be Rs.13,52,553/-. Admittedly, the insolvent (Ekambaram) was having only 50% share in the property sold under Sale Deed dated 06.11.2017. Therefore, 50% share will approximately work out to Rs.6,60,000/-. As seen from the Sale Deed dated 06.11.2017, the insolvent along with his brother had sold the property to respondents 2 and 3 for a total sale consideration of Rs.25,00,000/-. If guideline value is taken into consideration in respect of the land as observed earlier, the share in respect of the land alone works out to Rs.6,60,000/- approximately. Being a very old building of 63 years and in a dilapidated condition, judicial notice can be taken that it will not fetch much value. Even according to the valuation report submitted by the Official Assignee, the building value has been mentioned as 5,50,000/- for the property. The market value for a building, which is 63 years old and for the land, where the guideline value is admittedly Rs.1675 per sq.ft., the property may not fetch more than Rs.25,00,000/- as disclosed in the Sale Deed dated 06.11.2017. If guideline value is taken into consideration, the land value will be Rs.13,52,553/- and being a very old building of 63 years, the building being 850 sq.ft. may fetch a value of another 5 to 6 lakhs. Therefore, the sale price of Rs.25,00,000/- under the Sale Deed dated 06.11.2017, which is challenged in these applications by the Official Assignee cannot be held to be inadequate and also to be held as dishonest intention on the part of the respondents to deprive the creditors.

6.The Official Assignee has also not impleaded HDFC Bank Limited, the mortgagee of the property from whom respondents 2 and 3 have availed a loan by mortgaging the property. The loan availed by respondents 2 and 3 from the bank is also for a sum of Rs.27,00,000/-, which is more than the total sale consideration under the Sale Deed dated 06.11.2017.

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7.As seen from the documents placed on record, it is clear that the insolvent, the first respondent has sold the property to respondents 2 and 3 under the Sale Deed dated 06.11.2017 only by good faith and for a valuable sale consideration. In fact, even prior to the filing of the Insolvent Petition, the first respondent (insolvent) has sold the property to respondents 2 and 3 under the Sale Deed dated 06.11.2017. The first respondent (insolvent) was declared as insolvent on 01.08.2019, whereas the Sale Deed is dated 06.11.2017. Being a bonafide purchase for a valuable sale consideration, this Court cannot interfere with the Sale Deed dated 06.11.2017 standing in the name of respondents 2 and 3. For the foregoing reasons, there is no merit in these applications. Accordingly, these applications are dismissed.

24.07.2023

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