A(IP).Nos.221 of 2009, 75 of 2009, 76 of 2009, 177 of 2010 and 257 of 2017
in
I.P.No.69 of 1998

Reserved On	15.12.2023
Pronounced On	13.06.2024

C.SARAVANAN, J.

By this Common Order, all the applications are being disposed of.

2. These applications have been filed for the following relief:-

Appl.No.	Relief	Applicant	Respondent	Status of Applicant
A(IP).Nos. 75 of 2009, 76 of 2009	i) To declare the sale deed dated 15.05.1998 in respect of the property (Agricultural Lands) at Survey No. 393/1 measuring at 52 ½ cents and Survey No. 393/1D measuring 52 ½ cents situated at Thirunindravur Village Sriperumbudhur Taluk, Chennai MGR District as, fraudulent & Void against the Official Assignee. ii) To direct Official Assignee to take appropriate action for recovery of the property from respondent 3 & 4 (Elumalai Chettiar &	A.Seenivasan	1.Radhakrishnan 2.Official Assignee 3.Elumalai Chettiar 4.Valliammal	Creditor No.115

	Valliammal)			
A(IP).No. 221/2009	Praying that the sale deed dated 15.05.1998 vide Doc. No. 2045/1998 is void against the Official Assignee since there was lesser consideration and the Official Assignee may be permitted to sell the property	Official Assignee	1.Radhakrishnan 2.Elumalai Chettiar 3.Valliammal	Official Assignee
A(IP).No. 177/2010	To declare the sale deeds vide Doc. Nos. 203, 204, 205/2001 dated 24.01.2001, Doc. Nos.4426/2002 dated. 04.12.2002 and Doc. Nos. 695, 765 & 766/2004 dated 11.02.2004 as fraudulent and void against the Official Assignee and to direct the official assignee to enquire into realization made by the 3rd respondent (C. DHAYALAN) by sale of properties belonging to the insolvent and its partners and consequently to realize the proceeds and deposit the same to the credit of the above insolvency petition.	A.Jothimani	1.0fficial Assignee 2.Radhakrishnan 3.Dayalan	Creditor No. 100
A(IP).No. 257/2017	To grant unconditional discharge to the Applicant/Insolvent	Radhakrishnan	Official Assignee	Insolvent

3. After the case was heard at length, the learned counsel for the

insolvent, the applicant in A(IP).No.257 of 2017, filed a Memo dated 15.12.2023 stating that the insolvent has withdrawn the vakalat. Since the case was heard at length over a period of time, the request of the learned counsel for the insolvent, the applicant in A(IP).No.257 of 2017 cannot be acceded and therefore rejected.

4. A(IP).Nos.75 and 76 of 2009 and A(IP).No.221 of 2009 are in respect of the same property and the same reliefs. They are to be either allowed, dismissed or disposed.

5. A(IP).No.257 of 2017 has been filed by the insolvent K.Radhakrishnan to discharge the insolvent under Section 38 of the Presidency-Towns Insolvency Act, 1909.

6. A(IP).No.177 of 2010 has been filed by one A.Jothimani under Section 56 of the Presidency-Towns Insolvency Act, 1909. The said A.Jothimani is Creditor No.100.

7. The dispute in these applications arise on account of adjudication of the insolvent K.Radhakrishnan the applicant in A(IP).No.257 of 2017 on 30.07.1998 in I.P.No.69 of 1998. I.P.No.69 of 1998 was filed by the applicant in A(IP).No.257 of 2017 himself on 17.06.1998. There were suppression and failure to disclose the particulars of prior sales by the insolvent in I.P.No.69 of 1998. Prior to filing of the insolvency petition and adjudication on 30.07.1998 the applicant in A(IP).No.257 of 2017 [the insolvent K.Radhakrishnan] sold lands, which were standing in his name. Certain other lands which stood in the name of the relatives of the insolvent are also subject matter of these applications.

8. A(IP).Nos.75 and 76 of 2009 have been filed by one A.Seenivasan Creditor No.115 to declare the sale of agricultural property on 15.05.1998 by the insolvent measuring an extent of 105 cents (52 ½ cents x 2) respectively in S.No.393/1 and 393/1D each measuring an extent of 52 ½ cents in Thirunindravur Village, SriperumbudurTaluk, Chengalpattu District (presently Kanchipuram District) in favour of the 3rd and 4th respondents therein namely Elumalai Chettiar and his wife E.Valliammal both residing at No.10, Vaniyar Street, Kundrathur, Chennai

– 600 069.

9. It appears that the insolvent did not cooperate with the Official Assignee. Therefore, the Official Assignee was unaware of the sale of land to the 2nd and 3rd respondents in A(IP).No.221 of 2009, who are incidentally 3rd and 4th respondents in A(IP).No.75 and 76 of 2009.

10. A(IP).Nos.75 and 76 of 2009 were filed, the Official Assignee has also filed A(IP).No.221 of 2009 to declare the Sale Deed dated 15.05.1998 registered as Doc.No.2045/1998 with the Sub-Registrar's Office, Avadi, as null and void.

11. The aforesaid applications are predicated on the line that the sale in favour of the 3rd and 4th respondents in A(IP).No.75 and 76 of 2009/ 2nd and 3rd respondents in A(IP).No.221 of 2009 namely, Elumalai Chettiar and his wife E.Vailliammal were a sham and nominal sale for paltry amount of **Rs.1,20,960/-** even though the aforesaid property would have to be fetched at least **Rs.10,00,000/-** on the date of sale on **15.05.1998**.

12. Incidentally, A(IP).No.99 of 2021 and A(IP).No.100 of 2021 were filed by the Official Assignee for declaring the dividends for a sum of Rs.2,59,226/- and to disburse the same to the creditors which came to be allowed on 22.11.2021.

13. In A(IP).Nos.75 and 76 of 2009, the applicant A.Seenivasan Creditor No.115 states that the 3rd and 4th respondents in A(IP).No.75 and 76 of 2009 / 2nd and 3rd respondents in A(IP).No.221 of 2009 namely, Elumalai Chettiar and E.Valliammal are the parents of one E.Harikumar and that both E.Harikumar and his wife H.Vimala themselves were creditors of the insolvent and that the sale was clearly a fraudulent sale with a preferential treatment to them to defeat the rights of the other creditors of the insolvent and therefore, void in terms of Section 56 and Section 55 of the Presidency-Towns Insolvency Act, 1909, and therefore, the sale is deemed to be void as against the Office of the Official Assignee.

14. In A(IP).No.177 of 2010, the applicant *i.e.,* A.Jothimani, who is Creditor No.100 has stated that the insolvent was engaged in chit business

under the Name and Style of "Keyar Enterprises and Finance Company" and "Ar.Ke.Vee Investments" and owed the amounts to various creditors which include several depositors and several friends and relatives of the applicant A.Jothimani who invested in these two chits floated by the insolvents.

15. The further case of A.Jothimani, the applicant in A(IP).No.177 of 2010 is that the chit business was looked after by the insolvent A.Radhakrishnan himself both in the name of Ar.Ke.Vee Investments and Keyar Enterprises and the partners of Ar.Ke.Vee Investments were mere name lenders and therefore, dummy partners of "Ar.Ke.Vee Investments" that the insolvent decided to acquire the property in the name of the dummy partners of "Ar.Ke.Vee Investments" namely the following persons and later filed I.P.No.69 of 1998 on 17.06.1998 to defraud his creditors:-

Sl.No.	Name of the Managing Partner/Partners of Ar.Ke.Vee Investments
1.	K.Radhakrishnan (Managing Partner/Insolvent)
2.	R.Kalavathi (Partner)
3.	S.Venkateswaran (Partner)
4.	N.Vasudevan
5.	N.Venkatramani

16. It is further case of A.Jothimani, the applicant in A(IP).No.177 of 2010 that several parcels of lands were purchased during 1996 in the name of the above partners of "Ar.Ke.Vee Investments" located in Thirunindravur Village as detailed below:-

Sl. No.	Vendors	Purchasers/Partners	Sale Deed Document No. and Date	S.F.No.	Extent Ac. Cent	Doc. Total Extent Ac.
1.	K.Nithiyanandham	S.Venkates-waran	59/96 dated 07.01.96	396/2	0.30	0.30
2.	K.Sundaram	S.Venkates-waran	65/96 dated 07.01.96	396/3# 395/5	0.72 ½	0.72 ½
3.	G.Chandrasekar & others	S.Venkates-waran	1482/96 dated 21.03.1996	395/4 395/5A & 5B	0.40 0.32 ½	0.72 ½
4.	T.K.N.Kannappan	R.Kalavathi	1128/96 dated 04.03.96	406/1 404/3 404/2	0.23 0.36 0.13	0.72
5.	T.K.N.Kannappan	N.Venkatra-mani	1129/96 dated 04.03.96	402/2 397/4 396/4	0.89 0.60 1.67*	2.59
6.	T.K.N.Kannappan	N.Vasudevan	1130/96 dated 04.03.96	405/6A 405/7	1.16 0.45	2.09

Sl. No.	Vendors	Purchasers/Partners	Sale Deed Document No. and Date	S.F.No.	Extent Ac. Cent	Doc. Total Extent Ac.
				405/1 405/3	0.40 0.08	
7 Acres and 15 Cents				**Total Extent**		**7.15**

Note:

* Wrongly mentioned as S.F.No.393/3 and Extent.Ac.Cent 1.10 in A(IP).No.177 of 2010.

Wrongly mentioned by including S.F.No.396/4C in A(IP).No.177 of 2010.

17. The above mentioned properties at Sl.Nos.1 to 6 have been sold to J.Vijayabaskaran, S.Vijayalakshmi, P.Vetriselvi, C.Dayalan, G.Umaram as detailed below:-

Sl. No.	Doc.No.	Document Dated	Vendor Name	Purchaser Name	Survey No.	Sale Consi -deration Rs.
1.	203/2001	24.01.2001	N.Venkataramani	J.Vijayabaskar	402/2-22 Cent	Rs. 27,000/-
2.	204/2001	24.01.2001	N.Venkataramani	S.Vijayalakshmi	397/4-30 Cent	Rs. 37,800/-
3.	205/2001	24.01.2001	N.Venkatramani	E.P.Vetriselvi	402/2-69 Cent 397/4-22 Cent	Rs.1,14,000/-

Sl. No.	Doc.No.	Document Dated	Vendor Name	Purchaser Name	Survey No.	Sale Consi -deration Rs.
4.	695/2004	11.02.2004	N.Venkatramani	C.Dayalan	(Old Survey No.396/4), 396/4A, 396/4B, 396/4C – 1 Acre 67 Cent	Rs.2,50,000/-
5.	4426/2002	04.12.2022	R.Kalavathy	G.Umaram	406/1- 23 Cent 404/3- 36 Cent 404/2- 13 Cent Total – 72 Cent	Rs.1,50,300/-
6.	765/2004	11.02.2004	N.Vasudevan	G.Umaram	405/6a-1 Acre 16 Cent 405/7- 45 Cent 405/1- 40 Cent 405/3-8 Cent Total-2 Acres 9 Cents	Rs.3,00,000/-
7.	766/2004	11.02.2004	S.Venkateswaran	C.Dayalan	396/2- 30 Cent 395/4- 40 Cent 395/5A- 32 Cent 395/5B- 1/2 Cent-1 Cent 396/3-	Rs.3,00,000/-

Sl. No.	Doc.No.	Document Dated	Vendor Name	Purchaser Name	Survey No.	Sale Consi -deration Rs.
					72 Cent Total-1 Acre 75 Cent	

18. The case of A.Jothimani, the applicant in A(IP).No.177 of 2010, is that all these properties were purchased from and out of the amounts invested by the depositors and chit subscribers of "Ar.Ke.Vee Investments" and that in 1998, the insolvent persuaded the above mentioned partners to resign from the "Ar.Ke.Vee Investments" and thereafter filed I.P.No.69 of 1998, to have himself adjudged as an insolvent to defraud the creditors.

19. The further case of A.Jothimani, the applicant in A(IP).No.177 of 2010, is that the insolvent had declared details of only few of the assets which had not been sold and failed to disclose the properties sold and purchased in his name out of the funds invested by the subscribers and creditors and in the name of the above named partners in the schedule of affairs filed on 12.11.1998 after he was adjudicated on 30.07.1998.

20. It is further stated that during August 1998, C.Dayalan, the third respondent in A(IP).No.177 of 2010 registered Ar.Ke.Vee Depositors Welfare Association registered as Doc.No.390/1998, an Association for the welfare of the subscribers and creditors of the insolvent and convened a meeting of the subscribers/creditors and assured the subscribers/creditors of the insolvent not to worry about their investments and assured them to retrieve all the properties standing in the name of the insolvent as well as the partners of "Ar.Ke.Vee Investments". C.Dayalan, the 3rd respondent in A(IP).No.177 of 2010 acted as the Secretary of the said Association.

21. It is submitted that the said Association was founded for the purpose of retrieving the properties and selling them and to realize its proceeds for distribution of surplus amongst the subscribers and creditors. However, contrary to the assurance and in total misrepresentation and in breach of trust, the said C.Dayalan, the third respondent in A(IP).No.177 of 2010 had acquired some of the properties from the partners in his individual name and plotted them into house sites and sold to the third parties and thereby defeated the rights of the subscribers and creditors of the insolvent. It is stated that on a nominal estimation, the said C.Dayalan,

the 3rd respondent in A(IP).No.177 of 2010 has sold lands for Rs.7,00,00,000/- and has profited from such sale. It is submitted that the said C.Dayalan, the 3rd respondent in A(IP).No.177 of 2010 has not accounted for the amount realized by him nor has paid to the subscribers and creditors of "Ar.Ke.Vee Investments" as undertaken by him.

22. It is noticed that the said C.Dayalan, the 3rd respondent in A(IP).No.177 of 2010 in I.P.No.69 of 1998 had earlier filed A(IP).Nos.127 and 142 of 2008 for the following relief:-

Prayer in A(IP).No.127 of 2008	**Prayer in A(IP).No.142 of 2008**
To grant stay of all further proceedings pursuant to the Auction Notice issued by the Official Assignee, High Court, Madras as published in Tamil Daily "Thinathanthi" issue dated 28.03.2008 insofar as it relates to the land comprised in Survey No.396/4B situated in Thirunindravur Village, Poonamallee Taluk, Thiruvallur District.	To grant stay of all further proceedings pursuant to the Auction Notice issued by the Official Assignee in regard to the properties covered in I.P.No.69/1998 as published in Tamil Daily "Thinathanthi" issue dated 27.04.2008 insofar as it relates to the land comprised in Survey No.396/4A of Thirunindravur Village, Poonamallee Taluk, Thiruvallur District.

23. The above applications filed by the said C.Dayalan, the 3rd

respondent in A(IP).No.177 of 2010 were allowed by this Court vide a detailed order dated 22.12.2020.

24. The Additional Report of the Official Assignee dated 21.06.2023 in A(IP).No.177 of 2010 states as follows:-

> "5. The Insolvent has come forward with a different version of the case to support the applicant's case but never cooperated with the official assignee for realization of the assets. The Insolvent's case that the third respondent has manipulated the Survey Nos and the extent of land in the original sale deeds has to be substantiated with documents and evidence. It is alleged that the third respondent as the Secretary of the Association acquired properties from the Insolvent and partners and appropriated the sale proceeds and failed to discharge the liability. While the insolvent accuses the third respondent, the third respondent accuses the insolvent and the creditor viz., the applicants herein. None places the correct or prior facts to the Official Assignee with supporting documents for realization of the assets. Except filing affidavit, they don't appear to produce relevant supportive documents before the Official Assignee and furnish proper details relating to partnership firm and properties to realize the assets by the Official Assignee. In the counter report filed by the Official Assignee to the Application Nos.127 and 142 of 2009 it has been specifically stated that the Insolvent did not cooperate with the Official Assignee for several years in realization of the assets and furnished the information regarding some properties only in 2009.

> 6. The creditors and the 3rd respondent, Dayalan as well as the insolvent come forward with several facts after 13 years of filing this application and 25 years after adjudication on 30.7.1998. The insolvent as well as the third parties are fishing in troubled water without furnishing proper information to the Official Assignee for effective realization of the assets. The facts relating to the Survey Numbers and correlation of the properties are jumbled and complicated to the convenience of the insolvent, but it is expected that the Official Assignee is to sort out the disputes between the insolvent and others and the third respondent, Dayalan and creditors to realize the amount by sale of assets for distribution. When there is no proper and effective information and documents having been furnished without correct and proper particulars by Insolvent to mislead and side track the issue, it will not help the Official Assignee to realize the assets. Further, when the third respondent Dayalan who is a third party to the insolvency proceedings and who has not been adjudicated as an Insolvent, the creditos ought to have taken effective steps earlier in accordance with the Act against Dayalan for effective realization of the properties in the hands of Dayalan and third party."

25. The learned counsel for the Official Assignee has drawn attention to the documents marked before the learned Master and the cross-examination of the 3rd respondent in A(IP)No.221 of 2009 namely E.Valliammal. Specifically, it was pointed out that the 3rd respondent E.Valliammal has categorically admitted that the insolvent and the 2nd

respondent Elumalai Chettiar herein were acquainted with each other.

26. The relevant portion of the chief-examination and cross-examination of the 3rd respondent in A(IP).No.221 of 2009 namely E.Valliammal is extracted below:-

> "*Chief-Examination by Mr.M.Sriram, Counsel for the Applicant in both applications:*
>
> *I am the 3rd respondent in A.No.221 of 2009, the 2nd respondent is my husband. I am deposing on behalf of the 2nd respondent also. I am well acquainted with the facts of this case. I am filing my proof affidavit stating the facts of this case and the same may be treated as part of my evidence in chief. In continuation of proof affidavit, I am marking the following documents as exhibits.*
>
> *Ex.R1 is the Certificate Copy of the Sale Deed dated 28.09.1995, executed by T.N.Sambanthan in favour of Radhakrishnan.*
>
> *Ex.R2 is the Certificate Copy of the Sale Deed dated 07.01.1996, executed by Mr.K.Narayanasamy and others in favour of Mr.S.Venkateswaran.*
>
> *Ex.R3 is the Certificate Copy of the Sale Deed dated 07.01.1996, executed by Mr.S.Sivasankaran in favour of Mr.S.Venkateswaran.*
>
> *Ex.R4 is the Certificate Copy of the Sale Deed dated 21.03.1996, executed by Mrs.Amasavalli ammal and others in favour of Mr.Chandrasakaran.*

<u>Cross-Examination by Mr.K.V.Ananthakrushnan, Counsel for the Official Assignee</u>:

I came to know Mr. Radhakrishnan through a broker. Mr.Radhakrishnan is residing in Thirunindravur. We are not doing any farming in the agricultural land of 52 1/2 cents which was purchased by us. <u>My husband Elumalai Chettiyar knows Radhakrishnan.</u> I do not know the business of Radhakrishnan. Mr.Harikumar is my son. I do not know whether Mr.Harikumar had money transactions with the insolvent do not know at the Radhakrishnan. Mr.Harikumar's Wife name is Vimala. I do not know at the time of purchase of the property Mr.Radhakrishnan was in Insolvency circumstances. We have obtained the legal opinion before purchasing the property. I do not know whether my sons and my daughter-in-law have filed claim petition before the official assignee for the money lent to Radhakrishnan. My husband had paid the sale consideration for this property. I deny the suggestion that at the time of purchase of the property in the year 1998 the value of the property was Rs. 10,00,000/-.

27. The 2nd and 3rd respondents namely, Elumalai Chettiar and E.Valliammal in A(IP).No.221 of 2009 are parents of one Harikumar and that the said E.Harikumar and his wife H.Vimala had invested into chit business and had defaulted in repayment. It is submitted that the property which was valued at Rs.7,35,000/- in the year 1998 but was sold for a

paltry amount of **Rs.1,20,960/-** on 15.05.1998.

28. It is therefore submitted that the limitation under Article 137 of the Schedule to the Limitation Act, 1963 to set aside the sale has to be interpretated in favour of the Official Assignee in A(IP).No.221 of 2009. It is submitted that the application filed to set aside the sale under Section 55 of the Presidency-Towns Insolvency Act, 1909 is to be construed as having filed within three years from the date of knowledge.

29. Opposing the prayer, the learned counsel for the 2nd and 3rd respondents in A(IP).No.221 of 2009 would submit that purchase was *bona fide* and there are no evidence to substantiate that either the sale was not *bona fide* or was intended to defeat the rights of the creditors in the above insolvency proceedings. It is further submitted that the land was purchased for a sale consideration as per the guideline value as on the date of sale.

30. It is submitted the Ex.P3 Valuation Report dated 21.11.2010

cannot be accepted to be correct as it has not been tested. It is also submitted that the learned Official Assignee ought to have produced author of Ex.P3 Valuation Report dated 21.11.2010.

31. It is further submitted that it is not clear as to how Ex.P3 Valuation Report dated 21.11.2010 was allowed to be marked. Hence, he submits that the sale concluded in favour of the for the 2nd and 3rd respondents in A(IP).No.221 of 2009 cannot be disturbed and therefore, is liable to be dismissed.

32. The learned counsel for the Official Assignee submitted that there are decisions/case laws to substantiate that the application filed within three years from the date of knowledge i.e., date of filing of A(IP).Nos.75 and 76 of 2009.

33. The Office of the Official Assignee was orally directed to give particulars of the Sale Deed covered by A(IP).No.177 of 2010 by tracing the previous owner from whom the 3rd respondent C.Dayalan, applicant in A(IP).No.127 of 2008 and A(IP).No.142 of 2008, which came to be

allowed on 20.02.2022.

34. I have considered the arguments advanced by the learned counsel for the petitioner/applicant in the respective applications.

35. In the Counter Affidavit filed by the 2nd and 3rd respondents in A.(IP).No.221 of 2009, it is stated that A.(IP).No.221 of 2009 was filed in the year 2009 challenging the sale effected on 13.05.1998 after a period of two years and therefore, A.(IP).No.221 of 2009 is liable to be dismissed, since it is barred under the law of limitation and has not followed the provisions of the Presidency-Towns Insolvency Act, 1908.

36. It is further stated that there was no undervaluation and the property was purchased for valuable consideration offered by the purchaser and accepted by the vendor.

37. It is further stated that the purchase was made in good faith and for valuable consideration and therefore being a *bona fide* purchase it is

not hit under Section 55 of the Presidency-Towns Insolvency Act, 1908 and the same is protected under Section 57 of the Presidency-Towns Insolvency Act, 1908. In that context, it is stated that A.(IP).No.221 of 2009 has been filed after a period of 11 years and therefore the same is not maintainable.

38. It is stated that there is no lack of consideration or lesser consideration and that the property has been purchased at the correct market value. It is further stated that the respondents in A.(IP).No.221 of 2009 are not aware of any creditor by name A.Sreenivasan, the applicant in A(IP).Nos.75 and 76 of 2009. It is further stated that the respondents in A.(IP).No.221 of 2009 were not served with any copy of the application and hence, was not in a position to traverse any averment contained therein. It is further stated that A.(IP).No.221 of 2009 has been filed purely as an abuse of process of law to coerce the respondents with an ulterior motive.

39. The applications filed to set aside the sale of land in S.No.393/1 and 393/1D measuring a total extent of 1.05 acres in favour of the 3rd and

the 4th respondents in A(IP).Nos.75 and 76 of 2009/2nd and the 3rd respondents in A(IP).No.221 of 2009 deserves to be allowed in the light of restrictions contained in Section 55 and Section 56 of the Presidency-Towns Insolvency Act, 1909 as these sales have been made just within a period of two years before the date of adjudication of the insolvent on 30.07.1998.

40. These sales have taken place on 15.05.1998, *i.e.*, just one months prior to date of filing of I.P.No.69 of 1998 on 17.06.1998. These respondents i.e., Elumalai Chettiar and E.Valliammal have not proved their *bona fide.* Therefore, the Sale Deed in their favour on **15.05.1998** vide Doc.No.2045/1998 are liable to be declared as null and void.

41. There are no documents to substantiate that the purchase was *bona fide*. That apart, there are sufficient indications that son and daughter in law of the Elumalai Chettiar and E.Valliammal were the creditors of the insolvent and thus, there was a fraudulent transfer in favour of these respondents by the insolvent. Hence, applications A(IP).Nos.75 and 76 of 2009 and A(IP).No.221 of 2009 deserves to be

allowed.

42. As far as A(IP).No.177 of 2010 is concerned, the applicant has stated that the insolvent K.Radhakrishnan was also the Managing Partner of another partnership firm which was carrying a similar business in chit collection in “Ar.Ke.Vee Investments” and that several properties were purchased from and out of the chit amounts and subscriptions paid by the purchasers in the name of its partners as detailed below:-

Sl.No.	Name of the Managing Partner/Partners of Ar.Ke.Vee Investments
1.	K.Radhakrishnan (Managing Partner/Insolvent)
2.	R.Kalavathi (Partner)
3.	S.Venkateswaran (Partner)
4.	N.Vasudevan
5.	N.Venkatramani

43. This was not informed to the Office of the Official Assignee by the insolvent either at the time of filing of I.P.No.69 of 1998 on **17.06.1998** or before the adjudication of the insolvent on **30.07.1998** or in the Schedule of Affairs filed by the insolvent on **12.11.1998** under Section 24 of the Presidency-Towns Insolvency Act, 1909.

44. Properties were purchased in the name of the partners of Ar.Ke.Vee Investments who appeared to have resigned from the said Partnership Firm before the insolvent filed I.P.No.69 of 1998 on **17.06.1998**. Some of these properties were purchased by the 3rd respondent namely C.Dayalan which is also challenged in A.No.177 of 2010 filed by A.Jothimani.

45. Some of the properties which were purchased by C.Dayalan, the 3rd respondent in A(IP).No.177 of 2010 were brought to auction by the Official Assignee earlier. They were subject matter of a challenge by C.Dayalan, the said 3rd respondent in A.(IP).No.127 of 2008 and A(IP).No.142 of 2008. Specifically, the property in S.No.396/4A and S.No.396/4B were brought to sale as Lot.No.I and Lot.No.II respectively along with the other properties mentioned below:-

Lot	S.No.	Extent
I	395/5	76.5+28=104.5cents
	396/1	
	396/4A	
II	396/4B	72 cents

	395/5	0.5 cents

46. It is noticed that C.Dayalan, the 3rd respondent in A(IP).No.177 of 2010, had challenged the sale of property in S.No.396/4A and S.No.396/4B in A(IP).No.142 of 2008 and A(IP).No.127 of 2008 after the Office of the Official Assignee was permitted to proceed with the sale.

47. By an order dated 15.12.2023, the Official Assignee was permitted to proceed with the sale wherein reserved price of the properties were fixed and auctions were also held on the following date mentioned below:-

Lot	Auction date	Reserve Price	Actual Bid
I	**05.04.2008**	**47,70,000**	**43,60,000**
II	**05.04.2008**	**90,00,000**	**50,40,000**

48. The auction bidders had also offered the bid which were far and below the Reserve Price fixed by the Office of the Official Assignee.

49. However, vide order dated 22.12.2020, this Court had allowed A(IP).No.142 of 2008 and A(IP).No.127 of 2008 filed by C.Dayalan, the 3rd respondent in A(IP).No.177 of 2010, insofar as land in Survey

No.396/4A and 396/4B on the ground that these properties did not belong to the insolvent instead it belonged to the applicant therein and that these properties were also not mentioned in the Schedule of Affairs filed by the insolvent on **12.11.1998** under Section 24 of the Insolvency and Presidency-Towns Insolvency Act, 1909 by the insolvent.

50. Since the sales have taken place in respect of properties which was purchased in the year 1996 in the name of the partners of "Ar.Ke.Vee Investments" on various dates which was not brought to the knowledge of the Official Assignee or this Court in I.P.No.69 of 1998, these sales are questionable sales should be therefore enquired by the Office of the Official Assignee by applying the period of limitation in terms of Section 17 of the Limitation Act, 1963 as three years from the date of knowledge for the purpose of enquiring and for setting aside these sales in terms of Section 17 of the Limitation Act, 1963.

51. That apart, there are indications that the said C.Dayalan, the 3rd respondent in A.(IP).No.177 of 2010 realized 7 Crores from the sale of the assets, which were earlier purchased in the name of the partners of Ar.Ke.Vee Investments. C.Dalayan, the 3rd respondent in A(IP).No.177 of

2010, had actively played a role in forming Ar.Ke.Vee Depositors Welfare Association registered as Doc.No.390 of 1998, an association for the benefit of subscribers in "Ar.Ke.Vee Investments". Therefore, the said C.Dayalan, the third respondent in A(IP).No.177 of 2010, had *prima facie* acted in breach of the fiduciary duty to the investors by buying the properties in his name, which were purchased in the name of the partners of Ar.Ke.Vee Investments of which the insolvent was also the Managing Partner. Since there appears to be a breach of trust by C.Dayalan, the 3rd respondent in A.(IP).No.177 of 2010, by purchasing the properties in his own name after registering Ar.Ke.Vee Depositors Welfare Association as Doc.No.390 of 1998, the matter requires to be probed.

52. In the light of the above discussion, A(IP).No.75 of 2009, A(IP).No.76 of 2009 and A(IP).No.221 of 2009 are allowed and A(IP).No.177 of 2010 is partly allowed, by directing the Office of the Official Assignee to enquire and file a report before this Court and to file a fresh application to set aside the sale if any irregularity was committed in the light of the observations herein. The Office of the Official Assignee shall file a fresh report within a period of 12 months from today.

53. A(IP).No.257 of 2017 is dismissed with liberty to file a fresh application after all the assets of two partnership concerns in which the petitioner insolvent was the Partner/Managing Partner namely Keyar Enterprises and Ar.Ke.Vee Investments were transacted, are enquired by the Office of the Official Assignee and a consolidated report is filed.

13.06.2024

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C.SARAVANAN, J.
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Pre-Delivery Order in
A(IP).Nos.221 of 2009, 75 of 2009,
76 of 2009, 177 of 2010 and 257 of 2017
in
I.P.No.69 of 1998

13.06.2024