A(IP).Nos.230 to 238 of 2023
in
I.P.Nos.75, 76 and 146 of 2005

Reserved On	08.12.2023
Pronounced On	04.06.2024

C.SARAVANAN, J.

By this common order, all these applications are being disposed of.

2. These applications have been filed by applicants for the following reliefs:

A(IP).No(s).	Prayer of the Application
230 of 2023 in I.P.No.76 of 2005 233 of 2023 in I.P.No.75 of 2005 236 of 2023 in I.P.No.146 of 2005	To declare us as the *bona fide* purchasers of the property of "Schedule-E" house ground and premises of an undivided one-third share house and ground bearing Municipal Door No.3/4, Old Muttiah Chetty (Now Thiruvottiyur High Road), Old Washermenpet, Madras, bearing O.S.Nos.54 and 55 and R.S.No.1757/7 to the extent about 930 square feet.
231 of 2023 in I.P.No.76 of 2005 232 of 2023 in I.P.No.76 of 2005	(i) To declare us as the *bona fide* purchasers of the property of "Schedule-E" house ground and premises of an undivided one-third share house and ground bearing Municipal Door No.3/4, Old Muttiah Chetty (Now Thiruvottiyur High Road), Old Washermenpet, Madras, bearing O.S.Nos.54 and 55 and R.S.No.1757/7 to the extent about 930 square feet. (ii) To release and discharge the property from encumbrance

234 of 2023 in I.P.No.75 of 2005 235 of 2023 in I.P.No.75 of 2005 237 of 2023 in I.P.No.146 of 2005	created through the order of the High Court, Madras and subsequent direction issued through the Statutory Official Assignee dated 16th October 2018 directing the Sub-Registrar to incorporate the encumbrance of Statutory Vesting Rights of Official Assignee and not make further entries on the property without permission of the Official Assignee for the property "Schedule-E" house ground and premises of an undivided one-third share house and ground bearing Municipal Door No.3/4 Old Muttiah Chetty (Now Thiruvottiyur High Road), Old washermenpet, Madras, bearing O.S.Nos.54 and 55 and R.S.No.1757/7 to the extent about 930 square feet.
238 of 2023 in I.P.No.146 of 2005	(iii) To direct the Sub-Registrar, Royapuram to clear the encumbrance from the registration system records and to register the Settlement Deed of the 1st and 2nd Applicants in favour of Mrs.Maria Teresa and any all further lawful transactions to be done over the property in future.

3. The applicants are subsequent purchasers of "Schedule-E" property measuring an extent of 930 sq.ft. In these cases, the dispute pertains undivided share of 310 sq.ft. out of 930 sq.ft. land which was purchased by the applicants from one Kaja Moideen 23.02.2017 registered as Doc.No.549/2017.

4. "Schedule-E" property originally belonged to one Syed Habibullah Sahib who died intestate on 09.11.1959. There was family partition of Late Syed Habibullah Sahib which was recorded in Family Arrangement dated 10.03.1961 whereby three of his sons namely Syed Abdul Rahim, Syed Abdul Kareem and Syed Abdul Aleem were allotted 1/3rd undivided share in the

"Schedule-E" property measuring an extent of 930 sq.ft. At that time, the land also had a godown.

5. The second son of Late Syed Habibullah Sahib is Syed Abdul Kareem, who is the father of third to fifth respondents. The third to fifth respondents were declared as insolvents on 27.03.2006, 27.03.2006 and on 12.06.2006 in I.P.Nos.75, 76 and 146 of 2005. Earlier, Syed Abdul Kareem had settled his 1/3rd undivided interest share of 310 sq.ft in 930 sq.ft. of land in favour of his sons namely the third to fifth respondents (insolvents) and the other son S.A.Kaseem vide Settlement Deed 17.07.1984 registered as Doc.No.1191 of 1984. The third to fifth respondents (insolvents) and the other son S.A.Kaseem, the sons of Syed Abdul Kareem in turn sold their respective shares to S.Shajahan and his wife S.Ramzan Beevi vide Sale Deed dated 15.04.2013 registered as Doc.No.1009/2013, although the third to fifth respondents had been adjudged as insolvents on 27.03.2006, 27.03.2006 and 12.06.2006 in I.P.Nos.75, 76 and 146 of 2005.

6. The Legal Heirs of Syed Abdul Rahim and Syed Abdul Aleem have also sold their respective 1/3rd share to S.Shajahan and his wife S.Ramzan Beevi vide Sale Deed dated 07.06.2013 registered as Doc.No.1980/2013 and

Doc.No.1981/2013 respectively.

7. Thus, first purchasers namely S.Shajahan and his wife S.Ramzan Beevi had re-consolidated the entire extent of 930 sq.ft of land from the Legal Heirs/descendants of Syed Habibullah Sahib (who died intestate on 09.11.1959) vide three separate Sale Deeds, Sale Deed dated 15.04.2013 registered as Doc.No.1009/2013 and Sale Deeds 07.06.2023 registered as Doc.No.1980/2013, Doc.No.1981/2013.

8. The sale on 15.04.2013 by the three sons of Syed Abdul Kareem vide Doc.No.1009/2013 namely the third to fifth respondents (insolvents) and the other son S.A.Kaseem was without reference to adjudication of the third to fifth respondents (insolvents) on 27.03.2006, 27.03.2006 and on 12.06.2006 in I.P.Nos.75, 76 and 146 of 2005. The petitioner viz., three different creditors in I.P.Nos.75, 76 and 146 of 2005 are not before this Court, despite notice to them. The third to fifth respondents owed amounts to various secured and unsecured creditors.

9. Thus, *Status quo* prior to Family Arrangement dated 10.03.1961 thus stood restored, however without notice of adjudication of the third to fifth respondents as insolvents on 27.03.2006, 27.03.2006 and on 12.06.2006 in I.P.Nos.75, 76 and 146 of 2005.

10. S.Shajahan and his wife S.Ramzan Beevi in turn sold the entire extent of 930 sq.ft. of land to the second purchaser Kaja Moideen on 20.09.2013 vide Registered Doc.No.2943/2013 for a sum of Rs.29,50,000/-. The second purchaser Kaja Moideen in turn sold the entire extent to the applicants on 23.02.2017 which was registered as Doc.No.549/2017 for a sum of Rs.85,09,000/-.

11. The fact reveals that after the third to fifth respondents were adjudged as insolvents filed Schedule of Affairs on 01.11.2011 before the Office of the Official Assignee.

12. In the Schedule of Affairs filed before the Office of the Official Assignee on 01.11.2011, the third to fifth respondents had failed to give the particulars of the property settled in their favour by their father Syed Abdul Kareem vide Settlement Deed dated 17.07.1984 registered as

Doc.No.1191/1984 before the jurisdictional Sub-Registration Office, Royapuram, Chennai.

13. The report of the Official Assignee dated 28.11.2023 indicates that the Office of the Official Assignee received about 142 claim petitions for a total sum of Rs.3,92,25,049/- out of which eight claims for a sum of Rs.19,28,091/- were admitted, while 124 claims were rejected and about 10 claims are still pending admission (eight unsecured creditors and two secured creditors).

14. One of the other property of the third to fifth respondents at Door No.1, Old No.1/10A, East Muthiah Chetty Lane, Chennai – 600 021 was brought to public auction through auctioneer on 04.03.2010 for a sum of Rs.1,71,00,000/-. The sale was confirmed by this Court vide order dated 28.02.2011 in A.No.333 of 2010 in I.P.Nos.75, 76 and 146 of 2005.

15. These applications have been filed by the applicants on the ground that they are *bona fide* purchasers of the property and therefore, the purchase made by them was protected under the provisions of the Presidency-Towns Insolvency Act, 1909.

16. Specifically, it is the case of the applicants that they are *bona fide* purchasers of the property and were unaware that the third to fifth respondents were adjudged as insolvents on 27.03.2006, 27.03.2006 and on 12.06.2006 in I.P.Nos.75, 76 and 146 of 2005.

17. It is further submitted that when the property was purchased, there were no encumbrance that was reflected in the Sub-Registrar's Office and therefore, they are entitled to a clear title to the property purchased by them. It is further submitted that statutory vesting of the assets was not reflected in the records with the Sub-Registrar's Office and that the order dated 16.10.2018 of this Court was passed only one year after completion of sale on 23.02.2017 and transfer of title from the previous owner to the applicants. It is therefore submitted that they have a valid title over the entire extent, as they were *bona fide* purchasers.

18. I have considered the arguments advanced by the learned counsel for the applicants and the submissions of the Official Assignee.

19. As per Section 17 of the Presidency-Towns Insolvency Act, 1909, once a person is declared as an insolvent, the assets of the insolvent vest with the Official Assignee and shall become divisible among his creditors. It reads as under:-

> "17. Effect of order of adjudication:
>
> On the making of an order of adjudication, the property of the insolvent wherever situate shall vest in the official assignee and shall become divisible among his creditors, and thereafter, except as directed by this Act, no creditor to whom the insolvent is indebted in respect of any debt provable in insolvency shall, during the pendency of the insolvency proceedings, have any remedy against the property of the insolvent in respect of the debt or shall commence any suit or other legal proceeding except with the leave of the Court and on such terms as the Court may impose:
>
> Provided that this section shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed."

20. As per Section 61 of the Presidency-Towns Insolvency Act, 1909, the property of the insolvent shall pass from Official Assignee to Official Assignee, and shall vest in the Official Assignee for the time being during his continuance in Office, without any transfer whatever.

21. Sections 53 to 57 of the Presidency-Towns Insolvency Act, 1909

deals with effect of insolvency on antecedent transactions on insolvent.

22. Section 53 of the Presidency-Towns Insolvency Act, 1909, deals with restriction of rights of creditor under execution. As per Sub-Section 2 to Section 53, nothing in Section 53 shall affect the right of a secured creditor in respect of property against which a decree is executed. However, Sub-Section 3 to Section 53, a person who in good faith purchases the property of a debtor under a sale in execution shall in all cases acquire a good title to it against the Official Assignee. Section 54 of the Presidency-Towns Insolvency Act, 1909 deals with Duties of Court executing decree as to property taken in execution. They read as under:-

Section 53 of the Presidency-Towns Insolvency Act, 1909	**Section 54 of the Presidency-Towns Insolvency Act, 1909**
<u>Restriction of rights of creditor under execution</u>: (1) Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the official assignee, except in respect of assets realised in the course of the execution by sale or otherwise [before the date of the admission of the insolvency petition]. (2) Nothing in this section shall affect the right of a secured	<u>Duties of Court executing decree as to property taken in execution</u>: Where execution of a decree has issued against any property of a debtor which is saleable in execution, and before the sale thereof notice is given to the Court executing the decree that an order of adjudication has been made against the debtor, the Court shall, on application, direct the property, if in the possession of the Court, to be delivered to the official assignee, but the costs of the

Section 53 of the Presidency-Towns Insolvency Act, 1909	Section 54 of the Presidency-Towns Insolvency Act, 1909
creditor in respect of property against which a decree is executed. (3) A person who in good faith purchases the property of a debtor under a sale in execution shall in all cases acquire a good title to it against the official assignee.	execution shall be a first charge on the property so delivered, and the official assignee may sell the property or an adequate part thereof for the purpose of satisfying the charge.

23. In **Ram Lachman** Vs. **J.K.Kapoor after Him Bishamber Dayal Jain**, AIR 1965 All 80, the Hon'ble Division Bench of the Allahabad High Court observed as under in the context of Section 53 of the Presidency-Towns Insolvency Act, 1909:

> *"9. The essential ingredients of this section therefore are that a transfer can be annulled by a court only if it is not a transfer in favour of a purchaser or incumbrancer in good faith and for valuable consideration, of course, apart from a transfer in consideration of marriage which is not the case here. <u>If therefore the transferee proves that he is the purchaser in good faith and for valuable consideration, the court will have no power to annul the transfer</u>. As we have already seen, under Sec.6 the court was not to consider good faith or consideration paid by the purchaser and any finding recorded at that stage cannot possibly debar the purchaser from pleading these facts when the transfer in his favour is sought to be annulled. Moreover, the purchaser not being a party to the proceedings at the stage of adjudication can also plead that it is against the principles of natural justice that his rights be adjudicated upon in his absence. On the basis of the provisions of these sections, we have no doubt that the Insolvency Judge was not barred any principle of res-judicata*

to take into consideration the plea raised by the appellant in this case. This leads us to a consideration of the case law on the point. In ***Sheo Raj Bahadur*** *v.* ***Abdul Aziz****, A.I.R. 1956 All. 68, a learned single Judge of this Court relying upon the case of* ***Mohd. Siddique Yousuf*** *v.* ***Official Assignee****, A.I.R. 1943 P.C. 130, held as follows:*

"In view of the decision of the Privy Council just noticed, I must hold that it was not open to Abdul Aziz the transferee from Noor Ahmad to consent that the transfer in favour of ***Abdul Aziz*** *dated 4th July, 1947 was not void and could not be set aside under Sec.53 of the Provincial Insolvency Act.""*

24. In **Ram Lachman** Vs. **J.K.Kapoor after Him Bishamber Dayal Jain**, AIR 1965 All 80, the Allahabad High Court followed the views of Privy Council in **Mohd. Siddique Yousuf** Vs. **Official Assignee**, AIR 1943 P.C. 130, and held as follows:-

"In view of the decision of the Privy Council just noticed, I must hold that it was not open to Abdul Aziz the transferee from Noor Ahmad to consent that the transfer in favour of Abdul Aziz dated 4th July, 1947 was not void and could not be set aside under Sec.53 of the Provincial Insolvency Act."

25. Interpreting the decision of the privy council in **Mohd. Siddique Yousuf** Vs. **Official Assignee**, AIR 1943 P.C.130, the Hon'ble Division Bench of the Allahabad High Court in **Ram Lachman** Vs. **J.K.Kapoor after Him Bishamber Dayal Jain**, AIR 1965 All 80 observed as under:-

"13. Under this section, a transfer in favour of a creditor with a view to prefer him fraudulently must be deemed

to be void and no question of giving any evidence in order to save the transaction can possibly arise. Thus, the observation of their Lordships of the Privy Council in the case of Mohd. Siddiq must be read in connection with the provisions of the Presidency Towns Insolvency Act relating to transfers which amount to fraudulent preferences. When their Lordships observed that the very fact of adjudication on that ground finally decided that the transaction amounted to a fraudulent preference and the alienee was bound by it although he had no opportunity of being heard, they had hose provisions in view and those observations cannot be applied to a case under the Provincial Insolvency Act where an alienation has been made in favour of a third party who is not a creditor. The same view has been taken in ***D.G.Sahasrubudhe v. Kilachand Deochand and Co., A.I.R. 1947 Nag. 161 Official Receiver Guntur v. Narra Gopalakrishniah, A.I.R. 1945 Mad. 67 and Ram Chand Puri v. Lahore Enamelling and Stampting Co***., ***A.I.R. 1961 Pun. 84.*** *We need not consider these cases any further as the matter has since come up before their Lordships of the Supreme Court and at least one of the learned Judges constituting the Bench has clearly approved this view of the law. The other learned Judges did not express any contrary opinion on that point. In* ***Rm.NI.Ramaswami Chettiar v. The Official Receiver Ramanathapuram, A.I.R. 1960 S.C. 70****, Mr.Justice Subba Rao quoted with approval an observation of this Court in Amir Ahmad v. Syed Hasan:*

> *"It seems quite clear that if a transfer made by a debtor is wholly fictitious and bogus and no interest in the property passes to the transferee, then the transfer is void ab initio and subsequent transferees can never be protected because the foundation of their title does not exist. There would be no necessity for the official receiver to have such a wholly ineffective, void and fictitious transfer annulled under Sec.53 or Sec.54 of the Provincial Insolvency Act. In case of dispute he can always ignore it and treat it as a nullity either*

in a separate suit or in a proceeding under Sec.4, Insolvency Act."

26. However, it must be remembered that the Hon'ble Supreme Court in **Rm.NI.Ramaswami Chettiar** Vs. **The Official Receiver Ramanathapuram**, A.I.R.1960 S.C. 70 in the context of Sections 53 and 54 of the Provincial Insolvency Act, 1920, quoted with approval on the following observation of the Allahabad High Court in **Amir Ahmad Vs. Syed Hasan**, A.I.R.1935 All.671, wherein it was observed as under:-

> ***"It seems quite clear that if a transfer made by a debtor is wholly fictitious and bogus and no interest in the property passes to the transferee, then the transfer is void ab initio and subsequent transferees can never be protected because the foundation of their title does not exist. There would be no necessity for the official receiver to have such a wholly ineffective, void and fictitious transfer annulled under Sec.53 or Sec.54 of the Provincial Insolvency Act. In case of dispute he can always ignore it and treat it as a nullity either in a separate suit or in a proceeding under Sec.4, Insolvency Act."***

27. As per Section 55 of the Presidency-Towns Insolvency Act, 1909, any transfer by the insolvent prior to two years of date of adjudication of insolvency is treated as void against the Official Assignee. As per Section 56 of the Presidency-Towns Insolvency Act, 1909, there is an embargo for avoidance of preferential transfer while Section 57 of the Presidency-Towns Insolvency Act,

1909 protects *bona fide* transactions. Sections 55 to 57 of the Presidency-Towns Insolvency Act, 1909 read as under:-

Section 55 of the Presidency-Towns Insolvency Act, 1909	**Section 56 of the Presidency-Towns Insolvency Act, 1909**	**Section 57 of the Presidency-Towns Insolvency Act, 1909**
Avoidance of voluntary transfer: Any transfer of property, not being a transfer made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, shall, if the transferor is adjudged insolvent within two years after the date of the transfer, be void against the official assignee.	Avoidance of preference in certain cases: (1) Every transfer of property, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditor, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the official assignee. (2) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the insolvent.	Protection of bona fide transactions: Subject to the foregoing provisions with respect to the effect of insolvency on an execution and with respect to the avoidance of certain transfers and preferences, nothing in this Act shall invalidate in the case of an insolvency- (a) any payment by the insolvent to any of his creditors; (b) any payment or delivery to the insolvent; (c) any transfer by the insolvent for valuable consideration; or (d) any contract or dealing by or with the insolvent for valuable consideration. Provided that any such transaction takes place before the date

Section 55 of the Presidency-Towns Insolvency Act, 1909	**Section 56 of the Presidency-Towns Insolvency Act, 1909**	**Section 57 of the Presidency-Towns Insolvency Act, 1909**
		of the order of adjudication and that the person with whom such transaction takes place has not at the time notice of the presentation of any insolvency petition by or against the debtor."

28. As per Section 58(4) of the Presidency-Towns Insolvency Act, 1909, any part of the property of the insolvent which consists of things in action shall be deemed to have been duly transferred to the Official Assignee. Section 58 of the Presidency-Towns Insolvency Act, 1909 reads as under:-

"58. Possession of property by official assignee:

(1) The official assignee shall, as soon as may be, take possession of the deeds, books and documents of the insolvent and all other parts of the property capable of manual delivery.
(2) The official assignee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the insolvent, be in the same position as if he were a receiver of the property appointed under the Code of Civil Procedure, 1908 (5 of 1908), and the Court may on his application enforce such acquisition or retention accordingly.
(3) Where any part of the property of the insolvent consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office or person, the official assignee may exercise the right to transfer the property to the same extent as the insolvent might have exercised it, if he had not

> become insolvent.
> (4) Where any part of the property of the insolvent consists of things in action, such things shall be deemed to have been duly transferred to the official assignee.
> (5) Any treasurer or other officer, or any banker, attorney or agent of an insolvent, shall pay and deliver to the official assignee all money and securities in his possession or power as such officer, banker, attorney or agent, which he is not by law entitled to retain as against the insolvent or the official assignee. If he fails so to do, he shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the official assignee."

29. We are not dealing with the situations covered by Sections 53 to 57 of the Presidency-Towns Insolvency Act, 1909 as the first sale of 1/3rd part of 910 sq.ft of land was made on 15.04.2013 by the third to fifth respondents along with their brother S.A.Kaseem vide registered Doc.No.1009/2013 in favour of S.Shajahan and his wife S.Ramzan Beevi. S.A.Kaseem is not an insolvent. There was no partition of their undivided share in the property between them before the sale.

30. The first sale in favour of S.Shajahan and his wife S.Ramzan Beevi made on 15.04.2013 vide registered Doc.No.1009/2013 was after the date of adjudication of the third to fifth respondents (insolvents) on 27.03.2006, 27.03.2006 and on 12.06.2006 in the respective insolvency petitions filed against them.

31. The first purchasers, S.Shajahan and his wife S.Ramzan Beevi have also purchased the balance 620 sq.ft (310 x 2) which is 2/3rd of the balance undivided share in the land from the other descendants of Syed Habibullah Sahib through his other two sons viz., Syed Abdul Rahim and Syed Abdul Aleem by two separate Sale Deeds both dated 07.06.2013 registered as Doc.No.1980/2013 and Doc.No.1981/2013 respectively. The sale consideration in the respective Sale Deeds are Rs.10,00,000/- each. Thus, the first purchasers, S.Shajahan and S.Ramzan Beevi reconsolidated the entire extent of 930 sq.ft which was with the family till the death of Syed Habibullah Sahib on 09.11.1959. S.Shajahan and his wife S.Ramzan Beevi thereafter sold the entire extent of 930 sq.ft to one Kaja Moideen on 20.09.2013 vide registered Doc.No.2943/2013 for a sum of Rs.29,50,000/-.

32. Under Section 53(1) of the Transfer of Property Act, 1882, every transfer of immovable property made with intent to defeat or delay the creditors of the transferor is voidable at the option of any creditor so defeated or delayed.

33. However, an exception is provided to Section 53(1) of the Transfer of Property Act, 1882 itself. As per the exception, though every transfer of immovable property made with an intent to defeat or delay the rights of

creditors of such transferor is voidable at the option of the creditor so defeated or delayed, will not impair the rights of a transferee who purchases the property in good faith and for valid consideration.

34. However, the above exception is subject to a further exception. As per the further exception, nothing contained in Sub-Section 1 to Section 53 of the Transfer of Property Act, 1882 will affect any insolvency law as in force for the timing being. Section 53 of the Transfer of Property Act, 1882 reads as under:-

> "53. Fraudulent transfer:
>
> (1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.
>
> Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.
>
> Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.
>
> A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor, shall be instituted on behalf of, or for the benefit of, all the creditors.
>
> (2) Every transfer of immovable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.
>
> For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.

> <u>53A. Part performance:</u>
> Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:
> Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

35. Transfers/transactions made prior to two years before the date of adjudication of insolvency of an insolvent is/are immune from the rigours of the provisions of the Presidency-Towns Insolvency Act, 1909. A sale/transaction by an insolvent to a transferee within two years prior to the date of adjudication of insolvency is also void as against the Official Assignee except in the circumstances specified in Sections 53 to 57 of the Presidency-Towns Insolvency Act, 1909.

36. Under Section 57 of the Presidency-Towns Insolvency Act, 1909, antecedent transactions within such period (within two years) are protected subject to the stipulations therein. Thus, those transactions/transfers made within a period of two years prior to the date of adjudication are partly protected, if they are both *bona fide* and for a valid consideration under Sections 53 to 57 of the Presidency-Towns Insolvency Act, 1909.

37. Since under Section 17 of the Presidency-Towns Insolvency Act, 1909, property standing in the name of the insolvent on the date of adjudication of insolvency stands vested with the Office of the Official Assignee who represents the interests of the unpaid creditors of the insolvent from the date of adjudication of insolvency, an insolvent cannot convey a valid title to his buyer applying the legal principle in the latin maxim "**Nemo dat quod non habet**", which means one cannot give what one does not have.

38. Therefore, subsequent transfer(s) of such property by the subsequent purchasers is also bad in law as one cannot convey a right what one does not possess. Such subsequent transfer(s) are void and continue to be void against the Office of the Official Assignee.

39. Therefore, transfers by an insolvent after the date of adjudication of insolvency under the provisions of the Presidency-Towns Insolvency Act, 1909, even if made in good faith by the transferee and for valid consideration of the transferee are not protected under the provisions of the Presidency-Towns Insolvency Act, 1909 in view of Section 53 of the Transfer of Property Act, 1882 and Section 17 of the Presidency-Towns Insolvency Act, 1909. Even if the transferee had entered into such transaction in good faith and for valid consideration, such transactions are void from inception.

40. Therefore, on the date of adjudication of insolvency on 27.03.2006, 27.03.2006 and on 12.06.2006 respectively in I.P.No.75 of 2005, I.P.No.76 of 2005 and I.P.No.146 of 2005, the third to fifth respondents (insolvents) lost their rights over their undivided share in 390 sq.ft of land that was settled in their favour and their brother S.A.Kaseem vide Settlement Deed 17.07.1984 registered as Doc.No.1191/1984 by their father Syed Abdul Kareem in view of Section 17 of the Presidency-Towns Insolvency Act, 1909.

41. Thus, the first sale of undivided share to an extent of 232.50 sq.ft out of 310 sq.ft by the insolvents viz., the third to fifth respondents along with their

brother S.A.Kaseem in favour of S.Shajahan and his wife S.Ramzan Beevi on 15.04.2013 vide Doc.No.1009/2013 is clearly hit by exceptions in Section 53(1) of the Transfer of Property Act, 1882 read with Section 17 of the Presidency-Towns Insolvency Act, 1909 by applying the legal principle in the latin maxim "**Nemo dat quod non habet**".

42. Therefore, the first purchase by S.Shajahan and S.Ramzan Beevi vide Registered Sale Deed Doc.No.1009/2013 dated 15.04.2013 to the extent of 232.50 sq.ft out of 310 sq.ft [i.e., 82/3rd share in 310 sq.ft that was settled in favour of the third to fifth respondents (insolvent) and their brother S.A.Kaseem by their father Syed Abdul Kareem] was void as against the Official Assignee in view of Section 53 of the Transfer of Property Act, 1882.

43. Therefore, the third to fifth respondents (insolvents) could not have validly transferred their shares to the extent of 232.5 sq.ft (77.5 x 3) out of 390 sq.ft of undivided share to S.Shajahan and his wife S.Ramzan Beevi vide Sale Deed dated 15.04.2013 registered as Doc.No.1009/2013.

44. Therefore, it has to be held that sale to the extent of 232.5 sq.ft (77.5 x 3) out of 390 sq.ft of undivided share in the land by the third to fifth

respondents who were declared as insolvents on 27.03.2006, 27.03.2006 and on 12.06.2006 respectively in I.P.No.75 of 2005, I.P.No.76 of 2005 and I.P.No.146 of 2005 in favour of S.Shajahan and his wife S.Ramzan Beevi is void vide Sale Deed 15.04.2013 registered as Doc.No.1009/2013 and not binding on the Office of the Official Assignee.

45. Since the applicants are *bona fide* purchasers of the entire extent of 930 sq.ft of land [which includes 232.5 sq.ft (77.5 sq.ft x 3) of undivided share which was earlier wrongly sold/coveyed/transferred by the third to fifth respondents (insolvents) for consideration to the first buyers/purchasers namely S.Shajahan and his wife S.Ramzan Beevi], the ownership over the aforesaid extent of 232.5 sq.ft (77.5 sq.ft x 3) of undivided share in land cannot be perfected, unless the rights of the creditors of the insolvents namely the third to fifth respondents are protected in view of Section 17 of the Presidency-Towns Insolvency Act, 1909 applying the legal principle in latin phrase "***Nemo dat quod non habet***".

46. The applicants are not be be blamed wholly. Since at the time of the first sale on 15.04.2013, second and third sale on 07.06.2013, fourth sale on 20.09.2013 and fifth sale on 23.02.2017, the property or part thereof to the

extent of 232.5 sq.ft (77.5 x 3) out of 390 sq.ft of undivided share was not shown as an encumbered property in the records of the Sub-Registrar. Charge was also not reflected in the Encumbrance Certificate when the applicants purchased the property in 2017 from Kaja Moideen vide Sale Deed dated 23.02.2017 registered as Doc.No.549/2017. The applicants have also developed the entire extent of property. Therefore, they cannot be put to prejudice. Equity has to work in their favour, as they are innocent buyers.

47. Since the applicants have put up the construction over the entire extent of land after their purchase in the year 2017 from Kaja Moideen vide Sale Deed dated 23.02.2017 registered as Doc.No.549/2017 and have been in uninterrupted possession since then and considering the fact that the order was passed by this Court only on 16.10.2018, Court is of the view that equity can partly work in favour the applicants subject to the applicants paying the proportionate value of the aforesaid land measuring an extent of 232.5 sq.ft (77.5 sq.ft x 3) being the undivided share in the land of the third to fifth respondents (insolvents) on the guideline value as it prevailed in 2013 to the Official Assignee i.e., on the date of first sale to S.Shajahan and his wife S.Ramzan Beevi on 15.04.2013 vide Registered Doc.No.1009/2013.

48. Therefore, to balance the equity, the Office of the Official Assignee is thus entitled to recover an amount proportionate to the value of 232.5 sq.ft of land from and out of aforesaid 310 sq.ft of undivided share in land conveyed to the applicants herein on the guideline value that prevailed on the date of first sale on 15.04.2013 in favour of S.Shajahan and S.Ramzan Beevi vide Registered Doc.No.1009/2013 by the third to fifth respondents (insolvents).

49. In other words, the applicants should pay for the value of 232.5 sq.ft of land i.e., $3/4^{th}$ share of $1/3^{rd}$ share from and out of 310 sq.ft settled in favour of the third to fifth respondents (insolvents) and their brother S.A.Kaseem by their father Syed Abdul Kareem vide a Settlement Deed dated 17.07.1984 registered as Doc.No.1191/1984 to the Office of the Official Assignee.

50. Therefore, the Office of the Official Assignee is directed to get a Valuation Report for the aforesaid land measuring an extent of 232.5 sq.ft (77.5 sq.ft x 3) from an Approved Valuer on the guideline value of the aforesaid extent of land that prevailed in 2013. The aforesaid value determined by the Approved Valuer shall be paid by the applicants to the Office of the Official Assignee.

51. On payment of the aforesaid amount by the applicants to the Office of the Official Assignee, the applicants will be entitled to perfect the title for the undivided share of 232.5 sq.ft (77.5 sq.ft x 3) of land out of 930 sq.ft that was wrongly conveyed by the third to fifth respondents (insolvents) to S.Shajahan and his wife S.Ramzan Beevi vide Sale Deed dated 15.04.2013 registered as Doc.No.1009/2013 and thereafter by latter two to Kaja Moideen vide Sale Deed dated 20.09.2013 registered as Doc.No.2943/2013 and thereafter by latter to the applicants vide Sale Deed dated 23.02.2017 registered as Doc.No.549/2017.

52. Needless to state on such payment, the applicants shall also be treated as creditors of the third to fifth respondents (insolvents) and they shall be entitled to file a claim statement for receiving proportionate amounts from and out of the estate of the third to fifth respondents (insolvents).

53. It is expected that the entire exercise will be carried out by the Office of the Official Assignee within a period of six months from date of receipt of this order.

54. Subject to such exercise and payment, the prayer sought for by these

applicants to that extent will stand allowed.

55. List the matter “for reporting compliance” on 02.09.2024.

04.06.2024

arb

C.SARAVANAN, J.

arb

Pre-Delivery Judgment in
A(IP).Nos.230 to 238 of 2023
in
I.P.Nos.75, 76 and 146 of 2005

04.06.2024