



C.M.A(MD)Nos.656 and 657 of 2018 and C.R.P.(MD)No.1940 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 19.03.2024

PRONOUNCED ON:14.06.2024

CORAM

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

**C.M.A(MD)Nos.656 and 657 of 2018 and C.R.P.(MD)No.1940 of 2018  
and  
C.M.P.(MD)Nos.7648 and 7650 of 2018**

**C.M.A.(MD)No.656 of 2018:**

L.Arockiadoss : Appellant/4<sup>th</sup> Respondent /  
Petitioner/Auction Purchaser

Vs.

1.J.Kannaperuman : 1<sup>st</sup> Respondent/Petitioner/ Objector

2.M.Kamaraj : 2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent/  
1<sup>st</sup> Respondent/Petitioner/  
Plaintiff

Viswanath(died)

3.B.Nataraj : 3<sup>rd</sup> Respondent/3<sup>rd</sup> Respondent/  
3<sup>rd</sup> Respondent/2<sup>nd</sup> Respondent/  
2<sup>nd</sup> Defendant

4.R.Saroja : 4<sup>th</sup> Respondent/5<sup>th</sup> Respondent/  
Legal representative of  
Judgment Debtor No.1



C.M.A(MD)Nos.656 and 657 of 2018 and C.R.P.(MD)No.1940 of 2018

**PRAYER:-** Civil Miscellaneous Appeal filed under Order 41 Rule C.P.C.,  
r/w XXI Rule 97 C.P.C., against the fair and decreetal order passed in  
E.A.No.54 of 2012 in E.A.No.1 of 2012 in E.P.No.4 of 2010 in O.S.No.  
240 of 2004, on the file of I Additional District Court, Madurai, dated  
21.12.2017.

For Appellant : Mr.T.C.S.Thillainayagam  
For Respondents : Mr.T.K.Gopalan  
for R.1  
: Mr.M.Rajaraman  
for R.2  
: R.3 and R.4 – dispensed with  
Memo filed

**C.M.A.(MD)No.657 of 2018:**

L.Arockiadoss : Appellant/4<sup>th</sup> Respondent /  
Petitioner/Auction Purchaser

Vs.

1.Sigappai : 1<sup>st</sup> Respondent/Petitioner/ Objector

2.M.Kamaraj : 2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent/  
1<sup>st</sup> Respondent/Petitioner/  
Plaintiff

Viswanath(died)

3.B.Natarajan : 3<sup>rd</sup> Respondent/3<sup>rd</sup> Respondent/  
3<sup>rd</sup> Respondent/2<sup>nd</sup> Respondent/  
2<sup>nd</sup> Defendant



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4.R.Saroja  
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: 4<sup>th</sup> Respondent/5<sup>th</sup> Respondent/  
Legal representative of  
Judgment Debtor No.1

PRAYER:- Civil Miscellaneous Appeal filed under Order 41 Rule C.P.C.,  
r/w XXI Rule 97 C.P.C., against the fair and decretal order passed in  
E.A.No.57 of 2012 in E.P.No.4 of 2010 in O.S.No.240 of 2004, on the  
file of I Additional District Court, Madurai, dated 21.12.2017.

For Appellant : Mr.T.C.S.Thillainayagam  
For Respondents : Mr.M.r.Murugesan  
for R.1  
: Mr.M.Rajaraman  
for R.2  
: R.3 and R.4 – dispensed with  
Memo filed

**C.R.P.(MD)No.1940 of 2018**

L.Arockiadoss : Petitioner / Petitioner/  
Auction Purchaser

Vs.

.M.Kamaraj : 1<sup>st</sup> Respondent/1<sup>st</sup> Respondent/  
Petitioner/Plaintiff

Viswanath(died)

2.B.Nataraj : 2<sup>nd</sup> Respondent/3<sup>rd</sup> Respondent/  
2<sup>nd</sup> Respondent/2<sup>nd</sup> Defendant



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3.R.Saroja

: 3<sup>th</sup> Respondent/4<sup>th</sup> Respondent/  
Legal representative of  
Judgment Debtor No.1

4.Sigappi

: 4<sup>th</sup> Respondent

(4<sup>th</sup> Respondent is impleaded vide Court  
order dated 31.01.2024 made in  
C.M.P.(MD)No.10405 of 2018)

5.J.Kannaperuman

: 5<sup>th</sup> Respondent

(5<sup>th</sup> Respondent is impleaded vide Court  
order dated 31.01.2024 made in  
C.M.P.(MD)No.11260 of 2018)

PRAYER:- Civil Revision Petition filed under Section 115 of Civil Procedure Code against the fair and decreetal order passed in E.A.No.1 of 2012 in E.P.No.4 of 2010 in O.S.No.240 of 2004 on the file of I Additional District Court, Madurai, dated 21.12.2017.

For Appellant : Mr.T.C.S.Thillainayagam

For Respondents : Mr.M.Rajaraman  
for R.1

: Mr.T.K.Gopalan  
for R.5

: Mr.M.R.Murugesan  
for R.4

: R.2 and R.3 – dispensed with  
Memo filed



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### **COMMON JUDGMENT**

These two Civil Miscellaneous Appeals are directed against the common order passed in the claim petition in E.A.No.54 of 2012 in E.A.No.1 of 2012 in E.P.NO.4 of 2010 in O.S.No.240 of 2004 and the claim petition in E.A.No.57 of 2012 in E.P.No.4 of 2010 in O.S.No.240 of 2004 on the file of I Additional District Court, Madurai. The Civil Revision Petition is directed against the order passed in E.A.No.1 of 2012 in E.P.No.4 of 2010 in O.S.No.240 of 2004, on the file of I Additional District Court, Madurai, dated 21.12.2017, dismissing the petition filed under Order 21 Rule 95 C.P.C., for delivery of the property.

2. The factual aspects leading to the filing of the present appeals and the revision are as follows:

For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking before the Executing Court.

(a) The properties comprised in Survey No.2787/1A and the building bearing Door No.9B at Vallabai road, Madurai Town originally



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belonged to one Mrs.Saroja and her sons Mohan, Nirmal Kumar and Viswanath. They have partitioned their common properties on 27.02.1995 and the same was subsequently confirmed by a partition list dated 27.03.1995. In Ex.B.2 – rough sketch marked in E.A.No.57 of 2012, the portion shown as ABCDHIA was allotted to the said Viswanath and the portion shown as HDEFG was allotted to the said Saroja. The said Viswanath through his Power of Attorney – P.Nataraj (3<sup>rd</sup> Respondent) sold his property ABCI to one S.Mohandoss and his wife Dakshayini, vide two sale deeds dated 12.11.1999, who in turn sold the same to Selvi Joy Jayantha vide two sale deeds dated 13.06.2001 and 21.06.2001. The said Selvi Joy Jayantha through his power of attorney S.Raviraj sold the said property to the claim petitioner Dr.J.Kannaperuman vide sale deed dated 01.12.2006. The said Viswanath sold his remaining property ICDH to one P.Kalyanasundaram vide sale deed dated 24.11.1999, who in turn sold the same to the claim petitioner in E.A.No.57 of 2012 - Sigappi. The claim petitioner Sigappi has also purchased the portion shown as HDEFG from Viswanath's mother Saroja, vide sale deed dated 16.03.2000.



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(b) The first respondent in both claim petitions – M.Kamaraj entered into a sale agreement with the said Viswanath on 19.06.1997 in respect of 19 cents of land and he had paid an advance of Rupees Five Lakhs on the date of agreement. Since the said second respondent-Viswanath pleaded his inability to conclude the same on the ground that that was opposed by his family members and also lodging of criminal complaint against the said Kamaraj, the said Kamaraj and Viswanath have agreed to give up the sale agreement and the said second respondent Viswanath agreed to pay the advance amount with interest at the rate of 24% p.a., within six months from 01.12.1999. Since the said second respondent – Viswanath has failed to pay the said amount as agreed, the first respondent Kamaraj has filed a suit in O.S.No.240 of 2004 for recovery of Rs.5,75,000/- with interest and costs against the said second respondent-Viswanath and his Power of Attorney Nataraj, on the file of the Subordinate Court, Madurai. The first respondent Kamaraj has also filed an application seeking attachment before judgment of the property now in dispute and the learned Subordinate Court has directed the said second respondent Viswanath to furnish security. Meanwhile, the second respondent – Viswanath has filed a debtor insolvency petition in I.P.No.



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32 of 2000, on the file of III Additional Subordinate Court, Madurai, wherein the said Viswanath has alleged that he had no immovable property for distribution among the creditors. Moreover, he has shown the first respondent Kamaraj, plaintiff in O.S.No.583 of 2000 as 16<sup>th</sup> respondent therein. The second respondent – Viswanath has then filed an application in I.A.No.346 of 2000 to stay the trial of the suit in O.S.No. 583 of 2000 on the ground that his insolvency petition was pending.

(c) The first respondent has filed an application in I.A.No.89 of 2005 under Section 4 r/w 53 of the Provincial Insolvency Act, 1920 to annul the three sale deeds executed by Viswanath and a sale deed executed by Saroja and also the subsequent documents as void, illegal and inoperative and not binding on the petitioner against the second respondent, Mohandoss, Dakshayini and Sigappi ( claim petitioner in E.A.No.57 of 2012) and in that petition in I.A.No.89 of 2005, an exparte order came to be passed on 10.12.2008 annulling of the four sale deeds.

(d) The suit in O.S.No.583 of 2000, which was pending before the Subordinate Court, Madurai was transferred to the Court of I Additional District Court, Madurai and the same was taken on file in O.S.No.240 of



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2004. Since the respondents 2 and 3 had remained exparte, an exparte judgment and decree dated 10.09.2008 came to be passed in O.S.No.240 of 2004. Thereafter the first respondent Kamaraj, being the decree holder has laid the execution petition against the respondents 2 and 3 in E.P.No. 4 of 2010 claiming attachment and the sale of the property in dispute. The property was ordered to be attached and the same was brought for sale in Court auction held on 06.06.2011, wherein the fourth respondent – Arockiadoss was declared as the successful bidder and after depositing of the sale amount, the sale certificate came to be issued in his favour on 22.08.2011. In pursuance of the sale certificate obtained, the Court auction purchaser Arokiadoss has filed an application in E.A.No.1 of 2012 seeking delivery of the property. The Executing Court has passed an order for delivery. The Court Ameen, who went to the property to effect delivery, has returned the warrant on the ground that the property could not be located.

(e) At that juncture, Dr.J.Kanna Peruman and Tmt.Sigappi have filed claim petitions in E.A.No.54 of 2012 and E.A.No.57 of 2012 challenging the entire execution proceedings including the Court auction sale. The first respondent Kamaraj and the fourth respondent –



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Arokiadoss have filed their counter statement. The other respondents had remained exparte. During enquiry, in the claim petition in E.A.No.54 of 2012, the claim petitioner Dr.J.Kanna Peruman has been examined as P.W.1 and 25 documents came to be executed as Exs.P.1 to P.25. The respondents 1 and 4 were examined as R.W.1 and R.W.2 respectively and 4 documents came to be executed as Exs.R.1 to R.4. The Advocate Commissioner Thiru.Ramasubramanian and the Surveyor Thiru.Jeyaraj were examined as C.W.1 and C.W.2 respectively and 4 Court documents came to be executed as Exs.C.1 to C.4. In the claim petition in E.A.No. 57 of 2012, the husband of the claim petitioner – Sigappi, Thiru.M.Lakshmanan has been examined as P.W.1 and 38 documents came to be executed as Exs.P.1 to P.38. The respondents 1 and 4 were examined as R.W.1 and R.W.2 respectively and 6 documents came to be executed as Exs.R.1 to R.6 and 5 Court documents came to be executed as Exs.C.1 to C.5.

(f) The learned Additional District Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed a common order dated 21.12.2017 allowing the claim petitions, cancelling the sale certificate issued in favour of the



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fourth respondent, permitting the fourth respondent/auction purchaser to withdraw a sum of Rs.9,05,400/- along with accrued interest and also directing the first respondent / decree holder to deposit a sum of Rs.36,04,600/- with interest and costs till the date of realization within a period of two months and that the attachment made was ordered to be raised. Challenging the above common order, the Court auction purchaser Arokiadoss has preferred the present two Civil Miscellaneous Appeals.

(g) The learned Judge of the Executing Court, while allowing the claim petitions and cancelling the sale certificate, has also passed an order on the same date, dismissing the petition in E.A.No.1 of 2012 as infructuous. Challenging the said order, the present Civil Revision Petition came to be filed.

3. The learned Counsel for the appellant would mainly contend that neither the claimants nor any other person has challenged the order passed by the Insolvency Court, in I.A.No.89 of 2005 in I.P.No.32 of 2000 by way of appeal and as such, the said order has attained finality and that therefore, the petitioner herein cannot be allowed to challenge



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the said order, that the Executing Court has failed to take note of the commissions and omissions on the part of the judgment debtor Viswanath in defrauding and cheating the creditors and his modus operandi in conducting the cases, that after annulling all the four sale deeds by Insolvency Court, the second respondent – Viswanath with malafide intention, has allowed the main petition in I.P.No.32 of 2000 to be dismissed for default on 02.12.2009, that the order passed under Section 4 of the Provincial Insolvency Act is the final order which is also appealable, but the I Additional District Court has held that this Court has no powers to declare that the said order is void or non-est, that the Executing Court, by giving a finding that that Court has no power to declare that the order passed in I.A.No.89 of 2005 as void or non-est, as the parties have to challenge the said order before the higher Forum, has come to a decision that the said order passed in I.A.No.89 of 2005 has become ineffective on and from the date of dismissal of the main I.P.No. 32 of 2000, dated 02.12.2009, that the claim petitioner Sigappi and the vendors of the other claim petitioner were parties to the petition in I.A.No.89 of 2005 and all of them were aware of the above proceedings and the order passed by the Insolvency Court, that the claim petitioners have then filed applications for setting aside the order passed in I.A.No.



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89 of 2005 and the same are still pending and that therefore, they cannot be allowed to take a stand that the Insolvency Court has no power or jurisdiction to pass the said order.

4. The learned Counsel for the first respondent – Kamaraj would contend that the proceedings before the Insolvency Court would go to show that the insolvent and the purchasers have colluded together and fraudulently created the sale deeds with the knowledge of the pending proceedings, that since the order passed by the Insolvency Court is legal and valid, the sale deeds referred were declared as void documents, that the claim petitioners have purchased the properties during the pendency of the suit in O.S.No.583 of 2000 (O.S.No.240 of 2004) and as such, they cannot claim a better title than their vendors, that since the claim petitioners have purchased the properties during the pendency of the insolvency proceedings and after the annulment order passed by the Insolvency Court, they cannot be termed as the bonafide purchasers and that their sales are affected by the principle of *lis pendens*.

5. The learned Counsel for the appellant as well as the first respondent would contend that the claim petitioners have not raised any



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pleading that the Court auction sale proceedings were vitiated by suppression and fraud, that the claim petitioners have not adduced any evidence to prove the same, that the Executing Court, in the absence of any pleadings and evidence, has framed a point for consideration and gave a finding that the acts of the first respondent would amount to suppression and fraud and that therefore, the common order passed in the claim petitions are liable to be set aside and the execution application for delivery of property has to be allowed consequently.

6. The learned Counsel for the claim petitioners would contend that the Insolvency Court has no jurisdiction to pass any order of annulment of sale deeds during the pendency of the Insolvency Petition and hence, the orders passed in I.A.No.89 of 2005 is without jurisdiction, void and non-erst, that when the main I.P., itself was dismissed for default on 02.12.2009, the order passed in I.A.No.89 of 2005 ought to be considered as ineffective from the date of dismissal of the Insolvency Petition, that the second respondent / Judgment debtor was not the owner of the property on 06.08.2010, when the property was attached and no property was available at that time to the creditors of the Judgment debtor, that the claim petitioners are the bonafide purchasers for valid



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consideration and they put up the buildings after obtaining plan approval and have been in possession and enjoyment of the same and that the Executing Court, after considering the above aspects in proper perspective, has rightly allowed the claim petitions.

7. Regarding the plea of doctrine of *lis pendens* contemplated under Section 52 of the Transfer of Property Act, the main ingredient necessary to attract the said principle is that any suit or proceeding in which any right to immovable property must be directly and specifically in question must be pending. In the case on hand, as already pointed out, the first respondent – decree holder has not filed the suit either for specific performance of the sale agreement or for refund of advance amount, but on the other hand, he has filed the suit on the basis of the subsequent agreement entered into between himself and the second respondent, wherein they have given up the sale agreement and the second respondent has agreed to pay Rupees Five Lakhs which was received as advance amount with interest within six months and since that was not paid as agreed, the above suit came to be filed. Moreover, the second respondent has filed the Insolvency Petition to adjudge himself as insolvent and admittedly no immovable property was shown



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by him to be available at that time. Considering the above, the right to the property now in dispute was not all questioned directly and specifically in the suit or in the insolvency proceedings and as such, the question of invoking the doctrine of *lis pendens* does not arise at all.

8. The main points that arise for consideration are as to whether the Insolvency Court is having jurisdiction to decide the annulment of sales, during the pendency of the Insolvency Petition, whether the order annulling the sales is legally valid and what is the effect of the order annulling the sales after the dismissal of the main Insolvency Petition.

9. Before entering into further, it is necessary to refer Sections 4 and 53 of the Provincial Insolvency Act, 1920, under which the petition in I.A.No.89 of 2005 came to be filed and the same are extracted hereunder:

***“4. Power of Court to decide all questions arising in insolvency:***

*(1)Subject to the provisions of this Act, the Court shall have full power to decide all questions whether of title or priority, or of any nature whatsoever, and whether involving matters of law or of fact, which may arise in*



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*any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.*

*(2)Subject to the provisions of this Act and notwithstanding anything contained in any other law for the time being in force, every such decision shall be final and binding for all purposes as between, on the one hand, the debtor and the debtors estate and, on the other hand, all claimants against him or it and all persons claiming through or under them or any of them.*

*(3)Where the Court does not deem it expedient or necessary to decide any question of the nature referred to in sub-section (1), but has reason to believe that the debtor has a saleable interest in any property, the Court may without further inquiry sell such interest in such manner and subject to such conditions as it may think fit.*

### **53. 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 [on a petition presented] [Inserted by Act 10 of 1930, Section 6.] within two years after the date of the transfer,*



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*be voidable as against the receiver and may be annulled by the Court.”*

10. Invoking Section 4 of the said Act, the Insolvency Court can decide all questions of title or priority or of any nature whatsoever which may arise in any case of insolvency. But the only restriction is that the said powers of the Insolvency Court are subject to the other provisions of the Provincial Insolvency Act. To put it in other way, where any other Section of the Provincial Insolvency Act contains the provision which either runs counter to Section 4 or expressly excludes the application of Section 4, to that extent Section 4 cannot be invoked.

11. The learned Counsel for the appellant would submit that Section 4 of the said Act can be invoked even where Section 53 of the said Act cannot be applied and that the Insolvency Court is having necessary powers and jurisdiction to consider and decide the aspect not covered under Section 53 of the said Act. The learned Counsel would further submit that in the present case, the impugned order came to be passed under Section 4 of the said Act, is not without jurisdiction and is legally valid and that since the said order has attained finality, as there



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was no appeal, the said order cannot be challenged. In an attempt to highlight the scope and powers of Section 4 of the said Act, the learned Counsel for the appellant has relied on the following decisions:

(i) ***AIR 1933 Madras 271 {(Gunturu) Pullayya and another Vs Official Receiver of Kistna and others}*** :

*“Provincial Insolvency Act (1920), Ss.4 and 53 – If transfer by insolvent is not bona fide further transaction by transferee also falls – Court can set aside such further transaction by transferee also falls – Court can set aside such further transaction under S.4*

*Even if later transaction by the transferee from the insolvent cannot be considered in a petition under S.53 they cannot be so considered only on grounds peculiar and not as consequential on the main transaction. And if the sale deed by the insolvent is not bona fide the further transactions by the transferees also fall to the ground. In such cases even if it were to be held that the Court cannot declare the further transactions under S.4 to declare such transactions invalid.”*

(ii) ***AIR (31) 1944 Nagpur 44 (Vinayak Shamrao Vs. Moreshwar Ganesh Padhe and others):***

*Provincial Insolvency Act (1920), Ss.4, 53 and 54 – Scope of Ss.4, 53 and 54 explained – Ss.53 and 54,*



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*Insolvency Act, are wider than S.53, T.P.Act – If Ss.53 and 54 are to be taken advantage of rule of 2 years or 3 months would apply – Otherwise the remedy is under ordinary law – These remedies can however be pursued under S.4 although Insolvency Court may refer parties for expediency to civil suit.*

*Section 53 empowers the Court to annul certain transfers which take place within two years of the Insolvency, and S.54 to annul others which occur within three months before; but either section does not take away the general and wide jurisdiction and powers conferred by S.4. Sections 53 and 54 are enabling sections. They confer certain additional powers on the Insolvency Court which an ordinary Civil Court does not have. They are not restrictive and do not take away anything which is already there. Section 53, Provincial Insolvency Act, is wider than S.53, T.P. Act, and it gives added benefits to the creditors. If they want to avail themselves of these additional benefits they must bring themselves within the two years rule. If not they are left to their remedies under the ordinary law. But these remedies can be pursued in the insolvency Court under S.4, through it would be open to that Court on grounds of expediency, to refer the parties to a civil suit. Sec.4 travels much wider than the small class of litigation which centres round fraudulent transfers, and so does the Provincial*



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*Insolvency Act. All that the words “subject to the provisions of the Act” mean is that where the Act otherwise provides the insolvency Court is not to act as a civil Court. Neither S.53 nor S.54 deal with sham transfers. For one thing such transfers do not require annulment, and for another they are not really transfers, they only pretend to be. Hence there are matters relating to the property which the Court can deal with apart from Ss.53 and 54. No doubt if the transfer is sham then the property continues to reside in the insolvent, and on insolvency it vests in the Court, and the Court can then act under S.56. But that is the effect once the transfer is found to be sham. Section 56 does not vest the insolvency Court with jurisdiction to decide that question. Section 4 does that. And if the insolvency Court can determine this question of title when the transfer is alleged by the receiver or the creditors to be sham, and determine whether the title lies in the insolvent or the transferee, that is to say, determine whether it is wholly void or not, it can decide the allied question as to whether the title is voidable and whether it is liable to be avoided. Both are equally foreign to Ss.53 and 54 and equally germane or otherwise to S.4; and in nearly every case both positions are raised in the alternative.*



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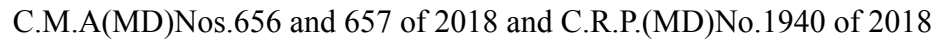
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(iii) (1977)4 SCC 59 ( *Johri Lal Soni Vs. Smt.Bhanwari Bai*):

*Insolvency – Provincial Insolvency Act (5 of 1920) – Sections 4 and 53 – Void transfers are not governed by Section 53 but only voidable transfers – Insolvency Court has jurisdiction under Section 4 to declare a transfer, effected more than 2 years before initiation of insolvency proceedings, to be void.*

*Section 4(1) of the Provincial Insolvency Act, 1920 is couched in the widest possible terms and confers complete and full powers on the insolvency court to decide all questions of title or priority of any nature whatsoever which may arise in any case of insolvency. The only restriction is that these powers are subject to the other provisions of the Act. Section 53 provides that any transfer of property not being a transfer made before and in consideration of marriage or made in favour of a purchaser or encumbrancer in good faith and for valuable consideration, shall, if the transferor is adjudged insolvent on a petition presented within two years after the date of transfer, be voidable as against the receiver and may be annulled by the Court.”*

12. In the first decision above referred, the petitioner therein was declared as insolvent on his own petition filed on 22.09.1915 and that



13. In the second decision above referred, it was held that though Section 53 empowers the Court to annul certain transfers which take place within two years of the insolvency and section 54 to annul others which occur within three months before, but either Section does not take away the general and wide jurisdiction and powers conferred by Section 4 and that Section 4 can be invoked for transfers not within two years rule.

14. In the third decision above referred, the petitioner therein on his own application was adjudged as an insolvent by the Additional District Court on 15.10.1968, that the receiver moved the Court under



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Section 4 of the said Act on 04.01.1969, for declaring the gift deed dated 07.11.1961 as void and inoperative, that the insolvency Court, after enquiry, has upheld the plea of receiver and declared the gift deed as being void and inoperative, that the donee has preferred an appeal before the High Court and the High Court has come to a decision that the insolvency Court had no jurisdiction to determine the question of title, nor could it go into the question of the validity of the transfer which was made more than two years before the insolvency proceedings had started and held that the power under Section 4 could not be exercised inspite of the transfers made during the period beyond two years of the insolvency proceedings and when the matter was taken up to the Supreme Court, the Hon'ble Apex Court has held that Section 53 of the Act bars the jurisdiction of the insolvency Court to determine the validity of any transfer made beyond two years of the transferor being adjudged as insolvent, that the above Section made a clear distinction between void and voidable transfers, that a void transfer is no transfer at all and is completely destitute of any legal effect and that the transfer which was sought to be challenged on the ground that it was a nominal and sham transaction and thus a void transaction which clearly falls within the four corners of Section 4 of the said Act.



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15. It is pertinent to note that in order to invoke Section 4 or Section 53 of the said Act, the foremost condition required is that the transferor has to be adjudged as an insolvent. It is pertinent to note that Section 4 will come into play only after the debtor has been adjudged as an insolvent and then only the Court can decide any question of title or priority arising between the debtor and one or more of his creditors. The provisions of Section 4 relate to post-adjudication proceedings and not to a case where a person is yet to be adjudged as insolvent under the said Act. The question whether any alienation by a debtor is fraudulent or not cannot be decided by the insolvency Court before adjudication, but that question can be decided by it only after adjudication on the application of the official receiver or when the official receiver is unwilling to act on the application of any creditor or any other person authorised by the insolvency Court in that behalf.

16. As rightly contended by the learned Counsel for the claimant, under Section 9 of the Provincial Insolvency Act, a creditor can file a petition against a debtor complaining the act of insolvency on which the petition is grounded has occurred within three months before the



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presentation of the petition. To put it in other way, the essential condition for a creditor to present a petition under Section 9 of the Act against the debtor is that the petition must be filed within three months of the act of insolvency.

17. As per Section 53 also, unless a person is adjudged as the insolvent, the insolvency Court has no jurisdiction to decide whether a transfer of property made by him should be annulled or fraudulent and void. Moreover, Section 53 of the said Act contemplates that a transfer of the nature mentioned therein is voidable as against the receiver and since it is not void ab initio, the same can be annulled by the Court. As rightly contended by the learned Counsel for the claimant, the receiver is the only competent person to seek annulment under Section 53 of the Act, after adjudging the debtor as insolvent. But more importantly, it is the receiver who alone is entitled to put forward a claim, if it is laid under Section 53 of the said Act to a particular property on the ground that it forms part of the insolvent's estate.

18. In the case of *Saraswathy Vs. Kishnier* reported in *AIR 1964 Madras 501* and in the case of *Sankari Debi and others Vs. Co-*





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claimant, the first respondent has not sought for appointment of any receiver or interim receiver in the pending insolvency petition filed by the second respondent nor filed any permission petition to challenge the sale deeds allegedly executed by the second respondent invoking Section 4 r/w 53 of the Provincial Insolvency Act, 1920.

20. As already pointed out, in the petition filed in I.A.No.89 of 2005, the first respondent has not impleaded the claim petitioner – Dr.J.Kannaperuman, but only impleaded the vendors of the claim petitioner. As already pointed out, the order passed in I.A.No.89 of 2005 is an exparte order. It is settled law that just because the other side has remained exparte, the relief claimed in the suit or in the petition cannot be granted automatically and the Court has to consider the case of the applicant and after recording its satisfaction, has to grant the relief. In the present case, it is not the case of the parties that the insolvency Court has considered the claim of the first respondent and the legal position applicable and passed the orders annulling the sale deeds. In the absence of any order adjudging the second respondent as insolvent and in the absence of any order appointing any receiver or interim receiver and in the absence of any permission to challenge the sale deeds obtained by the





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of any specific order of the Court, the property shall revert back to the debtor.

22. The learned Counsel would rely on the judgment of this Court in the case of ***Dharmasamarajayya Vs. Sankamma and others*** reported in ***AIR 1943 Madras 453***, wherein the High Court has held that the effect of annulment of gift deed must automatically disappear at the conclusion of the Insolvency Proceedings. In a subsequent decision in the case of ***S.Janabai Ammal Vs. Narasimhalu Naidu and others*** reported in ***AIR 1956 Madras 341***, this Court by relying on the decision of King, J., in Dharmasamarajayya's case above referred, has held as follows:

*“This decision of King, J., was cited with approval by a Bench of this Court in Muhammad Hussain Sahib V. Karutha Syed Mohammad Rowther (1952) 2 M.L.J. 823, consisting of Govinda Menon and Mack, JJ. I am in respectful agreement with the view taken by King, J., in the case referred to, Dharmasamarajayya V. Sankamma (1943) 1 M.L.J. 166, that the object of setting aside the alienation as offending the provisions of the Insolvency law was for the benefit of the insolvent's creditors and since no provision is required to be made from and out of*



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*the property so far as the insolvent's creditors are concerned and by reason of the adjudication having become annulled, the limited purpose for which the benefit of such an order of setting aside was intended having disappeared, the alienation in question must, therefore, be deemed to have been left untouched but restored as observed by King, J., in the case of the gift in that case.”*

23. In the case on hand, as already pointed out, the second respondent debtor was not at all adjudged as insolvent and the properties now in dispute were not vested with the official receiver. Moreover, no receiver either official or interim has been appointed in the proceedings in I.P.No.32 of 2000. More importantly the I.P., was dismissed for default on 02.12.2009. As rightly observed by the learned Judge of the Executing Court that the main aim of the Insolvency Act is to give equal priority to all the creditors of the insolvent and equally distribute the properties to the creditors so as to satisfy each one's claim.

24. No doubt, though the second respondent has filed insolvent petition against 22 persons, except the first respondent, no other creditors



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has initiated any proceedings. As rightly observed by the learned Executing Court that the transfers made are voidable only as against the receiver, as contemplated under Section 53 of the said Act and not against any other person. Considering the above and also the legal position above referred, it is very much clear that the annulment orders are being passed by the Insolvency Court for the limited purpose of benefiting the creditors, the interim order passed in I.A.No.89 of 2005, after the dismissal of the insolvency petition, has become ineffective and in the words of Justice King, the annulment of the sale deeds must automatically disappear at the dismissal of the insolvency petition.

25. The learned Counsel for the appellant would submit that the Executing Court has framed an issue as to whether the auction sale proceedings of the Executing Court are vitiated by suppression and fraud, but without any iota of pleadings, that a party pleads fraud has to raise necessary averments with required particulars and that the burden of proving the acts of fraud is on the party who pleads the same, that the claim petitioners have not produced any evidence or materials to prove the alleged fraud and that the Executing Court without any pleadings and



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evidence, has mechanically come to a finding that the auction sale proceedings are vitiated by suppression and fraud.

26. No doubt, generally any party takes a plea of fraud has to raise necessary pleadings with required particulars and to adduce evidence, but such requirement cannot be expected in all the situations. When the records available would disclose some facts, which in turn would go to suggest that a fraud is committed on a party or on a Court, then the Court is duty bound to consider and decide the same. In the present case, it is the specific case of the claim petitioner Dr.J.Kannaperuman that after the purchasing the property, obtained approval for construction of a building in 2007 and constructed the building in 2007 itself and subsequently after getting necessary approval, made alterations in 2009, that he is running a Dental Hospital in the name of Nala Dental Hospital in a four storey building, that the Advocate Commissioners have specifically noted the existence of four storey building, that the value of the building would be more than Rupees Six Crores and that the first respondent, by suppressing the existence of the four storey building, has valued the property only for Rupees Fifteen Lakhs.



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27. The learned Counsel for the claim petitioner – Sigappi would contend that she has also constructed a double storey building, after getting necessary approval from the Corporation and has been paying house tax and that the same was also suppressed in the execution proceedings.

28. The first respondent Kamaraj in his evidence before the Executing Court would say that he visited the suit property and found it as a vacant land and shed and that he was not aware of the constructions made by the claim petitioners therein. Even according to the first respondent, he is residing very close to the suit property. The Executing Court has specifically observed that the records revealed that the property was identified by the decree holder – first respondent at the time of attachment made by the Court Ameen. But the first respondent in her cross-examination would take a stand that he never identified the property to the Court Ameen at the time of attachment. The Court auction purchaser as R.W.2 would depose that before taking the property in the Court auction sale, he visited the property on 06.06.2011 and found the availability of buildings therein, that he enquired about the



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buildings with the auction officer, he was informed that the property would be handed over to him after demolishing the buildings therein.

29. As already pointed out, the Executing Court, taking note of the value given by the first respondent and the value given by the Court Ameen at Rs.45,00,000/-, has fixed the upset price at Rs.45,00,0000/-. It is pertinent to note that the first respondent has only mentioned the vacant site and shed, which was reiterated by the Court Ameen. The learned Judge of the Executing Court has rightly observed that the presence of the buildings in the suit property was not brought to the notice of the Court both by the Court Officer and by the first respondent.

30. It is pertinent to note that while issuing sale proclamation, the first respondent has made an endorsement about the annulment of the sale deeds as per the order dated 10.12.2008 in I.A.No.89 of 2005 in I.P.No.32 of 2000, but suppressing the factum of dismissal of the Insolvency Petition itself on 02.12.2009. As already pointed out, the upset price was fixed at Rs.45,00,000/- and the Court auction purchaser has purchased the property at Rs.45,10,000/-.



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31. Considering the above and the evidence available on record, this Court has no other option, but to hold that the first respondent – decree holder in collusion with the Court auction purchaser has suppressed the material facts and played a fraud not only on the claimants, but also on the Court.

32. The Executing Court has permitted the Court auction purchaser to withdraw a sum of Rs.9,05,400/- along with accrued interest, and directed the first respondent – decree holder to deposit a sum of Rs. 36,04,600/- along with interest at 6% p.a., from 22.08.2011 till the date of realization and upon such deposit, the Court auction purchaser was entitled to withdraw the said amount.

33. The learned Counsel for the appellant would submit that the first respondent had withdrawn Rs.19,60,206/- and the remaining amount is very much available with the Court (in Bank of Baroda) and that therefore, the above directions of the Executing Court cannot be sustained. It is not in dispute that the first respondent – decree holder



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had withdrawn a sum of Rs.19,60,206/- and the remaining amount is available with the concerned Court.

34. As already pointed out, the Executing Court, after allowing the claim petitions, has dismissed E.A.No.1 of 2012 which was filed for delivery of the property, as infructuous. Since this Court has confirmed the decision of the Executing Court in the claim petition, the order of dismissing E.A.No.1 of 2012 as infructuous, cannot be found fault with. Hence, this Court concludes that both the Civil Miscellaneous Appeals and the Civil Revision Petition are devoid of merits and the same are liable to be dismissed.

35. In the result, both the Civil Miscellaneous Appeals and the Civil Revision Petition are dismissed. Consequently, the connected Miscellaneous Petitions are also dismissed. The first respondent – decree holder is directed to deposit Rs.19,60,206/- with interest at 6% from 22.08.2011 till the date of deposit within a period of two months from today and upon deposit of such amount, the appellant/Court auction purchaser is permitted to withdraw the said amount along with the



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amount available in the Court deposit and accrued interest. There shall be no order as to costs.

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**14.06.2024**

NCC : Yes : No  
Index : Yes : No  
Internet : Yes : No

SSL

To

1. I Additional District Court, Madurai.
- 2.The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court, Madurai.



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**K.MURALI SHANKAR,J.**

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PRE-DELIVERY JUDGMENT MADE IN

C.M.A(MD)Nos.656 and 657 of 2018 and  
C.R.P.(MD)No.1940 of 2018

14.06.2024