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pplication (IP) Nos. 53 and 54 of 2017

IN

I.P.No. 25 of 2014

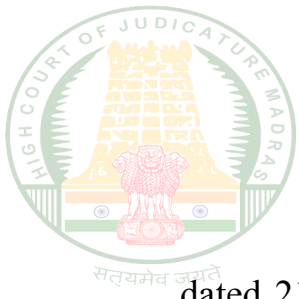
DR.G.JAYACHANDRAN, J.

and

C.V.KARTHIKEYAN, J.

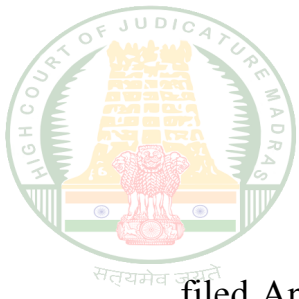
These applications have been filed by the Official Assignee for a declaration that the settlement deed dated 20.02.2014 executed by the second respondent S.Manohar Lal @ S.M. Lal in favour of the third respondent Anmol Anand (minor) with respect to the property of 33.39% of undivided share with Flat No.-D, Anmol in the 3rd floor in Advika Apartments, at Door No.11 and Old No.6, 6B & 7 First Street, Subbarao Avenue, Chennai- 600 006, as null and void under Section 53 of the Transfer of Property Act and to bring the said property for sale to adjudicate the proceeds of the liability of S.M.Lal due to the second respondent Arjunlal Sunderdas, insolvent.

2. In the report of the Official Assignee, it had been contended that on an Insolvency Petition filed by one Chitra Desai in I.P.No. 25 of 2014, the first respondent Arjunlal Sunderdas had been adjudicated as an insolvent by order



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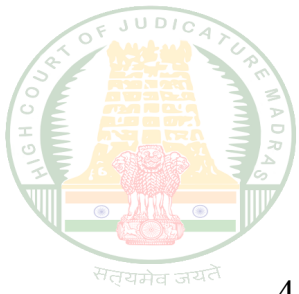
dated 21.04.2014. His assets then vested with the Official Assignee. He had filed his Schedule of Affairs belatedly and did not co-operate during the course of investigation. The Official Assignee had to rely on the computer generated statements produced by his auditor, Ranga Ramanujam which were further verified by the auditor appointed by the Official Assignee, M/s. Annamalai Associates. It had been contended that on perusal of the accounts, it was found that the second respondent was due and payable to the first respondent a sum of Rs.4,72,38,000/- from the “Property and Shares Account” maintained by him. In this connection, it must also be mentioned that the second respondent had earlier filed a Claim Petition before the Official Assignee for a sum of Rs.8.75/- crores allegedly payable to him from the estate of the insolvent Arjunlal Sunderdas. That Claim Petition was rejected by the Official Assignee. Questioning that rejection, the second respondent had filed Application No. 6 of 2019 before this Court and the said application had suffered an order of dismissal by order dated 17.12.2019. The second respondent had filed a Special Leave Petition before the Hon'ble Supreme Court and that was also dismissed by order dated 01.07.2021. Thereafter, the Official Assignee had



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filed Application No. 161 of 2016 seeking a Judgment and Decree for the said sum of Rs.4,72,38,000/- together with interest and costs. Orders have been passed separately in the said application allowing the application and passing a Judgment Decree for the said amount together with interest and costs.

3. It must be further stated that the second respondent, the brother of the insolvent/first respondent was also directly involved along with the first respondent in the business of real estate and finance. They were partners in the businesses called “Arjunlal Sunderdas”. They had also incorporated four separate companies, namely, (i) Sunil Anand and Company Private Ltd., (ii) International Sea Food Private Ltd., (iii) Manyal Reality Private Ltd., and (iv) Manyal Foundation Private Ltd. In each one of the four companies, the second respondent had a 25% interest and the first respondent had a 75% interest. There were several financial transactions between the first and second respondents with respect to the firm “Arjunlal Sunderdas” and also with respect to the aforementioned four companies.

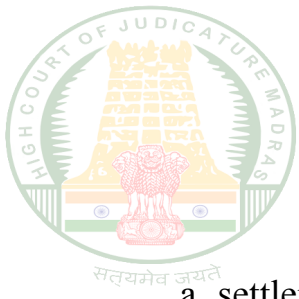


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4. The second respondent had maintained, quite apart from his personal accounts, two separate accounts relating to the transactions with the first respondent, namely, 'Property and Shares Account' and 'Advance Recd – Property (Unsecured Loans) Account. The ledger of the accounts had been produced as documents and a perusal of the same revealed that the quantum of transactions between the two brothers goes to more than Rs.20/- crores over a three year period on and from 2012-2013 onwards.

5. The first respondent Arjunlal Sunderdas had started to run into trouble in his financial business and the second respondent as partner of the firm 'Arjunlal Sunderdas' and also as holding 25% of the shares in the aforementioned four companies was well aware of the same. He cannot claim ignorance or innocence and seek indulgence.

6. It is the case of the Official Assignee that with intent to screen away the property being taken over by the Official Assignee as being the proceeds of acts of insolvency by the first respondent, the second respondent had executed



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a settlement deed on 20.02.2014 in favour of the third respondent. It is contended by the Official Assignee that the said transaction is a fraudulent transaction and therefore void under Section 53 of the Transfer of Property Act 1882. It is under those circumstances that these applications had been filed seeking such a declaration and also to bring that property for sale to realise the amounts due from the second respondent to the estate of the insolvent.

7. A counter affidavit had been filed denying and disputing these contentions. It had been contended that the property which is sought to be attached was purchased by sale deed dated 25.10.2012 registered as Document No. 978 of 2012 on the file of the Joint-II Sub-Registrar, Central Chennai whereby the vendors had sold 33.39% of undivided share of land from and out of 3 grounds and 178 sq.feet in Nungambakkam, Chennai for a consideration of Rs.1,97,08,000/-. Thereafter, as purchaser of the property, the second respondent had executed a settlement deed dated 20.02.2014 in favour of his great granddaughter / third respondent. It had been contended that the applicant had not produced any proof to show that it was the insolvent, who



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had funded this purchase of the property by the second respondent. It was thus contended that the settlement deed executed by the second respondent cannot be categorised as a fraudulent transaction. It was a settlement deed executed out of love and affection by a great grandfather to his great granddaughter.

8. It had been further stated that the sale deed and the settlement deed were executed much prior to the date on which the first respondent was adjudged as insolvent. It had been contended repeatedly that no document had been produced by the applicant to hold that the property had been purchased by the second respondent from and out of the funds provided by the first respondent. It had been stated that it was purchased by the second respondent and that the Official Assignee cannot claim any right over the same. It had been further contended that in exercise of the title vested with the property, the second respondent had, out of love and affection executed a settlement deed in favour of his great granddaughter and that the documents are unimpeachable and that the Official Assignee cannot seek any declaration against the same, much less, the relief that the settlement deed was null and void.



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9. Heard arguments advanced by Mr.K.V.Ananthakrushnan, learned counsel for the Official Assignee and Mr.R.Venkatraman, learned counsel for the second respondent.

10. Mr.K.V.Ananthakrushnan, learned counsel for the applicant/Official Assignee took the Court through the facts of the case and stated that the Official Assignee had established by producing documentary evidence that the second respondent was due and payable to the estate of the first respondent a sum of Rs.4,72,38,000/-. The learned counsel contended that the second respondent, as brother of the first respondent was a participant in all the financial and property transactions of the first respondent. He contended that there were separate accounts held by the second respondent with respect to each distinct head of transaction. Under the 'Property and Shares Account', a perusal of the ledger revealed that a sum of Rs.4,72,38,000/- was due and payable by the second respondent to the estate and claiming that sum, Application No. 161 of 2016 had been filed by the Official Assignee.



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11. The learned counsel further contended that the second respondent had settled the property described in the schedule to the Judges Summons in favour of his great granddaughter on 20.02.2014 only to avoid the property being attached by process of Court. It had been contended that within two months, on 25.04.2014, the first respondent had been adjudicated as insolvent. The learned counsel contended that the second respondent knew thoroughly about the financial difficulties of the first respondent and in order to screen away all properties from the creditors had surreptitiously executed the settlement deed in favour of this great granddaughter. It had been contended that this was a fraudulent transaction as stipulated under Section 53 of the Transfer of Property Act. The learned counsel therefore contended that the said settlement deed should be declared as null and void and the property should be attached and brought to sale to realise the amounts due and payable by the second respondent to the estate of the first respondent.

12. Mr.R.Venkatraman, learned counsel for the second respondent however disputed the said claims. The learned counsel contended that by no stretch of imagination could the property which had been purchased by the



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second respondent be termed to be the property of the insolvent or vested with the estate of the insolvent for any subsequent transaction to be impinged as fraudulent by the Official Assignee. The learned counsel stated that though, as a fact, the second respondent was a brother of the first respondent, the property had been independently purchased by the second respondent. He pointed out that the Official Assignee had not let in any evidence to show direct connection between the said property and the acts of insolvency of the first respondent. The learned counsel contended that the settlement was an internal arrangement out of love and affection within the family members and cannot be put to test by the Official Assignee.

13. In this connection, the learned counsel placed reliance on the Judgment of this Court reported in **2002 (4) CTC 550 [M.Govinda Gounder Vs. Pichandi Pillai and Others]** with specific reliance on paragraph No. 8 which is as follows:-

“8. I have considered the submissions of learned counsel for the appellant. It is not disputed as



could be seen from the records that the claimant has purchased the property on 19.9.1985 whereas the attachment was only subsequent to that namely, on 10.10.1985. Therefore, the burden to prove that the purchase was to defraud the creditor is very much on the plaintiff. A perusal of the counter filed by him shows that the counter is a very short one bereft of details except for stating that the purchase was not bona fide. Curiously the plaintiff has not got into the box; nor has he produced any other evidence to support his claim that the sale is vitiated by fraud. Ultimately the burden to prove the allegation of fraud is very heavy on the person pleading fraud and in the present case the plaintiff has not made any attempt to adduce any evidence. I am inclined to hold that on that basis alone the defence of the plaintiff ought to have been rejected by the Courts below. ”

14. The learned counsel further placed reliance on the Judgment of the Allahabad High Court, reported in ***AIR 1928 AII 476 [Saraswati Kuar Vs.***



Mahabir Prasad and Others], wherein with respect to Section 53 of the

Transfer of Property Act, it had been held as follows:-

“8. There is, of course, no direct evidence to prove the real intention of Jai Gobind, nor in most cases can such evidence exist. The learned advocate for the respondent relies on the circumstance that the gift was made by the husband to his wife of joint family property which could not in the long run be absolutely effective. He also relies on the suspicion which arises from the nearness of the dates of the suit and the gift. In our opinion these circumstances are not sufficient to justify a Court to infer that there was intention to defeat and delay creditors, when we have got the clear finding of the Court below that the value of the property which was left untouched by the gift was amply sufficient for the payment of the debt. There is no proof that he had any other debt to discharge. ”

15. The learned counsel contended that Section 53 of the Transfer of Property Act would not be applicable to the facts and circumstances of the case.



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16. The learned counsel further placed reliance on the Judgment of this Court reported in **2012-4-LW702 [G.Mohanvelu Vs. G.Kokila and Others]** wherein it had been held as follows:-

*“50. A deed of release for a consideration is a transaction. When, thus, a release is made for consideration, the particulars of consideration and other particulars which (sic) are required to be averred in the deed being essential elements thereof. Relinquishment of a property by a sister in favour of her brother for a consideration or absence of it, stands on a different footing. Section 25 of the Contract Act must be read and construed having regard to the fact situation obtaining in the cases. In **Manali Singhal v. Ravi Singhal, AIR 1999 DELHI 156**, it was held:*

20. Learned counsel for the defendants has then argued that the impugned settlement is without any consideration. Hence the same is hit by Section 25 of the Contract Act. The contention of the learned counsel may be an ingenious one but can be brushed aside without



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any difficulty. Parties more often than not settle their disputes amongst themselves without the assistance of the court in order to give quietus to their disputes once and for all. The underlying idea while doing so is to bring an era of peace and harmony into the family and to put an end to the discord, disharmony, acrimony and bickering. Thus the consideration in such type of settlements is love and affection, peace and harmony and satisfaction to flow therefrom.”

17. The learned counsel argued that the second respondent had purchased the property by a registered sale deed dated 25.10.2012 which clearly revealed that the property had been purchased by the second respondent out of his own funds. The learned counsel further stated that allegations of fraud must be specifically pleaded and details will have to be given supported by credible material evidence. No documents had been produced and no evidence had been adduced that the second respondent was aware that the first respondent would be declared as insolvent. The learned counsel further stated that the third respondent was a lawful settlee and it was only natural that the



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property was settled in her name. She was a great granddaughter of the second respondent and this settlement was a pure intrafamily arrangement made out of love and affection. It had been contended that therefore, the applications will necessarily have to be dismissed.

18. The learned counsel also filed written arguments.

19. We have carefully considered the arguments advanced and perused the materials available on records.

20. The first and second respondents are brothers. They were partners in a firm called “Arjunlal Sunderdas”. They both dealt with real estate and finance. They had a common auditor to maintain their accounts. These facts are neither denied nor disputed.

21. The transactions in the bank between themselves went continuously from as early from the year 2012 onwards. The transactions were quite



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substantial in number and in amount. The transactions crossed nearly Rs.20/- crores. The second respondent operated atleast two accounts with respect to distinct and separate transactions with the first respondent, namely, 'Property and **Shares Account**' and '**Advance Recd – Property (Unsecured Loan) Account**'.

22. In the second account, there had been four separate transactions of transfer of money from the account of the second respondent to the first respondent amounting to Rs.8.75 crores. With respect to the first account, the transactions were numerous and the final closing balance as stated by the auditor, revealed that the second respondent was due and payable to the first respondent a sum of Rs.4,72,38,000/-.

23. The first respondent had financial troubles with his creditors and debtors on and from the years 2012 and 2013 itself. Police complaints had been lodged, promises were made for repayment to the creditors and the promises were not kept up. This led to one of the creditors, Chitra Desai to file



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an Insolvency Petition in I.P.No. 25 of 2014 on 10.03.2014 against the first respondent seeking to adjudicate him as an insolvent. The first respondent was adjudicated as insolvent on 21.04.2014. On and from that date, the assets of the insolvent came to be vested in the Official Assignee.

24. In the I.P.No. 25 of 2014, the petitioning creditor had stated as follows as grounds to declare the first respondent herein/ Arjunlal Sunderdas as insolvent:-

“5. The petitioner states that on or about August 2013 the respondent started defaulting in making payments he kept assuring that the payments would be made for both the months of August and September in the second week of September 2013. When the money was not deposited in September as promised the petitioner tried calling him several times but there was no response nor were the interest cheques sent as promised. The petitioner made repeated calls but was unable to get through to the respondent. The petitioner therefore got in touch with her said



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friend Ms.Lata Krishnamurthi New Delhi who also told her that she too was not receiving the interest and that the respondent could not be contacted over phone. A copy of the bank statement is produced to show that no interest was deposited after July 2013 in petitioner's bank account. That even after 15.10.2013 the cheques for the interest amounts were not paid and the petitioner, therefore, contacted her said friend in New Delhi once again on or about 22.10.2013 when her friend said she also did not receive the payment of interest and she was unable to reach the respondent over the phone. Again on 16.11.2013 the petitioner tried calling up the respondent over the telephone but her efforts proved in vain. In December 2013 the petitioner and many of the creditors met in Delhi and decided to take some action against the respondent. Since the respondent lives in a big bungalow with many servants and two cars none of the creditors including the petitioner remotely suspected that the respondent is in insolvent circumstance. The



petitioner actually believed that the respondent was guilty of cheating under the IPC and therefore on or around 03.01.2014 the petitioner's said friend along with her brother Mr.K.Murali had made a complaint to the State Police at Chennai. On 06.01.2014 the petitioner arrived in Chennai after she heard that the respondent was at the police station in connection with the complaint made by the said Mr.K.Murali a resident of Chennai. The petitioner was also informed by her friend that the respondent had told the police that he was interested in settling the dispute with the petitioner's friend and her family members, and friends had invested after hearing about the respondent through the petitioner's said friend in New Delhi. The petitioner fell in the last category and her claims were also settled by issuing post dated cheques of 06.04.2014. Similar cheques were issued in the name of petitioner's husband.

6. The petitioner states that on 25.01.2014, her friend Ms.Lata Krishnamurthi called up the



petitioner and told her that the respondent had requested everyone to whom he had issued the post dated cheques to refrain from depositing the cheque until further instructions. When the petitioner's said friend had questioned the respondent as why the cheque should not be deposited, the respondent said that he did not have any liquid money in the bank. A copy of the said letter is filed along with the petition. It was only then that it became very clear to the petitioner that the respondent was in insolvent circumstances. The petitioner submits that the issuance of post dated cheques and the subsequent instructions not to present the cheques by the respondent amounts to suspension of payment within the meaning of the Presidency Towns Insolvency Act."

25. The second respondent disclaimed of knowledge about the affairs of the first respondent and filed a Claim Petition for the sum of Rs.8.75/- crores before the Official Assignee. That was rejected by the Official Assignee. He then filed Application No. 6 of 2019 before this Court for a direction against



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the Official Assignee to admit the Claim Petition. While adjudicating that particular application, this Court had very specifically observed that the second respondent had committed acts of fraud and cannot be granted any relief by the Court. It had been very specifically observed as follows:-

“6. Under Section 48 of the Presidency Town Insolvency Act, read with second schedule, Order 10, Form No. 42 and Form No. 43-A of Insolvency Rules 1958, the creditors should file a claim within 90 days from the date of notice of adjudication. It is seen that the applicant herein is the brother of the insolvent. He was not just a brother but also a co-director in four companies, namely, (a) Sunil Anand & Co. (P) Ltd., (b) International Sea Food (P) Ltd., © Manyal Reality (P) Ltd., and (d) Manyal Foundation (P) Ltd. He had subsequently relinquished his shares in favour of the insolvent, but in further proceedings when the properties were sought to be brought on sale, he however participated in the proceedings and claimed a share in the properties. It is clear that the petitioner had sworn to a false affidavit disclaiming knowledge of the



insolvency proceedings. He cannot plead ignorance and innocence and seek indulgence from this Court. ”

26. This Court had further placed reliance on the Judgement of the Hon'ble Supreme Court reported in **2005 6 SCC 149 [State of A.P., and another Vs. T.Suryachandra Rao]** with specific reference to the following:-

*“9. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See **S.P. Changalvaraya Naidu v. Jagannath (1994 (1) SCC 1)**).*

10. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed,



*innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See **Ram Chandra Singh v. Savitri Devi and Ors. (2003 (8) SCC 319).***

11.

12.....

13.



*14. Suppression of a material document would also amount to a fraud on the court. (see **Gowrishankar v. Joshi Amba Shankar Family Trust** (1996 (3) SCC 310) and **S.P. Chengalvaraya Naidu's case** (supra).*

*15. "Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in **Ram Preeti Yadav's case** (supra).*

*16. In **Lazarus Estate Ltd. v. Beasley** (1956) 1 QB 702, : Lord Denning observed at pages 712 & 713, "No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. **Fraud unravels everything.**"*

In the same judgment Lord Parker LJ observed that fraud vitiates all transactions known to the law of however high a degree of solemnity. “

[Emphasis Supplied]



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27. It had been observed that the second respondent had sworn to a false affidavit disclaiming knowledge about the insolvency proceedings of the second respondent. This order of this Court had been upheld by the Hon'ble Supreme Court which had dismissed in SLP (Civil) No. 2481 of 2021 by order dated 01.07.2021. It is thus seen that as a partner of all the business transactions of the first respondent, the second respondent was privy to the nature of transactions and also to the fact that after a period of time, the creditors had gathered laying claims against the first respondent.

28. The second respondent herein had during the course of his examination marked Exs. R-5 to R-25 which are self serving copies of alleged transactions between him and the first respondent.

29. A perusal of the documents marked show extensive transactions with the first respondent. Ex.R-5 shows that the first transaction was on 22.11.2012. They relate to transactions in properties and transactions in

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financial dealings. They relate also to the four companies in which both the second and first respondents were Directors and wherein the second respondent had a 25% share and the first respondent had a 75% share. It is thus evident that they were both jointly doing the business of real estate and finance together with knowledge of each others transactions and financial status. The second respondent can never claim ignorance about the financial status of the first respondent.

30. The property in question was purchased on 25.10.2012. The specific averment of the Official Assignee is that the sale consideration was paid by the first respondent. The learned counsel for the second respondent argued that no oral evidence could be advanced as against the written document. In this connection, reliance had been placed on Section 92 of the Indian Evidence Act, which is equivalent to Section 95 of the Bharatiya Sakshya Adhiniyam, 2023 which is as follows:-



“95. Exclusion of evidence of oral agreement.

When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 94, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Provided that any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law: ”

[Emphasis Supplied]

31. It is thus seen that though oral evidence cannot be admitted as against the written covenants in a document, any fact relating to fraud or illegality could still be adduced and proved.



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32. A perusal of the transactions show that as between the second and first respondents, numerous transactions had occurred running into pages in pages. It would thus be evident that the second respondent was aware of the financial difficulties of the first respondent. He had then executed a settlement deed on 20.02.2014 in favour of the third respondent/ great granddaughter. The petitioner in I.P.No. 25 of 2014 had narrated that the acts of insolvency had commenced even earlier and it is under those circumstances that in this application, the Official Assignee has asserted that the transfer of the property by the second respondent had been made to defeat any attempt made by the creditors to secure the assets of the second respondents on the possibility that consideration had flowed from the first respondent.

33. Section 53 of the Transfer of Property Act is as follows:-

“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



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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.”



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34. The learned counsel for the second and third respondents had argued that Section 53 would apply only to transactions entered into to defeat the creditors and argued that in the instant case only the first respondent is the debtor and not the second and third respondents. Further, there is no evidence produce to show that any creditor had proceeded against the second respondent. It was contended that therefore, the property of the second respondent cannot be brought into the umbrella of insolvency proceedings initiated against the first respondent.

35. The law will have to be examined deeply to attain the ends of justice. Both the first and second respondents were partners in financial dealings. The property had been purchased from and out of the sources of the financial transactions between the first and second respondents. The second respondent had never produced any document to show that he had independent financial capacity to purchase the property for a sum of Rs.1.47 crores. It is also relevant to record that when the second respondent earlier made a claim of Rs.8.75/- crores from the insolvent, he conveniently suppressed material facts



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and was non suited by this Court. An analysis of the bank statements of the two accounts maintained by the second respondent very clearly discloses that the finance and fund of the first and second respondents were flowing mutually either way only for the purpose of book adjustment. It is therefore evident that the transfer had been made only to avert the possibility of the creditors launching an investigation into the assets acquired by the first respondent either in his name or in the name of his business partner namely the second respondent. We therefore hold that this transfer of the property by way of settlement deed by the second respondent in favour of the third respondent was only to avert any action taken by the creditors also against this property. We further hold that this transfer is therefore a fraudulent transfer to defeat the creditors of the first respondent, who might lay a claim against the property.

36. The learned counsel for the second respondent had put forward an argument that the second respondent would not have had the knowledge that an Insolvency Petition would be filed to declare the first respondent as insolvent. But as a business partner of the first respondent, the second respondent cannot disclaim knowledge that the financial status of the first respondent had



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drastically declined over a period of one year. We hold that the second respondent must have been aware of a claim being laid by the creditors against the properties owned directly or purchased by the funds of the first respondent. Ultimately, when the first respondent had been adjudicated as insolvent and the Official Assignee had stepped into the shoes of the insolvent, the Official Assignee had a duty to secure all assets which had been fraudulently transferred to defeat the creditors. This securing of the property is in the interest of the creditors. The Court cannot bury its head in the sand like an ostrich and ignore the fact that the second respondent had deliberately transferred the property to the third respondent.

37. The learned counsel for the second and third respondents had placed reliance on the Judgment of the Hon'ble Supreme Court reported in *AIR 1958 SC 328 [Bombay Dyeing & Manufacturing Co. Ltd., Vs. The State of Bombay and Ors.]* with respect to observation that a remedy may be barred but the right is not extinguished. The issue in this case is not about the right of the second respondent but the right of the Official Assignee to lay a claim under



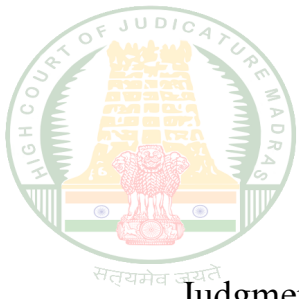
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Section 53 of the Transfer of Property Act and seek a declaration that the transfer made by the second respondent in favour of the third respondent is fraudulent and therefore as null and void. The judgment referred would not come to the assistance of the learned counsel for the second and third respondents.

38. The learned counsel for the second respondent had further placed reliance on the Judgment of the Division Bench of this Court reported in **2012 4 LW 702 [G.Mohanvelu Vs. G.Kolila]** with specific reference to an observation in paragraph No. 15 that there was no allegation of fraud in the execution of the release deed, which was the subject matter in that case.

39. In this case, the Official Assignee had directly alleged fraud in the execution of the settlement deed. The application itself is under Section 53 of the Transfer of Property Act, 1882 which relates to fraudulent transactions.

40. The learned counsel for the second and third respondent placed reliance on the observation of a learned Single Judge of this Court in the



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Judgment reported in **2022 (4) CTC 550 = 2003 (2) LW 79, [M.Govinda Gounder Vs. Pichandi Pillai and Ors.]** and placed reference to paragraph No. 8 where it had been observed that the only averment made therein was that the purchase was not bona fide.

41. In the instant case, the learned counsel for the Official Assignee had placed on record the fact that the first and second respondents were business partners and had financial and property dealings and each were well aware about the financial status of each other. The observations of the learned Single Judge would not come to the assistance of the second respondent.

42. The learned counsel for the second respondent had placed reliance on the Judgment of the High Court of Allahabad reported in **AIR 1928 AII 476 [Saraswati Kuar Vs. Mahabir Prasad and Ors.]** with specific reference to paragraph No. 8 wherein it had been observed that there was no direct evidence about the intention in the execution of the document. In that case, a gift was made by the husband to his wife of joint family property. The facts are distinguishable.



43. In the Judgment reported in *AIR 1958 Mad 580 [Muniyammal Vs. Thyagaraja Mudaliar and another]*, a learned Single Judge of this Court had examined the scope of Section 53 of the Transfer of Property Act, 1882 and had held as follows:-

“13. The intention of the parties to a transaction and the nature of interest thereby created can be determined from the following factors:—

(1) Motive of entering into a benami transaction may be to defeat an impending execution. The motive of defeating an impending execution does not affect a transfer effected to prefer one creditor over another. It does not amount to a transfer intended to defeat all the creditors. It does not render a bona fide transfer for adequate consideration, void. Such an intent is not one amounting to defraud; delay or defeat



creditors within Section 53 of the Transfer of Property Act.

(2) Position of the parties to the transaction, their condition, state, and rank and the direct tendencies of the transfer are circumstances determining their intention.

(3) Previous or subsequent conduct of the parties, the possession of the property in question; the possession of title deeds of the property, are factors on the point of intent.

(4) Relationship of the parties to one another, as father and sons, or husband and wife, or a transfer to an employee of the transferor's legal adviser, transfer to uncle, transfer to brodier; go to decide the question of intention. Mere relationship is not enough.

(5) The source or adequacy of purchase money determines intent.....”.”

44. In the instant case, the creditors were at the door steps of the first respondent and the second respondent being an active and direct partner of the first respondent, had with instruction to secure the property had transferred it



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by way of a settlement deed in favour of the third respondent. We hold that this was a fraudulent transfer. It had been done to defeat the rights of the creditors.

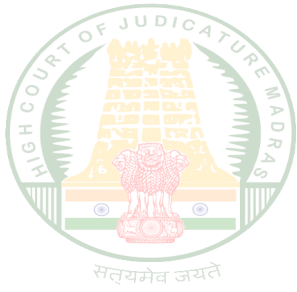
45. In view of the above reasons, we hold that this application should be allowed and we also hold and declare that the settlement deed executed on 20.02.2014 by the second respondent in favour of the third respondent is a fraudulent transfer under Section 53 of the Transfer of Property Act 1882 and accordingly, in order to secure the interest of the creditors, we further hold that the property has to be attached and brought to sale in manner known to law to adjudicate the proceeds of the liability of the second respondent to the estate of the first respondent.

46. Both the applications stand allowed with costs.

(DR.G.J.J.) & (C.V.K.J.)
23 .07.2025

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DR.G.JAYACHANDRAN, J.
and
C.V.KARTHIKEYAN, J.

vsg

Pre-Delivery Order made in
Application (IP) Nos. 53 and 54 of 2017
IN
I.P.No. 25 of 2014

23.07.2025