

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE  
and  
THE HON'BLE MR. JUSTICE R.MAHADEVAN

O.S.A.Nos.214 to 219 of 2016

The Official Assignee,  
High Court, Madras.

.. Appellant in  
all appeals

vs

1.S.Arjunlal Sunderdas  
2.P.Amarnath Reddy

.. Respondents in  
all appeals

Original Side Appeals filed under Order XXXVI, Rule 9 of Original Side Rules read with Clause 15 of Letters Patent against the common order in A.Nos.190 to 195 of 2014 in I.P.No.25 of 2014 dated 29.04.2016.

Appln.No.190 of 2014

Application praying that this Hon'ble Court be pleased to declare the sale of the property morefully described in Schedule I to the present judges summons, made by way of sale deed dated 27.07.2012 registered with the Joint II Sub Registrar, Chennai as Document No.713 of 2012, as a bonafide transaction as per section 57 of the Presidency Towns Insolvency Act, 1909 which is binding on the 1<sup>st</sup> respondent herein.

Appln.No.191 of 2014

Application praying that this Hon'ble Court be pleased to pass an order directing the 2<sup>nd</sup> respondent, his men, agent or servants or any other person acting on behalf of the 2<sup>nd</sup> respondent to deliver the vacant possession of the said property described in the schedule to the Judges Summons with all documents of title in his possession to the Official Assignee.

Appln.No.192 of 2014:-

Application praying that this Hon'ble Court be pleased to pass an order permitting the official Assignee to sell the property of the 1<sup>st</sup> respondent described in the schedule to the Judges

Summons in Public auction.

Appln.No.193 of 2014:-

Application praying that this Hon'ble Court be pleased to issue a warrant permitting the official Assignee to seize the property from the custody or possession of the 2<sup>nd</sup> respondent or any other person, men, agent or servants acting under him with the assistance of police with permission to break open the lock of the main door, if necessary.

Appln. No.194 of 2014:-

Application praying that this Hon'ble Court be pleased to pass an order of injunction restraining the 2<sup>nd</sup> respondent from creating any third party interest over the subject property, pending adjudication of the application to declare the sale dated 27.07.2012 as null, void and not binding on the Official Assignee.

Appln. No.195 of 2014:-

Application praying that this Hon'ble Court be pleased to pass an order to declare that the transfer effected by the sale deed dated 27.07.2012 and registered as Doc.No.713/2012 in respect of the Property bearing Door No.34, College Road, Nungambakkam, Chennai-34 more fully described in the schedule to the application in farms of the 2<sup>nd</sup> respondent herein shall be null, void and not binding on the official Assignee

For Appellant .. Mr.A.V.Ananthakrushnan

COMMON JUDGMENT

(Judgment of the Court was delivered by The Hon'ble Chief Justice)

The Official Assignee seeks to assail the order passed by the learned Single Judge dated 29.04.2016 in A.Nos.190 to 195 of 2014 in I.P.No.25 of 2014. The insolvency proceedings arose out of the petitioning creditor one Smt.Chitra Desai under the Presidency Towns Insolvency Act III of 1909 (hereinafter referred to "the said Act") seeking adjudication of one Arjunlal Sunderdas as an Insolvent with a direction to administer the estate of the said Insolvent. The debtor admitted that his liabilities are more than the assets and thus, had no objection to be declared as an Insolvent and he was so adjudicated vide order dated 21.04.2014.

2. The present dispute pertains to the purchase of a property by Amarnath Reddy/respondent No.2 from the Insolvent and one S.M.Lal prior to the insolvency proceedings, being the

property measuring an extent of 9.5 grounds of land at Nos.33-34, College Road, near Chetpet, for a consideration of Rs.35.00 Crores as per the registered sale deed dated 27.07.2012. This transaction was alleged to be not bonafide on the ground that it took place in June, 2013, while by August, 2013, the Insolvent had started defaulting in making payments. The purchaser in fact utilised the land for development of eleven Apartments and sale deeds were executed in respect of one Apartment. The owner denied any personal relationship with the Insolvent and pleaded that the transaction was in good faith for valuable consideration, coming within the scope of exemption under Sections 55 and 57 of the said Act.

3. The Official Assignee sought to build the case based on the transaction alleging that the Insolvent had claimed that he had borrowed a sum of Rs.4.00 Crores from the owner. However, the main plea was based on under-valuation of the property on the premise that this was so done to adjust the prior financial transactions. The property had been sold for Rs.36.00 Crores, while according to the Official Assignee, the market value of the property on the date of the transaction was Rs.53.39 Crores, and the transaction was within the window of two years prior to the adjudication of the Insolvent as such.

4. In order to appreciate the controversy, we reproduce Sections 55 and 57 of the said Act as under:-

"Section 55. 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."

"Section 57. 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 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."

5. The learned Single Judge, in the impugned order, has observed that the proper test to be applied is one whether in spite of the knowledge of the insolvency proceedings, an unfair purchase was made, and the onus was on the owner/purchaser to prove that it was in good faith.

6. In the facts of the case and on consideration of the evidence, the learned Single Judge found that the allegation that the owner/purchaser was aware of the insolvent circumstances even on the date of the sale could not be accepted, and the transaction had taken place almost two years prior to the Insolvent being declared as such. There were also no other creditors, on the basis of which financial trouble could be anticipated.

7. In our view, there can be no doubt about the test aforementioned. In the conspectus of the same, if the transaction is appreciated, as was done by the learned Single Judge, it is found that in respect of the transaction in question, the sale value was Rs.16,500/- per square feet, as against the guideline value of Rs.9,500/- per square feet. Sale deeds were also produced in respect of the proximity of the properties sold at Kothari Road and Sterling Road, where apparently the consideration was much lower. Not only that, the sale deed which the Official Assignee seeks to rely upon exhibited as Ex.A8 is stated to be in respect of the property which is three kilo metres away from the Schedule property and the guideline value of that property at the relevant time was Rs.20,000/- per square feet, while it was sold for Rs.29,500/- per square feet. Thus, the Official Assignee seeks to compare a property with a guideline value of Rs.9,500/- per square feet with the Schedule property, having a guideline value of Rs.20,000/- per square feet, which is completely impermissible. In fact, if the guideline value is taken as the basis as against the purchase price, in terms of the percentage over and above the guideline value, the purchaser/owner has paid much more in the present case.

8. The learned Single Judge has also considered another aspect - sale deed dated 27.7.2012 was executed by two persons - it included the brother of the Insolvent, who owns 25% share



and there is no challenge to that aspect.

9. We are, thus, of the view that the transaction in question cannot be categorised as unconscionable bargain and agree with the finding of the learned Single Judge that even a prior financial relationship would not vitiate the transaction.

10. The learned counsel for the Official Assignee sought to refer to the notice to produce the documents issued on 21.01.2015 seeking the Income Tax returns of the owner/purchaser, as also the agreement of sale entered into with the prospective purchasers of flats for sale of the property. In this context, he has referred to the cross-examination of the purchaser/owner, where a specific question was posed about the prior agreement of sale before the execution of the sale deed. The answer to this question by the witness was that he was not sure about possession of the copy of the agreement of sale and it was an unregistered document.

11. We put a query to the learned Official Assignee that if the objective is to find out as to the prior transaction, whether any interrogatories were served. The answer is in the negative. We see no reason why the purchaser would be required to produce his Income Tax returns.

12. In so far as the agreement of sale is concerned, we once again put to him as to why he did not at the stage of cross examination ask the witness. The submission of the learned counsel is that in spite of the notice to produce, he did not do so. On a perusal of the notice to produce the documents, we find that the agreement of sale which the Official Assignee sought for was the sale entered with the prospective purchaser of the flats and not the prior agreement of sale in respect of the subject sale deed. Thus, the aforesaid aspect does not help the appellant.

13. The learned Single Judge, thus found that the Official Assignee has not produced any evidence to show that there was a difference between the market value and the sale value and has rightly dismissed the applications. On perusal of the impugned order and the materials placed on record before us, we find no infirmity in the impugned order so as to call for our interference in the appeals.

14. The appeals are dismissed, leaving the parties to bear their own costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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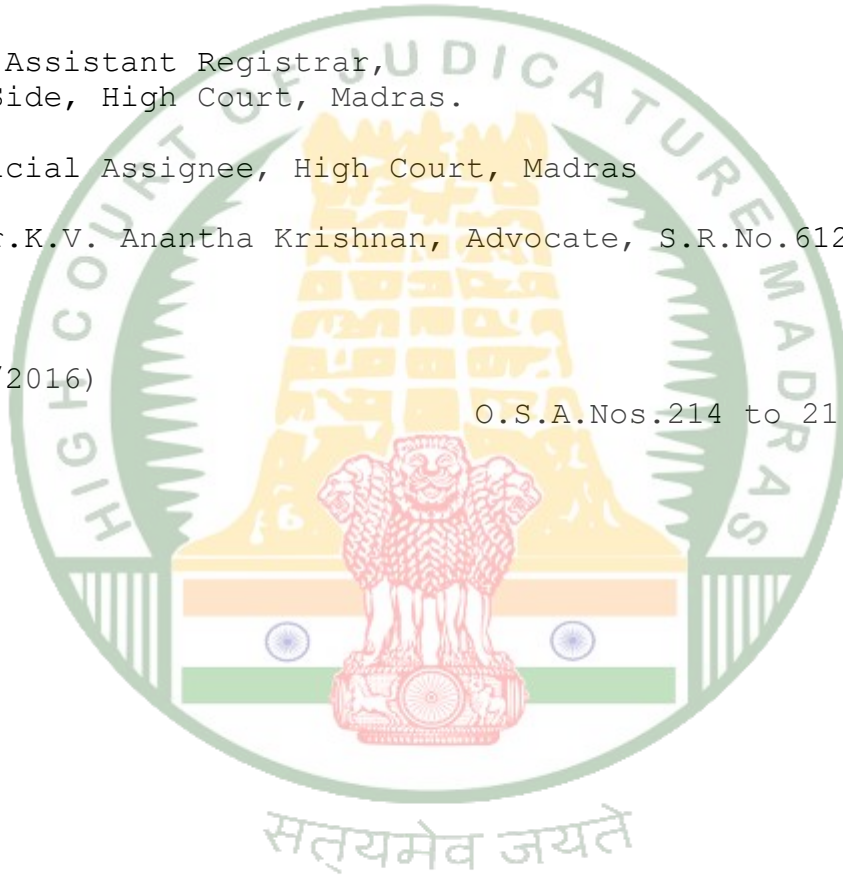
To  
1 The Sub Assistant Registrar,  
Original Side, High Court, Madras.

2 The Official Assignee, High Court, Madras

+2cc to Mr.K.V. Anantha Krishnan, Advocate, S.R.No.61286

sai (CO)  
md (10/11/2016)

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