

APPELLATE CIVIL.

Before C. C. Ghose and Mallik J.J.

HRIDAYKRISHNA ADYA

v.

OSMANALI MANDAL.*

1931

Feb. 19.

*Insolvency—Voluntary transfer of property by the insolvent, avoidance of—
Jurisdiction of Insolvency Court—Presidency Towns Insolvency Act
(III of 1909), ss. 55, 56—Provincial Insolvency Act (V of 1920), s. 53.*

Under section 53 of the Provincial Insolvency Act, the Insolvency Court alone has jurisdiction to annul any transfer of property made by the insolvent within 2 years of the adjudication order. If the receiver in insolvency reports recommending annulment of such transfer of property, the Insolvency Court is to treat the said report as an application under the aforesaid section and is to decide the matter after taking evidence.

APPEAL FROM ORIGINAL ORDER by the creditor of the insolvent against the transferee of the latter's property.

The material facts are set out in the judgment.

Sharatchandra Ray Chaudhuri, Bijankumar Mukherji, Apoorbadhan Mukherji and Bhutnath Chatterji for the appellant.

Panchanan Ghosh and Hiralal Ganguli for the respondent.

C. C. GHOSE AND MALLIK J.J. This appeal raises a question under section 53 of the Provincial Insolvency Act. The matter has arisen under the following circumstances. One Lehajuddin Jamadar was adjudicated an insolvent under the Provincial Insolvency Act on the 5th July, 1927. Subsequently, by an order made by the Insolvency Court, a receiver was appointed to take charge of the properties belonging to the insolvent. The receiver was asked to investigate whether the insolvent had got any immovable properties. The attention of the receiver was drawn to the fact that the insolvent had conveyed certain immovable properties to one Osmanali Mandal on the 26th May, 1926, that is on a date which was within two years of the date of

*Appeal from Original Order, No. 414 of 1929, against the order of S. N. Modak, Additional District Judge of Hooghly, dated June 14, 1929.

adjudication of the insolvent as such. The receiver made an investigation and submitted a report to the Insolvency Court. His report was to the effect that the transfer in favour of Osmanali Mandal was not in good faith nor for valuable consideration. He, accordingly, prayed to the Insolvency Court that the said transfer might be annulled under the provisions of section 53 of the Provincial Insolvency Act. It appears that the receiver had taken the statements of various people, who appeared before him. The matter, having come before the Insolvency Court, under these circumstances, the question arose whether that court could take action under section 53, go into the matter for itself and come to a determination on the point as to whether or not the transfer in favour of Osmanali Mandal was in good faith and for valuable consideration. On that point, it was obvious that the Insolvency Court had to take evidence; but it did not take evidence, but was content with the report of the receiver and the statements of the parties who had appeared before the receiver. No evidence in the legal sense of the term was taken by the Insolvency Court. The court came to the conclusion that an order under section 53 of the Act being of a summary character, it was not desirable in the circumstances to make such an order. But he referred the receiver to the civil court for determination by means of a suit of the question or questions raised in his report. It is against this order of the Insolvency Court, which is dated the 14th June, 1929, that the present appeal has been directed.

Our attention has been drawn to the circumstances under which the order in question came to be made and section 53 of the Provincial Insolvency Act has been contrasted with section 55 of the Presidency Towns Insolvency Act. It is clear from the records before us that if the question had to be determined by the Insolvency Court under the Provincial Insolvency Act such investigation has not been done. On the other hand, it is equally clear that if, according to the language of section 53 of the

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Provincial Insolvency Act, it is open to the Insolvency Court to decline jurisdiction and to refer the parties to a civil court for determination of the matter in issue, then what has been done by the Insolvency Court is one which it was competent to do and to which no exception can be taken. The question, therefore, is whether the Insolvency Court, under the Provincial Insolvency Act, is the only court which can determine the question raised in the section or whether any other court has jurisdiction to go into the matter.

Mr. Panchanan Ghosh, who has appeared for the transferee, contends that, according to the decisions in England based on a section which is more or less identical with section 56 of the Presidency Towns Insolvency Act, the Insolvency Court is not the only forum which has seisin of matters such as are referred to in section 55 of the Presidency Towns Insolvency Act. That is no doubt true, as far as the decisions go at the present moment; but, there is a significant change in the terms of section 53 of the Provincial Insolvency Act and it has been held in several cases decided in India that under the Provincial Insolvency Act, the Insolvency Court is the only court which has jurisdiction in the matter to go into the questions raised under section 53 of the Provincial Insolvency Act and decide the same and that the parties should not be referred to the civil court for determination of such questions (*see* in this connection the cases collected in Sir Dinshah Mulla's book on Insolvency at pages 48, 49, 429 and 430). Therefore, the view, which has found favour in India, is that the Insolvency Court, under the terms of the Provincial Insolvency Act, is the only appropriate tribunal which can determine the question raised under section 53 of the Act and we are in agreement with this view.

In that view of the matter, the question arises whether such determination has taken place in this case. The learned Additional District Judge has not come to any decision. He has referred no doubt to various circumstances, giving perhaps an idea of the

inclination of his mind, but he has not, as stated above, come to any decision, he having been content with expressing an opinion that it was a summary order which was prayed for and that he was not willing to make such a summary order. That obviously, having regard to what has been stated above, is wrong and, therefore, the conclusion we have come to is that the report of the receiver in insolvency should be treated as an application for action under section 53 of the Provincial Insolvency Act and that the matter has got to be investigated in evidence to be produced in court. If the evidence does not satisfy the court that the transaction in question can be successfully impeached, having regard to the language of section 53, then obviously the transferee must be held to have acquired a valid title to the properties conveyed by the deed of transfer. If, on the other hand, the evidence does not satisfy the court that the transfer cannot be questioned, then it will be for the court to determine whether such transfer, in the circumstances of this case, should be annulled by the court. We desire to express no opinion. We have only indicated what should be done.

Therefore, the conclusion is that the matter should be remitted to the Court of the Additional District Judge at Howrah sitting in insolvency and the matter must be investigated afresh on evidence to be produced in court.

Mr. Ghosh points out that certain transactions took place, which were beyond the limit of two years from the date of adjudication. These and various other circumstances will no doubt be brought to the notice of the learned Judge. But, having regard to the terms of the order, we prefer not to go into the merits ourselves, but will leave the matter to be tried out afresh on lines indicated above by the learned Additional District Judge of Howrah sitting in insolvency.

The costs of this appeal will abide the result.* We assess the hearing fee at three gold mohurs.