

APPELLATE CIVIL

Before Mr. Justice G. H. Thomas, Chief Judge

WAZIRE (DEFENDANT APPELLANT) *v.* MATHURA PRASAD
AND ANOTHER (PLAINTIFFS RESPONDENTS)*

*Provincial Insolvency Act (V of 1920), sections 37 and 43—
Adjudication of insolvency and vesting of property in official
receiver—Sale of property by official receiver approved by
Court—Sale deed executed after order of annulment—Sale,
whether valid—Transfer of property Act (IV of 1882), section
2(d)—Sale by official receiver whether in the nature of Court
sale—Sale, whether amounts to transfer by order of Court
under section 2(d), Transfer of Property Act.*

Where bankruptcy is annulled the authority of the Court will survive so far as may be necessary to complete the acts which were incomplete at the date when the order of annulment was passed. The annulment of the adjudication under the conditions defined under section 43 is intended as a punishment to the insolvent. Its effect is that the protection conferred on the insolvent by reason of his adjudication is withdrawn but it does not necessarily follow that he is to get back from the control of the Court his assets. The punishment cannot be used in favour of the insolvent.

Where therefore, a debtor is declared insolvent and his property is vested in the official receiver and the sale of certain immovable property by the official receiver is approved by the Court, but before the execution of the sale deed the order of adjudication is annulled, the sale does not become invalid. *C. A. B. Baluswami Naidu and another v. Official Receiver, Madura and another* (1), relied on and *C. A. V. Baluswami Naidu v. Official Receiver, Madura, and another* (2), referred to.

Sale by an official receiver is in the nature of Court sale and its validity really depends on the order of the Insolvency Court vesting the property in the Official Receiver and thus authorizing him to sell. Such sale is a "transfer by order of a Court of competent jurisdiction" within the meaning of section 2(d) of the Transfer of Property Act. *Pinnamameni Basava Sankaram v. Garapati Narasimhulu and others* (3), distinguished.

*Second Civil Appeal No. 263, of 1936, against the order of Babu Bhagwati Prasad Sahib, Sub-Judge of Lucknow, dated the 26th May, 1936.

(1) (1933) M.W.N., p. 455.

(2) (1936) A.I.R., Madras, 915.

(3) (1927) A.I.R., Madras, p. 1.

Mr. *Brij Bahadur*, for the appellant

Messrs. *B. K. Dhaon* and *Ganesh Prasad*, for the respondents.

1938

WAZIRE
v.
MATHURA
PRASAD

THOMAS, C. J.:— This is a second appeal on behalf of defendant no. 1 (*Wazirey*) against the judgment and decree of the learned Civil Judge of Lucknow, dated the 26th of May, 1936, reversing the decree of the learned Munsif of *Havali*, Lucknow, dated the 14th November, 1935.

Wazirey appellant was declared insolvent on the 31st October, 1927, and an official receiver was appointed to take charge of the assets of the insolvent. The official receiver on the 5th July, 1928, put in an application before the Insolvency Judge that he had put up to sale the two houses belonging to the insolvent and that the highest bid was of Rs.100 which may be accepted (*vide* Ex. 2). The Court on the 23rd August, 1928, passed an order that the sale was approved (*vide* Ex. 3). It appears that on the 11th October, 1928, the order of adjudication was annulled (*vide* Ex. A-1), but no order was passed as to what would become to the assets of the insolvent. The receiver executed the sale deed on the 17th March, 1929 (*vide* Ex. 1). It was registered on the 29th March, 1929.

Mathura Prasad, respondent no. 1, filed the present suit on the 31st July, 1935, for possession of the two houses.

The suit was contested on the grounds *inter alia* that the defendant was not bound by the sale deed executed by the receiver as he had no power to do so and that the houses belonged to his wife and mother.

The trial Court dismissed the suit on the ground that as the sale deed was executed after the order of annulment, it was invalid under section 37 of the Provincial Insolvency Act (V of 1920).

On appeal the learned Judge disagreed with this view of the learned Munsif.

1938

WAZIRE
v.
MATHURA
PRASAD

Thomas,
C. J.

The learned counsel on behalf of the appellant has raised the following two points:

(1) that as the sale deed was executed after the order of annulment the receiver had no power to execute the sale deed; and

(2) that under the provisions of the section 54 of the Transfer of Property Act the transaction was only a contract for sale and it did not create any interest or charge on such property.

In my opinion there is no force in either of these arguments. Under section 37 of the Provincial Insolvency Act where an adjudication is annulled, all sales and dispositions of property and payments duly made, and all *acts theretofore done* by the Court or receiver shall be valid. I am of opinion that where the bankruptcy is annulled, the authority of the Court will survive so far as may be necessary to complete the acts which were incomplete at the date when the order of annulment was passed. In my opinion the Court had jurisdiction over the proceedings notwithstanding the annulment of bankruptcy.

The learned counsel on behalf of the appellant has relied on the case of *C. A. V. Baluswami Naidu v. Official Receiver, Madura and another* (1) in which it was held that the effect of the annulment of adjudication under section 43 is that the provisions of section 37 apply immediately an order of adjudication is annulled and that on an annulment of adjudication without any order vesting the properties in the Official Receiver the Official Receiver ceases to have any right or authority to deal with the properties of the insolvent.

The learned counsel on behalf of the respondents has relied on the case of *C. A. B. Baluswami Naidu and another v. Official Receiver, Madura and another* (2), in which it was held that where the adjudication of the insolvents had been annulled and there was an order

(1) (1936) A.I.R., Mad. 915.

(2) (1938) Madras Weekly Notes, p. 455.

within a month of the annulment re-vesting the right, title and interest of the insolvents in the Official Receiver to sell the same and distribute the proceeds among the creditors, that order was not without jurisdiction because it was not passed simultaneously with the order of annulment but some time later.

In my opinion there is no conflict in the case reported *C. A. V. Baluswami Naidu v. Official Receiver, Madura, and another* (1), and relied on by the appellant. In the body of the judgment the learned Judge has stated as follows:

“Even now the Advocate appearing for the Official Receiver is not in a position to state that there was an order vesting the properties in the receiver along with or after the annulment of the adjudication or any order imposing any conditions on the reversion of the estate to the debtor.”

In case there is any conflict I am of opinion that the view laid down in *C. A. B. Baluswami Naidu and another v. Official Receiver, Madura, and another* (2) is the correct view.

Under section 43 of the Provincial Insolvency Act if the debtor does not appear on the day fixed for hearing his application for discharge or on such subsequent day as the Court may direct, or if the debtor does not apply for an order of discharge within the period specified by the Court, the order of adjudication shall be annulled. In my opinion the annulment of the adjudication under the conditions defined under section 43 is intended as a punishment to the insolvent. This is clear from clause (2) of section 43. The protection conferred on him by reason of his adjudication is withdrawn but it does not necessarily follow that he is to get back from the control of the Court his assets. An order of annulment may be made in a variety of circumstances, for instance, (1) when a composition is approved by the Court or (2) when the insolvent fails to apply for discharge in time or to prosecute his application, etc. I

1938

 WAZIRE
 v.
 MATHURA
 PRASAD

 Thomas,
 C. J.

(1) (1936) A.I.R., Mad., 915.

(2) (1938) M.W.N., p. 455.

1938

WAZIR
v.
MATHURA
PRASAD

am, therefore, of opinion that the punishment provided in section 43 of the Provincial Insolvency Act cannot be used in favour of the insolvent.

Thomas,
C. J.

With regard to the second contention, the learned counsel on behalf of the appellant relies on the provisions of section 54 of the Transfer of Property Act. The point no doubt is a controversial one but I am of opinion that the case is covered by section 2(d) of the Transfer of Property Act. The words of the section applicable are "transfer by order of a Court of competent jurisdiction". I am of opinion that the Official Receiver's sale falls within the words. It is in the nature of court sale and its validity really depends on the order of the Insolvency Court vesting the property in the Official Receiver and thus authorizing him to sell.

The learned counsel on behalf of the appellant relies on the case of *Pinnamameni Basava Sankaram v. Garapati Narasimhulu and others* (1), in which it was held that "the Official Receiver is not an agent of the Court transferring an application for adjudication for disposal within the meaning of the Indian Contract Act so as to enable the Court to ratify any unauthorized acts done by the agent, and therefore a sale by Receiver of insolvent's properties before a vesting order in his favour is invalid and it cannot be validated by Court subsequently ratifying the sale". In my opinion this case is distinguishable because no sanction of the sale had been obtained in this case but in the case before me there was a report by the Official Receiver (Ex. 2) and the Court sanctioned the sale. Therefore, I am of opinion that the sale was complete and no sale deed was really necessary.

I accordingly dismiss the appeal with costs.

Appeal dismissed.

(1) (1927) A.I.R., Mad., p. 1.