

## APPELLATE CIVIL.

Before Adami and James, JJ.

MUSAMMAT BECHNI

v.

SHEIKH SADIQUE.\*

1930.

March, 24.

*Provincial Insolvency Act, 1920 (Act V of 1920), sections 53, 54-A and 58—transfers made by insolvent within two years previous to insolvency—transactions impeached—onus of proving good faith and valuable consideration on whom lies—estate summarily administered by court—no Receiver appointed—creditor, right of, to apply for annulment of transfer—section 54-A, scope of.*

Section 53, Provincial Insolvency Act, 1920, provides :

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

Section 54-A of the Act lays down :

“ A petition for the annulment of any transfer, under section 53, or of any transfer, payment, obligation or judicial proceeding under section 54, may be made by the receiver or, with the leave of the Court, by any creditor who has proved his debt and who satisfies the Court that the receiver has been requested and has refused to make such petition.”

*Held, (i) that every transaction into which an insolvent enters within two years previous to his insolvency being prima facie invalid, the burden is on the insolvent or the alienee to show that the transaction impeached is a valid and bona fide transaction; good faith and valuable consideration must be proved by the alienee, or by the person who supports the transfer;*

*Henraj Champa Lall v. Ramkishen Ram (1) and Official Receiver Tanjore v. Veddappa Mudaliar (2), followed.*

\*Appeal from Original Order no. 236 of 1928, from an order of F. F. Madan, Esq., I.C.S., District Judge of Muzaffarpur, dated the 16th of August, 1928.

(1) (1916) 2 Pat. L. J. 101.

(2) (1924) 82 Ind. Cas. 450.

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(ii) that the restrictions placed by section 54-A on the powers of a creditor to move the court to take action under section 53 apply only where a Receiver has been appointed, and that, therefore, where a court is summarily administering the estate, any creditor may move the court for the annulment of a transfer made by the insolvent.

Appeal by the objectors.

The facts of the case material to this report are stated in the judgment of James, J.

*Bhagwan Prasad*, for the appellants.

*A. A. Syed Ali*, for the respondents.

JAMES, J.—This is an appeal from the order of the District Judge of Muzaffarpur avoiding two transfers made by an insolvent under section 53 of the Provincial Insolvency Act of 1920. On the 15th of February, 1926, a creditor instituted a suit against the insolvent in the Court of the Subordinate Judge of Motihari. On the next day he applied for attachment before judgment of the property of the defendant in the suit. On the 22nd February, six days after the application for attachment, the defendant executed two deeds, by one of which he purported to sell his land to a woman named Musammat Bechni, while by the other he transferred his house to his wife, nominally in satisfaction of a debt for dower. On the 2nd of July the suit in the Subordinate Judge's Court was decreed; and on the 5th of August the defendant of the suit Sheikh Maksud preferred his petition in insolvency. As the property of the insolvent according to the petition was below five hundred rupees in value, the District Judge directed that the estate should be administered summarily, and no receiver was appointed. The creditor who had obtained his decree in the Subordinate Judge's Court in due course applied to the District Judge that action might be taken under section 53 for the annulment of the two deeds of the 22nd February, 1926, and after enquiry the District Judge has annulled both the deeds.

It is argued in the first place, on behalf of the transferees under the deeds, that the District Judge erred in placing on the parties who are defending the impeached transactions the burden of proving that the transfers were made in good faith and for valuable consideration. The learned District Judge cited the decision in *Hemraj Champa Lall v. Ramkishan Ram* (1) in support of his view that the burden of proof lay upon the party defending the transaction; but it is argued that this decision can no longer be treated as good law; because under the Provincial Insolvency Act of 1907 transactions in favour of creditors were declared to be void, whereas under section 53 of the Act of 1920 they are only voidable at the instance of the receiver. But the rule was clearly set out, after the enactment of the later Provincial Insolvency Act, in *Official Receiver Tanjore v. Veddappa Mudaliar* (2) wherein it is said that every transaction into which an insolvent enters within two years previous to his insolvency is treated by the Act as prima facie invalid, and that the burden is on the insolvent or the alienee to show that the transaction impeached was a valid and bona fide transaction. Good faith and valuable consideration must be proved by the alienee, or by the person who supports the transfer.

It is argued in the second place that the effect of the provisions of section 54-A of the Provincial Insolvency Act is to vitiate the proceedings of the learned District Judge. Section 54-A lays down that a petition for annulment of a transfer can only be made by a creditor with the leave of the Court, and after he has satisfied the court that the receiver was requested to make the petition, and has refused to do it. In the present case no receiver had been appointed because the petition in bankruptcy indicated that there was no property of which a receiver could take charge. It is argued that the Court could not

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(1) (1916) 2 Pat. L. J. 101.

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take action under section 53 because no receiver had been appointed. But under section 58 of the Provincial Insolvency Act, where no receiver is appointed, the Court has the rights of a receiver and exercises his powers. It is clear that the restrictions placed by section 54-A on the powers of a creditor to move the Court to take action under section 53 apply only where a receiver has been appointed. Where the Court is summarily administering the estate, any creditor may move the Court to take action under section 53 of the Act.

It is argued on the question of fact that the evidence before the District Judge was not such as to justify the annulment of either of these transactions. The sale to Musammam Bechni was carried out by the insolvent debtor and his brother, each of whom had an equal share in the property transferred. The brother owed Rs. 305 to the transferee, while the insolvent debtor owed Rs. 74-14-0; and this forms the consideration of the transfer, with twenty rupees paid in cash. The learned District Judge has found that if the brother's half share was worth Rs. 315, the sale of the insolvent's half share for the sum of Rs. 85 cannot be treated as a sale made in good faith and for valuable consideration. The insolvent alleged that he and his brother had each of them only a quarter share, and that half of the property belonged to his sister and mother. It is argued that as this evidence was not rebutted, the District Judge ought to have acted upon it. But the learned District Judge has pointed out that the record-of-rights is against the insolvent on this point, and that there is no mention in the recitals of the sale deed of any share which belonged to the sister and mother. The other transfer purported to be for the equivalent of Rs. 150, the balance of dower due from the insolvent to his wife. The insolvent endeavoured to prove that his dower was three hundred rupees, of which Rs. 150 had already been paid. The learned District Judge did not believe

his evidence on this point and treated the insolvent as having failed to prove that the transfer was for consideration. It is argued that even if the insolvent failed to prove the amount of dower due from him, there is still a presumption that he owed something to his wife on account of dower; but here the insolvent set up a definite case that the dower was three hundred rupees, which the learned District Judge has found to be untrue. In all the circumstances of the case, and in view of the fact that the transfer was made within six days of the application in the Subordinate Judge's Court for attachment of the insolvent's property, the learned District Judge was justified in inferring that the transfer was fraudulent, made in order to defeat the claim of the creditor who instituted the suit.

I would accordingly affirm the decision of the District Judge and dismiss this appeal with costs. Hearing fee one gold mohur.

ADAMI, J.—I agree.

*Appeal dismissed.*

## APPELLATE CIVIL.

*Before Adami and Wort, JJ.*

JAGDAMBIKA PRASAD SINGH

v.

KALI SINGH.\*

*Hindu Law—antecedent debt, whether time-barred debt constitutes—test—debt legally recoverable from father.*

A time-barred debt constitutes a valid antecedent debt binding on the son for the purpose of supporting an alienation by the father of the ancestral joint property of the family, provided the debt was legally recoverable from the father, were he alive.

\*Appeal from Original Decree no. 95 of 1928, from a decision of M. Amir Hamza, Subordinate Judge of Gaya, dated the 20th November, 1927.

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