

APPELLATE CIVIL.

Before Mr. Justice Heald and Mr. Justice Maung Ba.

MAUNG PE

v.

MAUNG PO HTEIN AND ONE.*

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Jan. 24.

Provincial Insolvency Act (V of 1920), ss. 53, 28 (7)—Doctrine of 'relation back' cannot be applied to s. 53—Voluntary transfers voidable if made within two years from date of adjudication and not from date of presentation of petition.

Held, that a voluntary transfer made by an insolvent is voidable if made within two years from the date of adjudication and not from the date of the presentation of the petition on which the adjudication order is made. The doctrine of 'relation back' that is contained in s. 28 (7), cannot be imported into s. 53 of the Provincial Insolvency Act, *Ghulam Muhammed v. Panna Ram*, Civil Ap. No. 531 of 1917, Lah. H.C.; *K.N.K.L. Chettyar Firm v. Maung Ba Tin*, C.M. Ap. No. 42 of 1918, Ch. C. L.B.; *Nagindas v. Gordhandas*, 49 Bom. 730—*approved*.

Rakhal Chandra v. Sudhindra, 46 Cal. 991; *Shconath Singh v. Munshu Ram*, 42 All. 433—*dissented from*.

Ganguli for the appellant.

Basu for the respondent.

HEALD and MAUNG BA, JJ.—This is an appeal by the Receiver to the estate of insolvent Maung Po Se from an order of the District Court of Pyinmana refusing to annul the sale of a certain paddy land by Maung Po Se to his brother-in-law Maung Po Htein and the latter's wife, who are the present respondents, under section 53 of the Provincial Insolvency Act. The Receiver impugned the sale alleging that the transaction was a sham and fraudulent one and because Maung Po Se was declared insolvent within two years after the alleged sale. The learned District Judge held that the transaction fell within two years as specified by section 53, but he was of opinion that the transfer was made in good faith and for valuable consideration.

* Civil Miscellaneous Appeal No. 44 of 1927 from the order of the District Court of Pyinmana in Civil Miscellaneous No. 29 of 1926.

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Section 53 fixes two years from the date of transfer ending with the date of adjudication. As regards this date there has been a conflict of judicial opinion. Section 28, Clause (7) has been responsible for this conflict. Section 28 defines the effect of an order of adjudication and that effect is that on the making of an order of adjudication, the whole of the property of the insolvent shall vest in the Court or in a receiver, and shall become divisible among the creditors. Clause (7) provides that an order of adjudication shall relate back to, and take effect from, the date of the presentation of the petition on which it is made. The interval between the date of presentation and that of adjudication is therefore done away with so far as the vesting of the insolvent's property is concerned. Some learned Judges are of opinion that this doctrine of relation back to the date of presentation should also be applied to the avoidance of a voluntary transfer under section 53, or in other words that the two years prescribed by that section should be calculated from the date of presentation and not from the date of actual adjudication. Other learned Judges held the contrary view and according to them the date of actual adjudication should be the starting point. The former view was held by a Bench of the Calcutta High Court in *Rakhal Chandra Purkait v. Sudhindra Nath Bose* (1). The learned Judges observed that the order of adjudication might be delayed in some cases for more than two years, and in such a case any transfer made by the insolvent within two years before the date of presentation of the petition but more than two years before the order of adjudication would become valid, that they did not think that such a result was contemplated, and that they were of opinion that the provisions of section 36

(1) (1919) 46 Cal. 991.

(now 53) were to be read with section 16 (6) [now 28 (7)] of the Act. The same view was held by a Bench of the Allahabad High Court in *Sheonath Singh v. Munshi Ram* (1), and the learned Judges observed that they were adopting the view of a Bench of the Madras High Court in the case of *T. V. Sankaranarayana v. Alagiri Aiyar*. The contrary view was taken by a Bench of the Lahore High Court in *Ghulam Muhammad v. Panna Ram*, (Civil Appeal No. 531 of 1917). The learned Judges observed that it would hardly be safe to conclude that the framers of the Act intended section 16 (6) to govern section 36, but assuming that they were mistaken on this point, they conceived that the meaning of the Act was not to be interpreted with reference to what its framers intended to do, but with reference to the language which they did in fact employ. The learned Judges then quoted Maxwell on the Interpretation of Statutes who on page 5 says: "It matters not in such a case what the consequence may be when by the use of clear and unequivocal language capable of only one meaning anything is enacted by the Legislature, it must be enforced, even though it be absurd or mischievous." The same principle was adopted by a Bench of the Bombay High Court in *Nagindas Dahyabhai v. Gordhandas Dahyabhai* (2). The Chief Justice who delivered the judgment of the Bench observed: "In our opinion if it had been intended that a voluntary transfer should be voidable if made within two years from the date of the presentation of the petition on which the adjudication order is made, there was no reason why that should not have been as clearly stated in section 53 as it is in section 54, and we do not think that the doctrine of 'relation back' can be imported into the former section, so as to make it appear that the

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point of time from which the two years are to be calculated, is the date of the presentation of the petition, and not the date when the transferor is adjudged insolvent. The mere probability that in some cases a voluntary transfer cannot be defeated on account of the delay in making the adjudication order after the presentation of the petition, cannot provide sufficient ground for interpreting the words in section 53 otherwise than according to their clear meaning." Section 54 is concerned with avoidance of fraudulent preference. The period fixed by that section is three months from the date of presentation of the petition. Section 55 affords protection to *bonâ fide* transactions. The section has a proviso to the effect that in the case of a transaction which takes place before the date of the order of adjudication protection is afforded only to a transferee who has not at the time notice of the presentation of any insolvency petition. When one studies these three sections, namely 53, 54 and 55, very carefully one cannot fail to be struck by the difference in the language used as regards the starting point forming the basis of computation of the period. If the doctrine of relation back is to be deemed applicable to these sections the framers may have to be accused of being careless in drafting. In section 54 if it were intended that three months were to be calculated from the date of presentation the words "on a petition presented within three months after the date thereof" would become quite superfluous. Also in the case of the proviso to section 55 if the words "the date of the order of adjudication" were to be taken as the date of presentation of the petition, the condition about the notice would sound ludicrous being quite unnecessary. It is true that the time which may elapse between the date of presentation and the date

of adjudication may be somewhat considerable, still if we consider the large difference between the two periods provided by sections 53 and 54, being two years in one case and three months in the other, it will not be unreasonable to think that in fixing the longer period the framers of the Act did have in their minds that intervening period. They might have thought that a period of two years will be long enough to cover such an intervening time. We are therefore of opinion that the language used in those three sections is to be interpreted according to its plain meaning without reference to the doctrine of relation back provided in Clause (7) of section 28. We accordingly hold that in section 53 the date of adjudication and not the date of presentation should be the starting point. In this view we are fortified by the same interpretation given by a Bench of the late Chief Court of Lower Burma in *K.N.K.L. Chettyar Firm v. Maung Ba Tin* (Civil Miscellaneous Appeal No. 42 of 1918). The learned Judges observed, "the plain meaning of the term 'date of such adjudication' is the date on which the adjudication is actually made and the provisions of section 16, clause (6) do not go so far as to require that any such adjudication shall be antedated." In the present case the sale took place on 13th June 1924, while the insolvency petition was presented on 26th February 1926 and the order of adjudication was passed on 3rd July 1926. The sale in question therefore took place over two years before the date of adjudication. So far as section 53 is concerned an order of annulment cannot be made. It is therefore not necessary to decide the nature of the transaction whether it was a voluntary transfer or not. We therefore dismiss the appeal with costs (Advocate's fee three gold mohurs in each Court).

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