

APPELLATE CIVIL.*Before Addison and Din Mohammad JJ.*

ATA MOHAMMAD AND ANOTHER—Appellants
versus
 OFFICIAL RECEIVER, SARGODHA, AND
 ANOTHER (PETITIONERS) Respondents.

1935
 Jan. 25.

Civil Appeal No. 1433 of 1934.

Provincial Insolvency Act, V of 1920, sections 4, 28 (7) and 53: Transfer made by transferee from insolvent — whether can stand — when the original transfer by the insolvent has been declared void.

Held, that if once a transfer made by an insolvent is declared void as against the Official Receiver, a subsequent transfer by the transferee cannot stand and can be annulled under section 4 of the Provincial Insolvency Act, if not technically under section 53.

Jagannath Ayyangar v. Narayana Ayyangar (1), followed.

Hayat Mohammad v. Bhawani Das (2), not followed.

Held further, that when it is found that the original transfer in favour of the transferee was fictitious and fraudulent and consequently void as against the Official Receiver, the property vests in the Official Receiver by virtue of section 28, sub-section (7), from the date of the presentation of the petition for insolvency and therefore the original transferee cannot convey any saleable interest to a subsequent transferee.

Miscellaneous First Appeal from the order of Sardar Teja Singh, District Judge, Shahpur at Sargodha, dated 18th August, 1934, annulling the transfer in favour of Ata Mohammad and Allah Bakhsh and declaring them void as against the Official Receiver.

R. C. MANCHANDA, for Appellants.

L. M. DATTA, for Respondents.

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The judgment of the Court was delivered by—

DIN MOHAMMAD J.—Ghulam Mohammad transferred to Ata Mohammad his one-fourth share of a house on the 26th June, 1930. Ata Mohammad transferred to Allah Bakhsh this one-fourth share along with his own one-fourth share in the house on the 14th November, 1931. On an application made on the 1st June, 1931, Ghulam Mohammad was adjudicated an insolvent on the 15th February, 1932. On the 19th April, 1932, *Lala Mehr Chand*, Official Receiver, Sargodha, applied under section 53, Provincial Insolvency Act, to have the transfer in favour of Ata Mohammad declared void as against him and annulled. The District Judge accepted the petition and annulled the transfer. Both Ata Mohammad and Allah Bakhsh appealed to this Court. The appeal came for hearing before Agha Haidar J. who has referred it to a Division Bench for disposal on the ground that an important question of law is involved in the case.

Counsel for the appellants contends that section 53, Provincial Insolvency Act, does not apply to a transfer made by an insolvent's transferee, and in support of his contention relies on two Division Bench judgments of this Court reported as *Sudha v. F. Nanak Chand* (1) and *Hayat Mohammad v. Bhawani Das* (2). Both these judgments were delivered by Scott-Smith J. and Martineau J. in 1925 and 1926, respectively. In addition to these authorities there are some other authorities also of the other High Courts in India which have adopted this view, *e.g.*, *Govind v. Somba* (3) and *Ponnammai Ammal v. The District Official Receiver, Tinnevelly* (4). But with

(1) (1925) 7 Lah. L. J. 160.

(2) 1926 A. I. R. (Lah.) 146.

(3) (1930) 121 I. C. 663.

(4) (1927) 97 I. C. 918.

all respect we consider that these cases have been wrongly decided.

Section 53 of the Provincial Insolvency Act enacts that " Any transfer of property shall, if the transferor is adjudged insolvent, on a petition presented within two years after the date of the transfer, be voidable as against the receiver and may be annulled by the Court." We can find no reason for holding that a transferee from an insolvent can avoid the operation of section 53 by merely passing on the property to some other person. The original transfer made by the insolvent is voidable under section 53 and if once it is declared void as against the Official Receiver the subsequent transfer by the transferee cannot stand and can be annulled under section 4 of the Insolvency Act if not technically under section 53. The superstructure cannot remain suspended in the air if the foundation is removed and, however, strictly we may construe section 53 the subsequent transfer made by the transferee from an insolvent cannot debar the Official Receiver from exercising his rights under section 53 so far as the original transfer is concerned. We are in full accord with the view expressed by Oldfield J. in the following words in *Jagannath Ayyangar v. Narayana Ayyangar* (1) :—

" On the merits we read the report as embodying a request to the Court to avoid the transfers evidenced by two documents referred to by the Official Receiver as Exhibits III and IV. Exhibit III is a transfer by the debtor to one Thiruvengadatha Ayyangar and Exhibit IV by the latter to the present respondent. The lower Court has refused relief on the ground that section 36, Provincial Insolvency Act, under which the

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application was made authorises only the avoidance of transfers by the debtor, not by his transferees..... But even if section 36 does not authorise the Official Receiver's employment of the special procedure provided by the Act in respect of Exhibit IV we have been shown no reason why he was not entitled to employ it to obtain the avoidance of Exhibit III and thus to lay the foundation for legal proceedings in respect of the former document."

It may be noted in this case that both the transferees were parties to this petition and are now the appellants before us.

Moreover there is another circumstance in this case which is worth consideration. It has been definitely found by the District Judge that the original transfer in favour of Ata Mohammad was fictitious and fraudulent and consequently void as against the Official Receiver. If this be so, the property vested in the Official Receiver by virtue of section 28, subsection 7 from the date of the presentation of the petition and as the petition for insolvency was presented on the 1st June, 1931, and the subsequent transfer by Ata Mohammad was made on the 14th November, 1931, Ata Mohammad had no saleable interest in the property which he could convey to his transferee on the day of the alleged transfer.

We, therefore, uphold the decision of the District Judge and dismiss this appeal. There will be no order as to costs.

P. S.

Appeal dismissed.