

FULL BENCH.

Before Addison, Monroe and Din Mohammad JJ.

LAKHMI CHAND (PLAINTIFF) Appellant

versus

KESHO RAM (DEBTOR) Respondent.

1935

April 26.

Civil Appeal No. 2196 of 1934

*Provincial Insolvency Act, V of 1920, section 9 (1) (c)—
Limitation—whether runs from the date of registration of the
deed or of execution thereof.*

Held, that when a petition is presented alleging that a debtor has committed an act of insolvency by deed registered, the period of limitation prescribed by sub-section (1) (c) of section 9 of the Provincial Insolvency Act runs from the date of the registration of the deed and not from the date of the execution thereof.

Sarvathada Iswarayya v. Kurubasubbanna (1), U Ba Sein v. Maung San (2), Kanhaiyalal v. Sadashiv Rao Ganpat Rao (3), the Division Bench case, Devi Das v. Moti Ram, C. A. 2289 of 1934 (4), and C. A. 546 of 1934, per Bhide J. followed.

Miscellaneous first appeal from the order of Mr. G. U. Whitehead, District Judge, Mianwali, dated the 21st August, 1934, dismissing the petition for adjudication of Kesho Ram as an insolvent, as time-barred.

J. L. KAPUR and M. C. SHUKLA, for Appellant.

RAM NARAIN, for Respondent.

The order of Coldstream and Jai Lal JJ., dated 21st February, 1935, referring the case to a Full Bench, was delivered by—

COLDSTREAM J.—This appeal has been presented against an order of the District Judge of Mianwali which dismissed a petition by the appellant presented

(1) 1934 A. I. R. (Mad.) 637.

(3) 1934 A. I. R. (Nag.) 171.

(2) 1934 A. I. R. (Rang.) 216.

(4) Printed on page 739 *intra*.

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under section 9 of the Provincial Insolvency Act, praying that the respondent be adjudicated an insolvent on the ground of his having committed acts of insolvency. The acts of insolvency alleged were recorded in two mortgage-deeds executed by the respondent on the 25th of January, 1933, and the 16th of February, 1933. The deeds were, however, not registered until the 8th of May, 1933, and the 9th of May, 1933, respectively. The petition was presented on the 27th of July, 1933. The District Judge of Mianwali held that they were barred by time, inasmuch as more than three months had elapsed between the date of the petition and the date on which the last mortgage was executed.

The only question for consideration is, whether this decision on the point of limitation is correct. The learned District Judge relied on the judgment of Dalip Singh J. in *Ratan Chand v. Smail* (1). Our attention has been drawn to the judgments of three other Courts, namely, *Sarvathada Iswarayya v. Kuru-basubbanna* (2), *U Ba Sein v. Maung San* (3) and *Kanhaiyalal v. Sadashiv Rao Ganpat Rao* (4), in which a contrary view has been taken. In Civil Appeal No. 546 of 1934 Bhide J. upheld an order deciding that limitation ran from the date of registration. The judgment of Dalip Singh J. shows that there is much to be said for both views. As the point is of considerable importance and there appears to be some conflict of decision, we refer the following question for decision by a Full Bench:—

Where a petition is presented alleging that a debtor has committed an act of insolvency by transferring his property by deed registered, does the

(1) 1933 A. I. R. (Lah.) 821.

(3) 1934 A. I. R. (Rang.) 216.

(2) 1934 A. I. R. (Mad.) 637.

(4) 1934 A. I. R. (Nag.) 171.

period of limitation prescribed by sub-section (1) (c) of section 9 of the Provincial Insolvency Act run from the date of the execution of the deed or from the date of its registration?

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THE ORDER OF THE FULL BENCH.

MONROE J.—The following question has been referred to a Full Bench by Mr. Justice Coldstream and Mr. Justice Jai Lal:—

MONROE J.

“Where a petition is presented alleging that a debtor has committed an act of insolvency by deed registered, does the period of limitation prescribed by sub-section (1) (c) of section 9 of the Provincial Insolvency Act run from the date of the execution of the deed or from the date of its registration?”

The reason for this reference is stated to be that a conflict of authority exists; so far as this Court is concerned there are two Single Bench decisions in conflict, a judgment of Mr. Justice Bhide in Civil Appeal No. 546 of 1934, holding the critical date to be that of registration, and a judgment of Mr. Justice Dalip Singh, *Ratan Chand v. Smail* (1), holding the critical date to be that of execution of the deed. Decisions of other Courts cited before us support the view of Mr. Justice Bhide, *Sarvathada Iswarayya v. Kurubasubbanna* (2), *U Ba Sein v. Mawng San* (3) and *Kanhaiyalal v. Sadashiv Rao Ganpat Rao* (4). Since the date of this reference the question has come before a Division Bench of this Court in Civil Appeal No. 2289 of 1934 (5) and the view of Mr. Justice Bhide that the date of registration is the critical date has been upheld. The act of insolvency, which, to ground a

(1) 1933 A. I. R. (Lah.) 821.

(3) 1934 A. I. R. (Rang.) 216.

(2) 1934 A. I. R. (Mad.) 637.

(4) 1934 A. I. R. (Nag.) 171.

(5) Printed on page 739 *infra*.

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MONROE J.

petition, must have taken place within three months of the presentation of the petition, is in the present case " a transfer of property " and the question at issue resolves itself into the question, when does the transfer of property take place, when there is a written instrument purporting to transfer the property which is compulsorily registrable. Section 49 of the Indian Registration Act provides that no document required to be registered shall affect any immovable property comprised therein unless it has been registered. This section implies that such a document by reason of its execution alone cannot have the effect of transferring property. The title does not pass until registration has been effected—[see *Papireddi v. Narasareddi* (1)], in other words no transfer has taken place. It is argued, however, that the effect of section 47 is to require that the transfer of the property should be treated as thrown back to the date of execution. The section provides that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. In *Kalyana-Sundaram Pillai v. Karuppa Mooppuniar* (2), the section was applied by the Judicial Committee to determine the priority of two documents the earlier of which was the later registered and it was decided that the date of execution, not that of registration, determined the priority. It is contended that the principle of this decision governs the present case. This argument seems to me to confuse two wholly different ideas, the operation of a document, and an event. In the present case the question is not what was the effect of registration, but

(1) (1893) I. L. R. 16 Mad. 464. (2) (1927) I. L. R. 50 Mad. 193 (P.C.).

when did the event take place which caused the transferee to become the owner. We are not concerned with the time from which the document operated but with the time at which that document produced a legal effect; that the effect produced was, by reason of section 47, retrospective in its operation does not concern us. I, therefore, propose that the question referred to us should be answered as follows:—When a petition is presented alleging that a debtor has committed an act of insolvency by deed registered, the period of limitation prescribed by sub-section (1) (c) of section 9 of the Provincial Insolvency Act runs from the date of its registration. The case should now be posted before a Division Bench.

ADDISON J.—I agree.

DIN MOHAMMAD J.—I agree.

A. N. C.

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MONROE J.

ADDISON J.

DIN

MOHAMMAD J.

The judgment of Addison and Din Mohammad J.J. in Civil Appeal No. 2289 (Devi Das v. Moti Ram), dated 20th Nov., 1934, referred to in the above Full Bench Judgment, was delivered by—

ADDISON J.—Two creditors applied for the adjudication of the two respondents as insolvents on the ground that they had made a transfer of their property with intent to defeat or delay their creditors. This transfer was effected by a deed executed on the 7th of January, 1932, which was registered on the 18th February, 1932. The petition was brought on the 18th May, 1932, so that it is barred by time if the date of the transfer is taken to be the date of the execution of the deed, but it is within time if the date of registration is taken. The Insolvency Judge has held that the petition is barred by time and the creditors have appealed.

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The act of insolvency set out falls either under section 6 (b) or (c) of the Insolvency Act. Under section 9 (1) (c) the creditors shall not be entitled to present an insolvency petition against a debtor unless the act of insolvency on which the petition is grounded has occurred within three months before the presentation of the petition. The act of insolvency relied upon is the transfer of property and the question is when the act of insolvency took place.

A Judge of this Court considered this question in *Ratan Chand v. Smail* (1). He said that the point was not free from difficulty, but he came to the conclusion that as the Transfer of Property Act did not apply to the Punjab, the transaction took place on the date of execution and not that of registration. Another Judge of this Court in *Kirpa Ram v. Sanwala Ram* (2) took the opposite view and held that the transaction took place on the date when the deed was registered.

In *N. R. M. M. M. Muthia Chettiar v. Official Receiver of Trinnevelly* (3), it was held that in applications under section 54 of the Insolvency Act the period of three months should be calculated from the date of registration of the document and not from the date of execution. There is no difference in the language of section 9 and section 54 and the same principle would apply. It was held that as under section 59 of the Transfer of Property Act registration of the document was essential to make it a valid transfer, the date of the act of insolvency complained of should be taken to be the date of registration. A Division Bench of the same Court in *Sarvathada Iswarayya v. Kurubasubbanna* (4), followed this

(1) 1933 A. I. R. (Lah.) 821.

(3) 1933 A. I. R. (Mad.) 185.

(2) 1933 A. I. R. (Lah.) 55.

(4) 1934 A. I. R. (Mad.) 637.

decision in a case falling under section 9 of the Insolvency Act.

Similarly, the Additional Judicial Commissioner of Nagpur held in *Kanhaiyalal v. Sadashiv Rao* (1), that the starting point of limitation for the purposes of section 9 (1) (c) of the Insolvency Act is the date of the registration of the deed of transfer and not the date of execution. A Division Bench of the Rangoon High Court in *U Ba Sein v. Mawng San* (2) took the same view in a case falling under section 54 of the Insolvency Act.

It is true that the Transfer of Property Act does not apply to the Punjab, but the Indian Registration Act does. This is not the case of an oral sale, which would not be illegal in the Punjab, but a case in which the parties intended to give expression to their contract of transfer by a document. This document was compulsorily registrable under the provisions of the Indian Registration Act and under section 49 it could not affect any immovable property comprised therein until it was registered. Under the provisions of section 47 of the Indian Registration Act the document when registered operates from the date of execution and not from the date of registration, but the transfer could not be said to have been completed until registration of the document was effected. In this respect it seems to us that there is no difference between the provisions of the Transfer of Property Act and the Indian Registration Act. The act of insolvency, namely, the transfer, must thus be held to have occurred when the document took effect by reason of its registration. It follows that the date of registration is the starting point of limitation

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(1) 1934 A. I. R. (Nag.) 171.

(2) (1934) I. L. R. 12 Rang. 263.

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for the purposes of section 9 (1) (b) or (c) of the Insolvency Act.

We accordingly accept the appeal, set aside the decision of the Insolvency Judge dismissing the petition as barred by time, and remand the proceedings to him for disposal in accordance with law. As there have been two conflicting decisions of Single Benches of this Court, we leave the parties to bear their own costs up to date.

Appeal accepted.

APPELLATE CIVIL.

Before Young C. J. and Din Mohammad J.

MAKHAN SINGH AND OTHERS (PLAINTIFFS)

Appellants

versus

BAKSHSHISH SINGH AND OTHERS (DEFENDANTS)

Respondents.

Civil Appeal No. 3094 of 1927.

Custom — Succession — Pagwand or Chundawand — Presumption in favour of Pagwand — when rebutted.

Plaintiffs sued for a declaration that the custom in their family was that of *Chundawand*, and in accordance with that custom, they claimed possession of certain lands to the exclusion of the defendants, who were their relatives of the half blood. Evidence in the case proved that J. S., the common ancestor of the parties had three wives and, on his death, three groups were made of his descendants according to the three wives. Among the descendants of these three groups, *Chundawand* was apparently established in the one to which the plaintiffs belong, and *Pagwand* in the other, while in the third there was no conclusive evidence one way or the other.

Held, that in this case, the existence of three different families by the three wives of the common ancestor having been recognized, and it having been established on the only

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