

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(IN INSOLVENCY)

MONDAY, THE 12TH DAY OF JULY 2021

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

APPLN.Nos.160 & 169 to 172 of 2015

in

I.P.No.46 of 2012

IP No.46 of 2012

In the matter of the Presidency Towns
Insolvency Act, III 1909

and

In the matter of

1. M.Alagurajan

2. A.Vanithamani

... Petitioners/Debtors

1. M.Alagurajan
S/o.Manimuthu

2. A.Vanithamani,
W/o.M.Alagurajan,
Both are residing at
Door No.162, Subramania Street,
Erikarai Road, Virugambakkam,
Chennai-600 092.
Carrying on business at
No.333, Arcot Road, Salma Complex,
Shop No.B1, Kodambakkam,
Chennai 600 024.

... Petitioners / Debtors

APPLN.No.160 of 2015:

R. Prakash Kumar,
S/o.Radhakrishnan
No.12, Ganapathi Nagar,
Kolapakkam, Chennai – 600 122.

...Applicant/3rd Party

-VS-

1. M.Alagurajan
S/o. Manimuthu

2. A. Vanithamani
W/o. M.Alagurajan,

both at No.162, Subramania Street,
Erikarai Road, Virugambakkam,
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Chennai 600 024.

...Respondents 1 & 2/Insolvents

3. The Official Assignee,
Office of the Official Assignee,
Family Court Building, I Floor,
High Court Campus, Chennai – 600 104.

...3rd Respondent

Application praying that this Hon'ble Court be pleased to declare that the sale transaction taken place between the petitioner/3rd party and the 2nd respondent in I.P.No.46 of 2012 in respect of the application schedule property under a Sale deed, dated 01.11.2012, registered as Document No.5774/2012 at Sub-Registrar Office, Pammal is bonafide and legally valid.

APPLN.Nos.169 to 172 of 2015:

The Official Assignee,
High Court, Madras.

...Applicant

Vs

1. Mrs.A.Vanithamani,
Wife of Mr.M.Alagurajan,
162, Subramania Street,
Erikarai Road, Virugambakkam,
Chennai-600 092.

...1st Respondent/2nd Insolvent

2. Mr.Prakash Kumar
Door No.28, Ganapathy Nagar,
Kolapakkam, Chennai – 600 123.

...2nd Respondent/Transferee

APPLN.No.169 of 2015:

Application praying that this Hon'ble Court be pleased to declare the transfer of the Insolvents' property described in the Schedule to the Judges Summons in favour of the 2nd Respondent herein as null, void and not binding upon the official assignee.

APPLN No.170 of 2015:

Application praying that this Hon'ble Court be pleased to issue warrant permitting the Official Assignee to seize the property from the custody or possession of the 2nd Respondent or any other person, his men, agents or servants acting under him with the assistance of Police.

APPLN No.171 of 2015:

Application praying that this Hon'ble Court be pleased to direct the 2nd Respondent, his men, agent or servants or any other person acting on his behalf to deliver vacant possession of the said property described in the Schedule to the Judges Summons with all documents of title in his possession to the official assignee.

APPLN No.172 of 2015:

Application praying that this Hon'ble Court be pleased to permit the Official assignee to sell the property described in the Schedule in the Judges Summons in public auction and sale proceeds rateably divided amongst the General body of Creditors.

The above applications coming on this day before this court for hearing in the presence of Mr.R,Munusamy, Advocate for the Applicant/3rd Party/Transferee in Appln.No.160 of 2015 and for 2nd Respondent in Appln.Nos.169 to 172 of 2015 herein; Mr.J.Balagopal, Advocate for Respondents 1 & 2/Insolvents in Appln.No.160 of 2015 and for 1st Respondent in Appln.Nos.169 to 172 of 2015 herein; Mr.C.Ramesh, Advocate for the Official Assignee, the 3rd Respondent in Appln.No.160 of 2015 and the applicant in Appln.Nos.169 to 172 of 2015 herein; and upon reading the Judges summons and Reports of the Official Assignee filed in Appln.Nos.169 to 172 of 2015 and Judges Summon and Affidavit of R.Prakash Kumar filed in Appln.No.160 of 2015; and this court is of the view that the sale transaction will fall within Clause 'c' of Section 57 of the Presidency Towns Insolvency Act as a protected transaction, the payment of Rs.35,156/-(Rupees Thirty five thousand one hundred and fifty six only) as deficit stamp fee would only enhance the value of property by Rs.5,10,800/- and

It is ordered as follows:

1. That the Application Nos.169, 170, 171 & 172 of 2015 in I.P.No.46 of 2012 be and are hereby dismissed.

2. That the sale transaction taken place between the petitioner/3rd party and the 2nd respondent in I.P.No.46 of 2012 in respect of the schedule mentioned property under a Sale deed, dated 01.11.2012, registered as Document No.5774/2012 at Sub-Registrar Office, Pammal be and is hereby declared as bonafide and legally valid.

SCHEDULE OF PROPERTY

Within the Registration District of Chennai-South, Sub-Registration District of Pammal:-

All that piece and parcel of ground and premises, situated at Plot No.12, Ganapathi Nagar, Kolappakkam Village, Sriperumbudur Taluk, Kancheepuram District, Comprised in Survey No.183/5(Old Survey No.183/3), land measuring an extent of 1890 sq.feet together with R.C.C. Building and electricity service connection thereon; bounded on the

North by - Property of Mr.Ravi

South by - 20 feet Road

East by - Plot No.11

West by - Property of Mr.Senthil

measuring,

North to South	- both side	- 60 feet
East to West	- Northern side	- 33 feet
East to West	- Southern side	- 30 feet

totally measuring 1890 sq.feet.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
12TH DAY OF JULY 2021.

Sd./-
ASSISTANT REGISTRAR
Original Side-I

//CERTIFIED TO BE TRUE COPY//
DATED THIS THE DAY OF 2021.

MANAGER
INSOLVENCY OFFICE

From 25th Day of September 2008 the Registry is issuing certified copies of
the Orders/Judgments/Decrees in this format.

PK
09/08/2021

HIGH COURT, MADRAS

APPLN.Nos.160 of 2015
and
APPLN.Nos.169 to 172 of 2015
in
I.P.No.46 of 2012

DECREE DATED : 12/07/2021

THE HON'BLE MR.JUSTICE
R. SUBRAMANIAN

FOR APPROVAL : 12/08/2021

APPROVED ON : 16/08/2021

Copy to :

The Official Assignee
High Court, Madras.

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the court made the following order:-

The Official Assignee is the applicant in Appln.Nos.169, 170, 171 & 172 of 2015. These applications have been filed by the Official Assignee seeking to declare the transfer of property by the Insolvents made on

01.11.2012 as invalid, to seize the property from the alienee, to direct the alienee to deliver possession of the property and to permit the Official Assignee to sell the property by way of public auction for the benefit of the estate of the insolvents.

2.Appln.No.160 of 2015 has been filed by the transferee to declare the transfer as valid. The sequence of events are as follows:-

The transferee purchased the property from the insolvents on 01.11.2012 under a registered sale deed bearing No.5774 of 2012. The said instrument was presented for registration on the same day. The consideration reflected in the document is Rs.45,00,000/- (Rupees Forty Five Lakhs only). The Insolvents presented an application for adjudicating themselves as Insolvents in I.P.No.46 of 2012 on 15.11.2012 and an order of adjudication came to be passed by the learned Master of this Court on 22.11.2012. Thereafter, the learned Official Assignee in whom the estate vests has come up with these applications. In the course of these proceedings, evidence was let in and the Section Officer in the Office of the Official Assignee was examined as P.W.1 and Exs.A1 to A4 were marked. On the side of the transferee, he was examined as R.W.1 and Exs.R1 to R11 were marked. A Chartered Engineer was examined on the side of the transferee as R.W.2 and his report was marked as Ex.R12.

3.I have heard Mr.C.Ramesh, learned counsel appearing for the

Official Assignee and Mr.R.Munusamy, learned counsel appearing for the transferee.

4.The main contention of Mr.C.Ramesh is that the transaction is a loan transaction, which has been camouflaged as a sale and therefore, it will be hit by Section 56 of the Presidency Towns Insolvency Act as a fraudulent preference. In support of his submission, the learned counsel appearing for the Official Assignee would submit that a perusal of the sale deed marked as Ex.A1 and Ex.R4 would show that the sale consideration has been paid much prior to the date of the sale deed without any independent receipt. This, according to the learned counsel would lead to suspicion on the bonafide nature of the transaction. He would further submit that this is actually a loan transaction, which has been converted into a sale transaction at the instance of the transferee.

5.Contending contra, Mr.R.Munusamy, learned counsel appearing for the transferee would submit that the sale consideration has been paid through bank in three installments prior to the date of the registration of the sale deed. He would also point out that the insolvents, after having received the sale consideration from the transferee had repaid the debt due to the bank and got the mortgage discharged and handed over the documents to the transferee. Therefore, according to him, the entire transaction was a bonafide transaction and the very insolvency petition has been presented

within 15 days of the execution of the sale deed, with a view to avoid the sale deed.

6.Mr.C.Ramesh, learned counsel appearing for the Official Assignee would take me through the evidence to draw support for his submissions. The sale deed, Ex.R4 shows that out of the total consideration of Rs.45,00,000/-(Rupees Forty Five Lakhs only), a sum of Rs.12,75,000/- (Rupees Twelve Lakhs Seventy Five Thousand only) was paid on 18.09.2012 and a sum of Rs.10,00,000/-(Rupees Ten Lakhs only), each was paid on 11.10.2012 and 22.10.2012. The remaining amount of Rs.12,00,000/- (Rupees Twelve Lakhs only) was paid by way of cheque and Rs.25,000/-(Rupees Twenty Five Thousand only) was paid by way of cash on 01.11.2012. The transferee has also filed his passbook to show that all these cheques, which were issued by him have been encashed by the insolvents. The receipt issued by the Lakshmi Vilas Bank, which has been marked as Ex.R3 would show that the insolvents have discharged the mortgage on 26.10.2012, which is five days prior to the execution of the sale deed in his favour.

7.Mr.C.Ramesh would attempt to draw support from the fact that a sum of Rs.35,176/- has been collected as deficit stamp duty to contend that the sale deed has been under valued. The transferee has produced the guideline valuation of the property, which shows that the guideline value

was Rs.1,800/- per square feet on the date of the sale. Even, the Engineer examined by the transferee namely, R.W.2 has adopted a valuation of Rs.2,000/- per square feet for the land on the date of the alienation. The Engineer has however adopted a value of Rs.2,000/- per square feet for the constructed area as on the date of the sale namely, 01.11.2012. In his calculations, he has not adopted any depreciation. Annexure 1-A filed along with the sale deed shows that the age of the building as 5 years therefore, the building should have been constructed sometime in the year 2008. The Engineer should have adopted the cost of construction of the year 2008 or should have adopted depreciation. His report does not reveal that he has adopted any depreciation. However, in his evidence, he has said that he has adopted a depreciation of 1%. I am unable to accept the said evidence as evidence of proof of under valuation by the transferee.

8. Section 55 of the Presidency Towns Insolvency Act invalidates alienations, made two years prior to the order of adjudication. Section 56 deals with fraudulent preference. Section 57 protects bona fide transactions. Section 57 of the Act reads as follows:-

“57. Protection of bona fide transactions:- Subject to the foregoing provisions with respect to the effect of insolvency on an execution and with respect to the avoidance of certain transfers and preferences, nothing in this Act shall invalidate in the case of an insolvency:-

- a) any payment by the insolvent to any of his creditors;*
- b) any payment or delivery to the insolvent;*
- c) any transfer by the insolvent for valuable consideration; or*
- d) any contract or dealing by or with the insolvent for valuable consideration: Provided that any such transaction takes place before the date of the order of adjudication and that the person with whom such transaction takes place has not at the time notice of the presentation of any insolvency petition by or against the debtor. Realization of property.”*

The proviso to Section 57 may not apply to the case on hand, I am therefore, convinced that this case would fall within a transfer for valuable consideration made under Clause 'c' of Section 57 of the Presidency Towns Insolvency Act and therefore, it will be protected as a bona fide transaction.

9.It is claimed that an agreement was entered between insolvent and the transferee for a sum of Rs.83,75,000/-(Rupees Eighty Three Lakhs Seventy Five Thousand only) but the sale deed was only for Rs.45,00,000/- (Rupees Forty Five Lakhs only). There is no evidence of any such agreement. The insolvents have not chosen to appear and tender evidence or produce the said agreement.

10.Even assuming that they could produce such evidence, such evidence cannot be admitted, in view of Section 92 of the Evidence Act, which prohibits evidence contrary to the recitals in a registered instrument

by any of the parties to the instrument. Therefore, the claim that there is an agreement for Rs.83,75,000/- (Rupees Eighty Three Lakhs Seventy Five Thousand only) but the sale deed was entered into for a lesser consideration cannot be accepted.

11.In view of all the above reasons, I do not see any merit in the applications filed by the Official Assignee. As already pointed out, the sale transaction will fall within Clause 'c' of Section 57 of the Presidency Towns Insolvency Act as a protected transaction, the payment of Rs.35,156/- (Rupees Thirty Five Thousand One Hundred and Fifty Six only) as deficit stamp fee would only enhance the value of the property by Rs.5,10,800/-. I do not think such a nominal increase can be taken into account as a vitiating factor.

12.Therefore, the applications filed by the Official Assignee in Appln.Nos.169, 170, 171 & 172 of 2015 are dismissed and the application filed by the transferee in Appln No.160 of 2015 is allowed.

SCHEDULE OF PROPERTY

Within the Registration District of Chennai-South, Sub-Registration District of Pammal:-

All that piece and parcel of ground and premises, situated at Plot No.12, Ganapathi Nagar, Kolappakkam Village, Sriperumbudur Taluk, Kancheepuram District, Comprised in Survey No.183/5(Old Survey

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ORDER DATED : 12/07/2021

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FOR APPROVAL : 12/08/2021

APPROVED ON : 16/08/2021

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