

PRIVY COUNCIL

Harry Pope

Vs.

Official Assignee, Rangoon

P.C.A.No.84 of 1932

(Lords Blanesburgh, J. Thankerton and Sir John Wallis. JJ.)

16.10.1933

JUDGMENT

LORD THANKERTON J.

1.This is an appeal from a judgment and decree of the High Court of Judicature at Rangoon dated 8th March 1932, whereby the Court, in exercise of its appellate jurisdiction, set aside an order dated 14th December 1931, made in exercise of its original jurisdiction, and declared that the deed of sale hereinafter referred to was void as against the respondent. The respondent did not appear in the appeal.

2. The deed of sale in question was dated 27th February 1931, and was made between Mrs. Edith Young, who carried on business as a milliner and dressmaker at 15, Phayre Street, Rangoon, and the appellant; Mrs. Young thereby assigned to the appellant the stock-in-trade then lying in her shop and all her book debts then due and owing in consideration of the payment by the appellant to her bank of the sum of Rs. 20,229, being the amount of her overdraft with the bank. The appellant had guaranteed Mrs. Young's overdraft with her bank up to the sum of Rs. 25,000, and the bank were pressing the appellant for payment. On 16th June 1931; Mrs. Young was adjudicated an insolvent. On 7th July 1931, the respondent, as the assignee in insolvency of Mrs. Young's estate, made the application, out of which the present appeal arises to have the deed of sale declared void as against the respondent, in respect of the provisions of Sections 55 and 56, Presidency Towns Insolvency Act, 1909. The respondent's contentions however have been confined to Section 55, and it is unnecessary to refer to Section 56. section 55 provides as follows :

"55. Any transfer of property, not being a transfer made before and in consideration of marriage, 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 void against the Official Assignee.',

The sole question in the case is whether the deed of sale was a transfer " in good faith and for valuable consideration " within the meaning of Section 55 and it is clearly for the respondent to establish the contrary in order to succeed in his application : *Official Receiver v. P.L.K.M.B.M. Chettyar Firm*, There is little dispute about the facts, and the evidence is referred to in detail by Sen, J, who decided the case on the original side of the High Court. In carrying on her business, which was started in 1929, Mrs. Young financed it by means of the overdraft of Rs. 25,000 permitted by her bank on the guarantee of the appellant, who deposited the title deeds of his home with the bank and a promissory note for Rs. 25,043 signed by himself and Mrs. Young. The appellant also guaranteed Mrs. Young's rent for the shop for three years from 1929.

3. On 4th February 1931, the bank called on the appellant as guarantor to liquidate the overdraft and, after obtaining the deed of sale from Mrs. Young the appellant liquidated the overdraft by two payments on 20th and 27th March amounting to Rs. 24,521-2-9, which was considerably less than the guaranteed amount. Four days after signing the deed of sale Mrs. Young left for England where she told the appellant she hoped to realise Rs. 35,000 from her father's estate and the appellant thereafter carried on the business in order to realise the stock and made no new purchases except little articles like ribbons used for making up dresses.

4. Their Lordships are unable to find any evidence that the appellant knew, when he took the deed of sale, that Mrs. Young was insolvent. The overdraft was not exhausted, and there is no evidence that the appellant knew of other creditors at that date. Their Lordships agree with the opinion of Sen, J. The transaction admittedly was a real one, which takes it out of the class of case found in *Ex parte Chaplin In re Sine-air* In that case and in *Tomkins v. Saffery* there was knowledge of insolvency.

5. Their Lordships are therefore of opinion that the respondent has failed to prove that the transfer was not made in good faith, and they will humbly advise His Majesty that the appeal should be allowed ; that the decree of the High Court dated 8th March 1932, should be set aside and the order dated 14th December 1931, should be restored, the appellant to have the costs of the appeal and of the proceedings before the High Court in exercise of its appellate jurisdiction.

Appeal allowed.

Cases Referred.

AIR 1931 PC 75=131 IC 767=58 IA 115 =9 Rang 170.

(1884) 53 LJ Ch 732=26 Ch D 319=51 LT 345.

(1877) 3 AC 213=47 LJ BK 11=26 WR 62=37 LT 758,