

Raj Kumar and Another

Vs

Official Receiver of The Estate of Chiranji Lal Ram Chand, Ludhiana and Others

Civil Appeal No. 1985 of 1980

(K. Ramaswamy, B. L. Hamsaria JJ)

14.12.1995

ORDER

1. The only question in this appeal is whether Chiranji Lal, declared insolvent, had 1/3rd share in the property Item 1 and 3 which was the subject-matter before the High Court.
2. This appeal by special leave arises from the order in Second Appeal No. 4 of 1975 dated 15-2-1980. The Insolvency Court initially declared all the three partners and the partnership firm by name Chiranji Lal Nihal Chand as insolvents. On appeal filed by Nihal Chand and Sarwan Kumar, the District Court, by order dated 29-8-1955, declared them to be not insolvents and set aside the order of the Insolvent Court. The revision filed in the High Court was dismissed on 29-9-1959. Thus as far as Chiranji Lal is concerned the order declaring him to be insolvent became final.
3. The Official Receiver, after taking over the estate, filed an application under Section 4 of the Provincial Insolvency Act on 16-8-1966 for a declaration that the insolvent had 1/3rd share in items mentioned in paras 4, 6 and 7; and 2/3rd share in property listed in para 5 of the petition. The Insolvency Court declared that he had got 1/3rd share in some properties and 2/3rd in some others; but on appeal the District Court declared that Chiranji Lal had 1/3rd share in Items 317,326 in Division Number 3 in Ludhiana and 1000 sq. yds. in Civil Lines, which the High Court identified as Items 1 and 3 and held that Chiranji Lal had 1/3rd share in those properties. Thus, this appeal by special leave.
4. Shri E. C. Agarwala, learned counsel for the appellants, who are sons of Nihal Chand, contended that the alleged admissions relied on by the High Court are not correct. There is no such admission which was subsequently explained in the evidence and the High Court had not bestowed due care in scrutinising the evidence. He has contended that the petition itself is barred by limitation under Article 120 of Schedule III to the Limitation Act, 1963, which mentions limitation of six years; but as the application was filed after 11 years, it is barred by limitation.
5. The first question is whether the application is barred by limitation. It is seen that declaration of insolvency was made on 22-2-1955, when the estate was taken into custody by the Official Receiver after the proceedings became final. He sought a declaration as to which part of the property, the insolvent had in several items of properties. He rightly had taken that step since it was difficult for him to decide as to in which part and to what extent, he was insolvent in joint properties. The insolvent Chiranji Lal claimed to have 1/3rd or 2/3rd share, as the case may be. The limitation, therefore, would begin to run when the appellants sought to create a cloud over that right setting up their entitlement or title to these properties. It was done after the application under Section 4 was made by the Official Receiver. The High Court has rightly concluded that the cause of action, viz.,

the right to sue in the present case had accrued to the Official Receiver when some cloud was cast on the title of the Official Receiver claiming 1/3rd share of the insolvent. Under these circumstances, the learned Judge of the High Court rightly concluded that "I do not find any force in this contention of the learned counsel for the respondent". Consequently, the suit regarding the property in Items 1 and 3 was held to be within time. We agree with the learned Judge in this conclusion. The creditors' stand was that it was joint property of the three partners and of the partnership firm which was sought to be declared as insolvents. In the proceedings for declaration of insolvency, the firm as well as the appellant's father and Chiranji Lal and another were declared to be insolvent. Since Chiranji Lal allowed the declaration to become final and the property was joint property held by all of them, it would be difficult to decide as to what extent and in which property, the insolvent had interest or title to the property. When the appellants claimed exclusive title to these properties, the cloud on the title of the Official Receiver, who had taken over the estate, was cast. Consequently, the limitation began to run when the cloud was cast. Admittedly, that was done when the application came to be filed. Thus, the application was within limitation.

6. The question then is whether in Items 1 and 3 as noted by the High Court, the insolvent has 1/3rd share. The question was considered in extenso and it was held that the insolvent had 1/3rd share in Items 1 and 3. The High Court noted in the order the admissions thus :

"Wherein admissions regarding property at Item 1 have been made by the respondent Nihal Chand, such as AW 1/4 evidence given by Nihal Chand : AW 5/7 written statement of Nihal Chand dated 26-8-1957, AW 2/3 dated 8-10-1965, an application filed on behalf of Nihal Chand claiming 1/3rd share in this property; AS 5/6 application dated 29-7-1954 by Nihal Chand, AW 4/1 the desolation deed, AW 6/2 the copy from the entries of the register of the property tax for the years 1956 to 1961; AW 6/3 for the years 1960 to 1965; AW 6/9 for the years 1965 to 1970, in which the share of Chiranji Lal insolvent has been shown as 1/3rd. All this evidence has been relied upon by the trial court and the lower appellate court has also observed, that 'from the perusal of these documents, it is well likely clear, that these documents are only admissions of either Nihal Chand or Chiranji Lal, insolvent. The admissions, no doubt have got some evidentiary value and they are presumed to be true unless they are proved to be false and wrong'. But, subsequently, all this evidence has been brushed aside on the ground that the same is contrary to the sale deeds and the revenue record and hence has not much evidentiary value.

It was conceded that there are five sale deeds regarding the property at Item 1. Out of these, three sale deeds, i.e., Ex. OC dated 2-6-1938, Ex. OL dated 17-4-1940 and Ex. OM, dated 2-6-1935 are in favour of all the three brothers, including Chiranji Lal, insolvent, and hence 1/3rd share in the property, which is the subject-matter of these sale deeds, does not vest in the Official Receiver.

Once the admission is proved, the burden is shifted on the maker thereof to explain the circumstance under which the same was made. What a party himself admits to be true may reasonably be presumed to be so and until the presumption was rebutted the fact admitted must be taken to be established. In the present case, Nihal Chand, respondent, who appeared in the witness-box, tried to explain the said admissions by saying that in order to help him, i.e., the insolvent, Chiranji Lal, he allowed him to have 1/3rd share of the rent of this property. Various admissions made in this case are unambiguous and unequivocal. In the written reply EX. AW 5/7, filed by Nihal

Chand in these proceedings, it has been clearly admitted that the insolvent has 1/3rd share in the property. Under these circumstances, the burden of proof on the Official Receiver, if any, is fully discharged. Mere absence of entry in the revenue record in favour of persons in pursuance of the sale deeds in their favour is hardly of any consequence. Consequently, the findings of the lower appellate court on this point are set aside and that of the trial court is restored and it is held that the Official Receiver has 1/3rd share in the property at Item 1."

7. These considerations with equal force apply to Item 3.

8. In view of the discussion of various items by the High Court and the conclusion reached on the basis thereof, we entirely agree with the High Court that the admissions bind the appellants. Therefore, it is clearly established from the admission that the insolvent Chiranji Lal had 1/3rd share in these properties. Consequently, they stood vested in the Official Receiver and he is entitled to proceed further in realising the amounts to distribute to the creditors.

9. The appeal is accordingly dismissed but, in the circumstances, without costs.