

SUPREME COURT OF INDIA

Rajeswari (Dead) By Lrs

Vs.

The Official Assignee

C.A.No.6263 of 2013

(H.L.Dattu and M.Y.Eqbal JJ.)

05.08.2013

ORDER

1. Leave granted.

2. This appeal arises out of the impugned judgment and order passed by the High Court of Judicature at Madras in O.S.A.No.293 of 2005, dated 30.07.2008. By the impugned judgment and order, the High Court has rejected the prayers made by the appellant, late Smt. Rajeswari, who is now represented by her Legal Representatives in Application No.461 of 2004 in I.P.No.79 of 1972.

3. The instant case has a checkered history. One B.C. Munirathinam Naidu had filed an Insolvency Petition No.79 of 1972 before the Trial Court under the provisions of the Presidency Towns Insolvent Act of 1909 (for short 'the Act'). The aforesaid proceedings reached up to this Court in a Special Leave Petition in I.A.No.2646 of 1979. This Court, vide its order dated 29.03.1982 had disposed of the application and directed that the property of the insolvent could be sold and the creditors be paid out of the sale proceeds. The orders so passed by this Court was accepted by the parties concerned.

4. The High Court, pursuant to the orders of this court dated 29.03.1982 in I.A.No.2646 of 1979, had appointed an Advocate Commissioner and directed the Commissioner to furnish the list of persons who are in occupation of the vast extent of the properties owned by insolvent B.C. Munirathinam Naidu. Unfortunately, the name of the appellant was not reflected in the list prepared by the Advocate Commissioner.

5. After the inspection by the Advocate Commissioner, the Official Assignee of the Court had inspected the site and produced the list before the High Court and in the said list, the name of the appellant did find a place and was reflected at Serial No. 145.

6. Subsequently, the Official Assignee once again inspected the site on 18.08.1994 and gave the list of persons who are actually in possession of the properties owned by the insolvent B.C. Munirathinam Naidu. In the said list, the name of the appellant was at Serial No. 136.

7. The Division Bench of the Madras High Court, in its order dated 24.08.1994 was pleased to accept the report of the Official Assignee and thereafter had passed the order directing the Official Assignee to issue demand notices to the persons whose names find a place in the list submitted by him and after collecting the value of the site, execute the sale deed in favour of those persons. In fact, the Official Assignee by demand notice dated 27.09.1994 directed the appellant to deposit a sum of Rs.8,311/-. After receipt of the said demand notice, the appellant has deposited the amount as demanded by the Official Assignee.

8. In spite of long lapse of time, the Official Assignee had not executed the sale deed in favour of the appellant which prompted the appellant to approach the High Court by filing Application No.461 of 2004 in I.P.No.79 of 1972. The said application was rejected by the learned Single Judge as well as by the Division Bench of High Court of Madras. Aggrieved by the orders of the High Court, the appellant (through L.Rs.) is before us in this Civil Appeal.

9. We have heard Shri K.K.Mani, learned counsel for the appellants and Shri P.B. Suresh, learned counsel for the respondent-Official Assignee.

10. The facts more or less are not in dispute. The only dispute appears to be is that the appellant's name did not find a place in the list prepared by the Advocate Commissioner but was reflected in the report submitted by the Official Assignee, not once but twice. In our view, the High Court ought not to have given much importance to the report of the Advocate Commissioner, since the Official Assignee had made joint inspection of the property in dispute and had found that the appellant is in actual possession of the property and therefore should have directed the Official Assignee to execute the sale deed in favour of the appellant. Since that has not been done by the High Court, in our opinion, the judgment and order passed by the High Court cannot be sustained.

11. In the result, we allow this appeal and set aside the impugned judgment and order passed by the High Court. We now direct the Official Assignee to execute the sale deed in favour of the legal representatives of the appellant - late Smt.Rajeswari, as expeditiously as possible, at any rate, within two months' time from the date of receipt of a copy of this order.

12. The Civil Appeal is disposed of accordingly. No costs.

Ordered accordingly.