

PETITIONER:
JAGANNATH

Vs.

RESPONDENT:
SHRI YUGAL NARAIN PUROHIT, ADV. & ORS.

DATE OF JUDGMENT: 19/12/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

This appeal by special leave arises from the judgement of the Division bench of the Rajasthan High Court, made on November 15, 1983 in special appeal no. 18/81. The respondent had purchased the property from Bhadaarmal on May 17, 1958. Subsequently, the vender was declared insolvent. Therefore, when the proceeding were sought to be taken in respect of those properties, the appellant filed an application to declare the transfer of the lands made in favour of the respondent under Section 53 of the Provincial Insolvency Act to be a fraudulent one. All the courts have concurrently found, as a fact, that the sale transaction under Ex-A1 is a bona fide sale for valuable consideration executed in good faith and, therefore, the sale was not executed to defraud the creditors.

Shri B.D. Sharma, learned counsel for the appellant, contends that the respondent is no other than a practicing advocate. He having obtained the sale deed, could not get physical possession of the property. Had he taken the physical possession, the things would have been different. In an appeal filed by the insolvent himself, the High Court had stayed delivery of the possession subject to payment of rent. The finding that the possession was taken, thereby, is vitiated by error of law. These facts have not been properly considered by the courts below in reaching that conclusion. We find no force in the contention.

Admittedly, Ex. A-1, sale-deed makes a clear recital that the possession of the property sold thereunder was delivered to the vendee-respondent. The learned single judge of the High Court after elaborate consideration of the evidence recorded thus:

"There is recital in the sale-deed (Ex. A1) that the possession of the apartments which were in possession of the transferor, have been delivered to the transferor, have been delivered to the transferee. Relying on the testimony of D.W.1 Yugalnarain, which supports the recital made in the sale deed (Ex.

A1), I hold that the possession as mentioned in the sale-deed (Ex.A1) in pursuance of it was delivered to the transferees. The inference that can safely be drawn from the evidence and broad facts emerging therefrom is that the official receiver has not succeeded in establishing want of good faith on the part of respondent No.1. As the Official Receiver has failed to discharge the burden which lay on him, I agree with the learned district judge when he found that issue No.1 has not been proved. It cannot be said that the sale-deed (Ex.A1) was not for valuable consideration and in good faith, I hold that the Official Receiver is not entitled to avoid the voluntary transfer of sale made by Bhadarmal in favour of Yugalnarain. The sale, evidenced by Ex.A1, is not voidable against the official Receiver and it cannot be annulled."

This is a finding based on appreciation of evidence recorded by the learned single judge. The Division Bench, therefore, was right in its conclusion that "there is a concurrent finding of fact that the impugned transaction is a real one and with consideration". The trial court held that the sale was made for valuable consideration and in good faith. This finding was upheld by the learned single Judge. In this view, it being a finding of fact based on appreciation of evidence, we do not find any substantial question of law of public importance warranting interference. Even the contention raised by the learned counsel was in a fact considered by the learned single judge and also the trial court. The direction to the vender to pay rent would be in recognition of the title of the respondent as landlord and vender as tenant in occupation. Though a different conclusion could be reached, but that would not be a ground for this court to interfere under article 136.

The appeal is accordingly dismissed. No costs.