

**IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE :
KAKINADA**

Present: **Sri B.Srinivasu**
I Additional Senior Civil Judge, Kakinada

Friday, this the 19th day of December, 2024

I.P.NO.24/2022

Between:

Sathi Saibaba Reddy, S/o.Sura Reddy, aged 43 years, Business, D.No.1-93/1, R/o.G.Mamidada, Near Venkateswara Swami Temple, Pedapudi, Kakinada District, KSCJ.

...Petitioner

And:

1. Vakacharla Veera Babu, S/o.Venkata Raju, aged 59 years, D.No.7-3-13, Prakasam Street Ramarao Peta, Kakinada, Kakinada District.
2. Gollapudi Janardhana Rao, S/o.Satyanarayana, aged 64 years, D.No.26-5-9, Opposite Usha Company Ganjam Vari Street, Kakinada, Kakinada District, KSCJ.

...Respondents

This petition has come before me on 09.12.2024 for hearing in the presence of Smt.S.Ganga Devi, Advocate for the petitioner and of Sri K.V.S.V. Lakshmajirao, Advocate for respondent No.2, the respondent No.1 had chosen to set exparte. Upon perusing the material on record, hearing arguments and having considered the matter till this day, this court delivered the following:

ORDER

1. Petitioner filed this petition under sections 6 and 9 of Provincial Insolvency Act praying this court to declare the 1st respondent as insolvent and to declare the sale by 1st respondent in favour of 2nd respondent on 05.09.2022 under document No.11459/2022 is sham, nominal and to annul the said sale deed and to vest the petition schedule property with the official receiver of Rajamahendravaram to sell the same to discharge the pronote

amount with interest to the petitioner and for costs.

2. The brief facts of the petition are that

the petitioner is filed this petition to declare the 1st respondent as insolvent and the sale of the schedule property by 1st respondent in favour of the 2nd respondent is null and void and to annul the sale deed dated 05.09.2022 and to appoint official receiver to take possession of petition schedule property and to sell the same for realization of the debt of the petitioner. The 1st respondent borrowed an amount of Rs.6,00,000/- on 01.12.2019 from the petitioner to meet family expenses and to discharge sundry debts agreeing to repay the same with interest at 24% per annum either to the petitioner or his order and executed the promissory note in favour of the petitioner. Subsequently the petitioner demanded the 1st respondent to pay the pronote amount with interest thereon but the 1st respondent failed to discharge the debt. The 1st respondent is having only the petition schedule property and except the petition schedule property the 1st respondent has no movable and immovable properties. To avoid the debt of the petitioner the 1st respondent sold the petition schedule property to the 2nd respondent by colluding with him on 05.09.2022 under document No.11409/2022. It is a sham and nominal document and never acted upon. Recently the petitioner came to know about the sale of the property by 1st respondent in favour of the 2nd respondent and immediately obtained the registration extract of sale deed. On verification of the sale deed the petitioner came to know that the respondents 1 and 2 colluded together and

created the sale deed for lesser amount of Rs.31,20,000/-. Even after the receipt of the sale consideration the 1st respondent, failed to discharge the pronote amount due to the petitioner and the 1st respondent secreted about the sale. Since the 1st respondent have no other properties and to avoid the debt of the petitioner sold the schedule property to the 2nd respondent, thus the 1st respondent committed acts of insolvency. So the 1st respondent has to be declared as insolvent. After coming to know about the sale, the petitioner got issued notice to the respondents calling upon them to pay the pronote amount. The 1st respondent avoided to receive the said notice and the 2nd respondent received the notice but failed to pay the pronote amount. The petitioner therefore filed this petition to declare the 1st respondent as insolvent and to annul the sale deed dated 05.09.2022 under document No.11409/2022 and to vest the petition schedule property with Official Receiver, Rajamahendravarm and to sell the property for realization of the pronote amount of petitioner. Hence, the petition.

3. After receiving notice, the respondent No.2 filed counter denying the allegations mentioned in the petition. He further contended that he is a bonafide purchaser for a valuable consideration of the property and the respondent purchased the property for prevailing the then market rate and after paying full sale consideration only the respondent No.1 registered the sale deed in the name of respondent and put him in possession of the property and since the date of purchase of the property, he is in peaceful possession and enjoyment of the same. After filing of this petition he made

enquires and came to know that the petitioner is henchmen of 1st respondent and that the 1st respondent though the petitioner got fabricated the anti dated petition listed documents i.e., alleged promissory note and notice etc. and filed the present petition only with a view to defeat the rights of him over the petition schedule property that was purchased by him. The alleged pronote transaction is nothing but a creation of the 1st respondent in collusion with the petitioner and the petitioner is not having such a financial capacity to lend huge amount of Rs.6,00,000/- more particularly by way of cash to the 1st respondent as alleged. He purchased the schedule property covered under the sale deed dated 05.09.2022 vide document No.11459/2022 is the true and genuine transaction and all the amounts are paid through discharge of mortgage debt of 1st respondent with Kakinada cooperative town bank to a tune of Rs.31,20,000/- therefore he is a bona fide purchaser for a valuable consideration and the sale transaction is not hit by any insolvency proceedings. Thus he is having subrogation rights over the petition schedule property and that this IP is not maintainable against him valuable properties in their hold and he is the person behind the screen in filing the present petition collusion with the petitioner to defeat the rights of this respondent by one way or other. Hence he prays to dismiss the petition.

4. During the course of enquiry, the petitioner examined as PW1 and PW2 also examined and Exs.P1 to P6 are marked. On behalf of the respondents, respondent No.2 is examined as RW1 and RW2 also examined and Ex.R1 is marked.

5. Heard arguments of both counsel.

6. Now the point for consideration is:

Whether the 1st respondent can be declared as insolvent and the registered sale deed dated 05.09.2022 is liable to be declared as annulled?

POINT :

7. In order to prove the case of the petitioner, petitioner is examined as PW1, he filed his chief affidavit, in his chief examination he reiterated the entire contents of the petition. As per his evidence on 01.12.2019 the 1st respondent borrowed an amount of Rs.6,00,000/- from him by executing Ex.P1 promissory note in his favour subsequently inspite of repeated demands the respondent No.1 failed to pay the debt amount. Respondent is having only the petition schedule property, except the petition schedule property 1st respondent has no movable or immovable properties to avoid his debt the 1st respondent sold away the petition schedule property to the 2nd respondent on 05.09.2022 under a document No.11409/22. Recently he came to know about the execution of the said document in favour of the 2nd respondent, immediately he obtained the registration extract of the same, even after receiving sale consideration the 1st respondent failed to discharge debt amount, the 1st respondent has no other properties except the schedule property, to avoid the debt, 1st respondent sold away the schedule property to the 2nd respondent, as such the 1st respondent committed an act of insolvency. After came to know about the sale, he got issued notice to the respondents calling upon them to pay the pronote amount, the 1st respondent

awaited to receive the said notice, 2nd respondent received the notice but failed to pay the debt amount, hence he filed this petition.

8. He further deposed that he filed OS. 1136/2022 on the file of II Additional Junior Civil Judge, Kakinada against the 1st respondent to pass a decree for recovery of the suit amount and the same is decreed on 10.05.2024. The 1st respondent is remained exparte, the 2nd respondent is contesting in the petition, the 1st respondent colluded with the 2nd respondent and fabricated sale deed dated 05.09.2022, hence he filed this petition to declare the 1st respondent as insolvent and to annul the sale deed dated 05.09.2022 under document No.11409/2022. He also filed the Ex.P1 certified copy of promissory note dated 01.12.02019 executed by the respondent No.1 in his favour, Ex.P2 certified copy of the sale deed dated 05.09.2022 executed by respondent No.1 in favour of respondent No.2, Ex.P3 office copy of the legal notice dated 29.10.2022 issued by him through his counsel to the respondents 1 and 2, he also filed the Exs.P5 and P6 Judgment and Decree passed in OS.1136/2022 on the file of II Additional Junior Civil Judge, Kakinada in his favour and against the respondent No.1, but in his cross examination he clearly admitted that he is not disputing the contents in Ex.P2 registered sale deed executed by respondent No.1 in favour of respondent No.2, respondent No.2 is no way concerned with the Ex.P1 transaction directly or indirectly, prior to filing of this petition, after filing of this petition, he did not consult the respondent No.2, he does not know the complete details of Ex.P2. He also admitted that in Ex.P2 it is mentioned that an

amount of Rs.10,00,000/- was paid through the online transaction to the account of respondent No.1 and the remaining amount of Rs.20,00,000/- was also transferred to the account of respondent No.1, there is no cash transaction under Ex.P2. Prior to filing of this petition or after filing of this petition, he did not approach the respondent No.1, he does not know whether respondent No.1 is the bonafide purchaser for valuable consideration under Ex.P2 or not. PW2 is the one of the attestors of the promissory note dated 01.12.2019. He supported the case of the PW1 by stating that on 01.12.2019 the 1st respondent borrowed an amount of Rs.6,00,000/- from the petitioner by executing a promissory note, he along with one Rajesh are acted as attestors in the said promissory note, one K.Sadgurnath Reddy is the scribe of the said promissory note.

9. Even though the evidence of the PW1 and Ex.P1 shows that there is creditor and debtor relationship between the petitioner and 1st respondent, but the petitioner should prove that respondent No.1 has more debts than their assets and to defraud their creditors, respondent No.1 sold away his properties. But in this case there is no pleading of the petitioner that the petitioner has more debts than his credits, to defeat or defraud the interest of the petitioner, respondent No.1 sold away the schedule property to the respondent No.2. It is not the case of the petitioner that respondent No.1 sold away the schedule property for under value to the respondent No.1 or there is no consideration passed to the respondent No.1 under the said document. Moreover the cross examination of PW1 is clearly shows that he

did not dispute the contents of the Ex.P2 sale deed executed by the respondent No.1 in favour of respondent No.2, he does not know the complete details of Ex.P2.

10. As per section 6 of Provincial Insolvency Act to get declare any person as an insolvent based on the petition filed by the creditor, a creditor has to prove the relationship with the 1st respondent as a debtor and he also prove that respondent has more debts than what he had and the properties held by him are insufficient in value to liquidate the debts. In this case as per the admission made by the PW1 in his cross examination he did not conduct any enquire about the properties of respondent No.1 prior to lending money to the respondent No.1. Moreover as on the date of filing of this petition no decree is passed in OS.1136/2022 by the II Additional Junior Civil Judge Court, Kakinada in his favour.

11. On the other hand in order to disprove the case of respondent No.2, respondent No.2 is examined as RW1, he filed his chief affidavit, in his chief examination he reiterated the entire contents of the counter. He further deposed that he is a bonafide purchaser, he purchased the schedule property for valuable consideration after paying full consideration to the respondent No.1 and got registered the sale deed dated 05.09.2022 under document No.11459/2022 in his favour and since then he is possession and enjoyment of the same. Before purchasing the schedule property he made enquires about the encumbrance and obtained Ex.R1 encumbrance certificate from the Sub-Registrar Office, Kakinada, after verifying the debts of the 1st respondent

he purchased the schedule property for a valuable consideration. He further deposed that after filing this petition he made enquires and came to know that petitioner is a henchmen of 1st respondent and the 1st respondent through the petitioner got fabricated anti dated alleged promissory note and filed this petition with a view to defeat his rights over the petition schedule property which is purchased by him, the alleged promissory note transaction is nothing but the creation of the 1st respondent by colluding with the petitioner and the petitioner has no financial capacity to lend huge money to the respondent No.1. The schedule property covered under sale deed dated 05.09.2022 is true and genuine and all the amounts are paid by him to discharge the mortgage debt of the 1st respondent with Kakinada Cooperative Town Bank for a tune of Rs.31,20,000/-. As such he is having subrogation rights over the petition schedule property, the 1st respondent is also having both movable and immovable properties hence this petition is not maintainable.

12. RW2 is the son of the RW1/2nd respondent. He also supported the entire evidence of the RW1 by stating that RW1/respondent No.2 is a bonafide purchaser, respondent No.2 purchased the schedule property for valuable consideration after paying full consideration to the respondent No.1 and got registered the sale deed dated 05.09.2022 under document No.11409/22 in his favour and since then respondent No.2 is in possession and enjoyment of the same. He further deposed that before purchasing the schedule property respondent No.2 made enquires about the encumbrance

and obtained Ex.R1 encumbrance certificate from the Sub-Registrar Office, Kakinada, after verifying the debts of the 1st respondent, respondent No.2 purchased the schedule property for a valuable consideration. He further deposed that after filing this petition, respondent No.2 made enquires and came to know that petitioner is a henchmen of 1st respondent and the 1st respondent through the petitioner got fabricated anti dated alleged promissory note and filed this petition with a view to defeat the right of his father in the petition schedule property which is purchased by respondent No.2, the alleged promissory note transaction is nothing but the creation of the 1st respondent by colluding with the petitioner and the petitioner has no financial capacity to lend huge money to the respondent No.1, the schedule property covered under sale deed dated 05.09.2022 is true and genuine and all the amounts are paid by his father to discharge the mortgage debt of the 1st respondent with Kakinada Cooperative Town Bank for a tune of Rs.31,20,000/-. As such he is having subrogation rights over the petition schedule property, the 1st respondent is also having both movable and immovable properties hence this petition is not maintainable.

13. Hence the evidence of the PW1 and the contents of the petition clearly shows that in this petition or in his chief affidavit he contended that with an intention to defeat or defraud the interest of the creditors respondent No.1 sold away the schedule property to the respondent No.2 in his evidence also simply he deposed that he came to know that respondents 1 and 2 colluded together and created sale deed dated 05.09.2022 for lesser amount

of Rs.31,20,000/-, the respondent No.1 has no other properties, to avoid his debt, respondent No.1 sold away the schedule property to respondent No.2 for under value and to avoid his debt respondent No.1 executed the sham and nominal document in favour of respondent No.2, hence he issued notice to the respondent Nos.1 and 2, respondent No.1 did not receive the same, respondent No.2 received the notice and failed to pay the pronote amount hence he filed this petition but petitioner did not file any document to show that respondent No.1 sold the schedule property to the respondent No.2 for under value. More over the cross examination of PW1 is clearly shows that he did not conduct any enquire with regard to properties of respondent No.1 whether he has any immovable properties or not. The contents of Ex.P2 shows that respondent No.1 received consideration amount through the online transaction to his account, after paying the debt amount to the bank of respondent No.1, respondent No.1 executed Ex.P2 in favour of respondent No.2. Moreover Ex.P6 Judgment and decree passed by the II Additional Junior Civil Judge, Kakinada shows that it was passed on 10.05.2024 i.e., after filing this petition, as on the date of filing of this petition no decree is passed in favour of the petitioner. It is not the case of the petitioner that respondent is indebted to several persons, except the schedule property the respondent No.1 has no other properties and to defeat and defraud their interest the petitioner executed the registered sale deed for the schedule property in favour of respondent No.2. Hence it shows that respondent No.2 is the bonafide purchaser, purchased the schedule property for valuable

consideration.

14. Section 6 [(1)] A debtor commits an act of insolvency in each of the following cases:

(a) if, in the (the provinces) or elsewhere, he makes a transfer of all or substantially all his property to a third person for the benefit of his creditors generally;

(b) if, in (the provinces) or elsewhere he makes a transfer of his property or of any part thereof with intent to defeat or delay his creditors;

(c)) if, in (the provinces) or elsewhere he makes any transfer of his property, or of any part thereof, which would, under this or any other enactment for the time being in force, be void as fraudulent preference if he were adjudged an insolvent;

(d) if, with intent to defeat or delay his creditors, (i) he departs or remains out of provinces, (ii) he departs from his dwelling-house or usual place of business or otherwise absents himself, (iii) he secludes himself so as to deprive his creditors of the means of communicating with him;

15. In the presence case the evidence of the PWs.1 and 2 shows that there is a creditor and debtor relationship between the petitioner and respondents but in the petition or in his chief examination there is no pleading of the petitioner that with an intend to defeat or defraud his interest the respondent No.1 executed Ex.P6 in favour of respondent No.2. It is not the case of the petitioner that except the schedule property there are no other properties to the respondent No.1. Moreover as on the date of filing of

this petition no decree is passed in favour of the petitioner against the respondent No.1. Even though petitioner filed Ex.P6 Judgment and Decree passed by the II Additional Junior Civil Judge, Kakinada in OS.1136/2022 shows that a decree was passed in favour of the petitioner, but it shows that this petition is filed in the year 2022, the said decree is passed on 10.05.2024 i.e., two years after filing of this petition the said decree is passed in his favour. Hence it shows that as on the date of the filing of this petition no decree is passed in his favour.

16. The counsel for the respondent also relied upon the following authorities :

1) The Judgment of the Hon'ble High Court of Judicature A.P at Hyderabad between the **Bachu Srinivasa Rao vs. Yerramsetti Saraswatamma and others reported in 2011 (4) ALT 119** para Nos.15 and 16 by stating that petition though filed under section 6(1)(a) no pleading to that effect that debtor/respondent No.1 transferred property to a third party for benefit of his creditors generally, in the absence of such pleadings, any amount of evidence cannot be looked into.

Para No.15 : From a reading of the above provision it is clear that if the allegation is that the debtor transferred his property or of any part thereof, with intent to defeat or delay his creditors, the same falls under **clause (b) of sub section (1) of Section 6**. Though the petitioner has filed the petition under Section 6(1)(a) of the Act, there are no pleadings to that effect that he transferred the property to a

third party for the benefit of his creditors generally, curiously, both the courts found that the transfer under Ex.A-1 is an act of insolvency as defined under Section 6(1)(a) of the Act, because, admittedly R.W.1 sold the property and discharged some debts only, but she did not sell the property for the benefit of all his creditors generally. In the absence of pleadings, any amount of evidence cannot be looked into. Hence, in view of the averments of the petitioner with regard to intention of the debtor to delay and defraud the creditors, it is expedient to look into the material on record to see whether the said ingredient is proved based on evidence, to declare the debtor as 'insolvent'. This court in [Sanjeevi Reddy v. Ellappa Reddy](#) (1 supra), while considering **clauses (b) and (c) of sub section 1 of Section 6**, held as under:

"5. . .A careful reading of the Section, particularly the above said two provisions, would reveal that the Section is exhaustive with regard to what constitutes an act of insolvency. It is therefore plain that nothing can be considered as an act of insolvency unless it can be brought under one or the other clauses of Section 6. Adjudging a person as insolvent results in bringing about serious consequences. It becomes therefore necessary to take particular care to see that the provision of law is observed strictly and correctly applied. The Section discloses that the condition precedent to adjudicate a debtor insolvent on the petition of a creditor is that the debtor must have committed one or the other of the acts of insolvency set out in Section 6. It is,

therefore, necessary before he is adjudicated an insolvent that the facts alleged must constitute an act of insolvency within the meaning of Section 6."

Para No.16: In view of the above provision and the law laid down by this court, it is necessary to examine whether the creditor could prove his averments with regard to the intention of the debtor to delay and defraud the creditor and whether the acts complained, would result in declaring the debtor as insolvent?

In this case also there is no pleading and also there is no evidence that to delay and defraud the petitioner and other creditors R1 executed a registered sale deed in favour of R2 and thereby committed act of insolvency.

2) The Judgment of the Hon'ble High Court of Judicature A.P at Hyderabad between the **Gunapati Radha Krishna Reddy vs. Cheemala Venkata Ramana and others reported in 2010 (3) ALD 721** para Nos.6, 8 and 10 by stating that creditor cannot institute proceedings under section 9 in the absence of any adjudication as to debts or unequivocal admission thereof by a person proposed to be declared as insolvent.

Para No.6 : The I.P. filed by a creditor under Section 9 of the Act, however, stands on a different footing. Before he invokes the jurisdiction of the insolvency Court, there must exist the adjudication of the debt or the debts, vis-a-vis the proposed insolvent in his favour. That can be in the form of a decree passed by the competent Court of civil jurisdiction or an unequivocal declaration on the part of the

proposed insolvent, before the proceedings are instituted. To put it differently, a creditor cannot institute proceedings under Section 9 of the Act, in the absence of any adjudication, as to the debts, or unequivocal admission thereof, by a person proposed to be declared as insolvent.

Para No.8 : The jurisdiction of an insolvency Court is delineated under Section 4 of the Act. It empowers the Court to adjudicate the disputes, as to title in relation to the property, which is sought to be proceeded against. Section 4 of the Act reads as under:

“Power of Court to decide all questions arising in insolvency:—(1) Subject to the provisions of this Act, the Court shall have full power to decide all questions whether of title or priority, or of any nature whatsoever, and whether involving matters of law or of fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

(2) Subject to the provisions of this Act and notwithstanding anything contained in any other law for the time being in force, every such decision shall be final and binding for all purposes as between, on the one hand, the debtor and the persons claiming through or under them or any of them.

(3) Where the Court does not deem it expedient or necessary to

decide any question of the nature referred to in subsection (1), but has reason to believe that the debtor has a saleable interest in any property, the Court may without further inquiry sell such interest in such manner and subject to such conditions as it may think fit.”

Nowhere from the text of the Section, it is evident that the insolvency Court is conferred with the power to determine the liability of a proposed insolvent towards the creditor. Such an adjudication is supposed to exist before the proceedings under the Act are initiated.

Para No.10. Secondly, the necessity for the petitioner to seek declaration that the 1st respondent is an insolvent would have arisen, if only he made an effort to recover the amount due to him and the properties available with the 1st respondent were found to be inadequate. In his counter, the 1st respondent stated that he holds several movable and immovable properties. Filing of an Insolvency Petition cannot be a maiden effort on the part of a proclaimed creditor. An individual would answer the definition of creditor, if only the person against whom he claims rights was declared as debtor. This naturally must take place in a different set of proceedings and not in the LP. itself.

In this case also evidence of the PW1 is clearly shows that prior to filing of this petition no decree is passed by the II Additional Junior Civil Judge, Kakinada against the respondent No.1 and it is not the case of the petitioner

that he made efforts to recover the amount due to him and the properties available with the 1st respondent were found to be inadequate. Even he did not conduct any enquiry whether the R1 has any other immovable properties are not.

3) The Judgment of the Hon'ble High Court of Judicature A.P at Hyderabad between the **Gutta Nirmala vs. Gutta Nageswara Rao and others reported in 2011 (5) ALD 498** para No.21 by stating that when there is no specific pleading and assertion of insolvency petition being that sale was only to delay and defeat debt due to the petitioner, the said transaction does not constitute an act of insolvency.

Para No.21 : In the case on hand, the transfer of his property by Nageswar Rao in favour of Prapoorna under Ex.A.1 sale deed does not fall within the provisions of Section 6(1)(b) of the Act, since it is not a transfer with intent to defeat or delay the whole body of creditors. The lower appellate Court while observing that the sale proceeds under Ex.A.1 could not have been employed by Nageswar Rao to discharge the debt of State Bank of India, alternatively observed that even if the State Bank of India's debt was discharged from out of the sale proceeds under Ex.A.1, the same would amount to an act of preference. Since the transaction is neither pleaded nor established to have been with an intention to defeat or delay the whole body of Nageswar Rao's creditors and since the specific pleading and assertion of the insolvency petitioner was that the sale under Ex.A.1 was only to delay and defeat the debt due by Nageswar Rao to her, the claim per se falls outside the purview of Section 6(1)(b) of the Act in view of the decision of this Court in Pydimarri Venkateshwarlu (3 supra). The transaction is also outside the purview of Section 6 (1)(c) read with Section 54 of the Act

since the sale under Ex.A.1 is not in favour of a creditor, Prapoorna admittedly not being a creditor of Nageshwar Rao, as held in Sanjeeva Reddy and Pydimarri Venkateswarlu (4 and 3 supra).

In this case also there is no specific pleadings in the petition or there is no specific pleadings and assertion of the insolvency petition that the sale under Ex.P2 does only to delay and defeat the debt due to the petitioner.

4) The Judgment of the Hon'ble High Court of A.P at Amaravathi between the **Chavana Rajendra Prasad vs. Orchu Jagannadam and others reported in 2024 Supreme AP 461** para No.29 by stating that there must be prior adjudication of the debtor before declaring a debtor insolvent and the creditor must obtained a Judgment on the debtor before initiating insolvency proceedings under section 9 of the Provincial Insolvency Act as act requires clear proof of indebttness.

Para No. 29: In the instant case, by the date of filing petition seeking annulment under section 53 or 54 of the Act of 1920, respondent Nos.1 and 2 were not even adjudged as insolvents. So, the first condition was not satisfied. The petitioner did not approach Official Receiver and proved his debt as contemplated under Part-III of the Act of 1920 and did not comply with Section 54-A of the Act of 1920. Therefore, the order of annulling Ex.A3 sale deed dated 26.07.2001 and Ex.A4 sale deed dated 01.08.2001 passed by the trial court is erroneous ex facie and contrary to the provisions of the Act of 1920. Hence, the order of the trial court annulling Exs.A3 and A4 is illegal and the same is liable

to be set aside. Therefore, I find that the appellate Court did commit no error in reversing the finding of the trial Court. Hence, I find no ground to interfere with the finding recorded by the appellate Court. Accordingly, the finding of the appellate Court is hereby confirmed holding this point in favour of respondent Nos.3 and 4 and against the petitioner."

In this case also as on the date of filing of this petition there is no adjudication in favour of the petitioner with regard to debts of the respondent No.1 and the annulment of document arise after the debt must be adjudged as insolvent and after showing his debt and the creditor should prove his debt. By following the procedure contemplated under part 3 of the Act. The petitioner cannot seek simultaneous relief under section 53 and 54 for annulment of document without filing a petition by the official receiver under section 54 A of the insolvency Act.

17. Hence the evidence of the PW1, PW2, Rws.1 and 2 and other material available on the record shows that the petitioner failed to prove that with an intention to defeat or defraud his interest the respondent No.1 executed Ex.P2 in favour of respondent No.2 as on the date of filing of this petition there is no adjudication in favour of the petitioner to show that the respondent No.1 was indebted to him. Petitioner also failed to prove that except the petition schedule property the respondent No.1 has no other properties and to defeat or defraud his interest, respondent No.1 alienated the same in favour of respondent No.2. Accordingly this point is answered.

18. In the result, this petition is dismissed without costs.

Typed to my dictation by the Stenographer Grade-III, corrected and pronounced by me, this the 19th day of December, 2024.

Sd/- B.Srinivasu
I ADDITIONAL SENIOR CIVIL JUDGE,
KAKINADA.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

FOR PETITIONER:

P.W.1 : Sathi Saibaba Reddy
P.W.2 : Padala Srinivasa Reddy

FOR RESPONDENTS:

R.W.1 : Gollapudi Janardhana Rao
R.W.2 : Gollapudi Veera Venkata Naga Satya Ganeshkumar

DOCUMENTS MARKED

FOR PETITIONER:

Ex.P1: Certified copy of the promissory note date 01.12.2019 executed by R1 in favour of petitioner.
Ex.P2: Certified copy of the sale deed dated 05.09.2022 executed by R1 in favour of R2.
Ex.P3: Office copy of the legal notice dated 29.10.2022 got issued by petitioner through his counsel to R1 and R2.
Ex.P4: Postal acknowledgment received from the 2nd respondent.
Ex.P5: Certified copy of the judgment in O.S.No.1136/2022 passed by the II Addl. Junior Civil Judge, Kakinada dated 10.05.2024.
Ex.P6: Certified copy of the Decree in O.S.No.1136/2022 passed by the II Addl. Junior Civil Judge, Kakinada dated 10.05.2024.

FOR RESPONDENTS:

Ex.R.1 : Certified copy of the encumbrance certificate dated 17.08.2022 issued by the District Registrar, Kakinada.

Id/- B.S
I.A.S.C.J.,
KAKINADA