

(1960) 02 MAD CK 0034
In the Madras High Court

A.B. Palani

APPELLANT

Vs

K.P. Ramaswami Mudaliar and Co., by K.P. Kolandiappa
Mudaliar and Others

RESPONDENT

Date of Decision : 17-02-1960

Acts Referred:

Citation : (1960) ILR (Mad) 1072 : (1960) 73 LW 450 : (1960) 2 MLJ 361

Hon'ble Judges : Rajamannar, C.J

Bench : Single Bench

Judgement

Rajamannar, C.J.—These two appeals arise out of a petition filed by one K.P. Ramaswami Mudaliar & Co., the contesting respondent before us, to adjudicate Venkataramanjulu Chetty insolvent. The petition was filed on 27th March, 1958. To that petition, as the rules stood at the time, only the debtor was made a party. It was alleged that the debtor had sold away his only available property, No. 40, Rottikara Thiruvengada Mudali Street, Choolai, for Rs. 25,000 on 7th March, 1958 and that the alienation was fraudulent and intended to defeat and delay creditors including the petitioning creditor. On 30th June, 1958, an application was taken out by the petitioning creditor for the addition of the alienee under the sale-deed as a party respondent and for setting aside the sale in his favour. Notice went on this application to the alienee Palani Mudaliar who raised the objection that he was not liable to be added as respondent because three months had elapsed since the date of the alienation in his favour and hence it could not be attacked in the pending insolvency petition. Subrahmanyam, J., who was the Judge sitting in insolvency over ruled the objection and directed that the alienee be added as a party-respondent. He also allowed the insolvency petition to be amended to bring out clearly what was already contained in the original insolvency petition, viz., the allegation that the alienation in favour of Palani Mudaliar was an act of insolvency. The learned Judge was of opinion that the application, dated 30th June, 1958, which prayed that the alienee may be added as a party, implied a request to the Court to order notice to the alienee and the prescribed rule in force at the time would

substantially be satisfied. That Rule is Rule 6-A of Order 3 of the Presidency-Towns Insolvency Rules, Madras, before 1st July, 1958 and ran thus:

When a petition alleges as an act of insolvency that any transfer by the debtor comes within the meaning of Clauses (a), (b) or (c) of Section 9 of the Act, notice of the petition shall be taken to the transferee under the transfer which is impeached.

The Insolvency Rules were revised and the revised rules came into force on and from 1st July, 1958. It is now provided in these rules that where a petition alleges as an act of insolvency a transfer by a debtor, the transferee should be impeached as a respondent to the petition. It is, therefore, clear that as the rule now stands the alienee should be made *eo nomine* a respondent and that is what the petitioning creditor sought by his application referred to above. O.S. Appeal No. 51 of 1959, is from this order of Subrahmanyam, J.

2. There was another application made by the petitioning-creditor, Application No. 14 of 1959, for permitting the petitioner to carry out the amendments in the petition. This petition related to the alienation in favour of the appellant. This application was disposed of by Rajagopala Ayyangar, J. As the learned Judge observed, and with respect we say rightly, this application is complementary to the previous application which had been ordered by Subrahmanyam, J. Again the alienee objected on the ground that more than three months had elapsed since the date of the alienation in his favour before the date on which he had been served with notice in the prior application, and *ex hypothesi* before the second application was taken out. The learned Judge felt himself bound by the order of Subrahmanyam, J., and further added that the difference between the old Rule 6-A and the present Rule 9 was merely procedural and when there is an order permitting the petitioning creditor to serve notice on the alienee, it logically follows that the petitioning creditor is entitled to an order formally impleading the alienee, to comply with the rules of 1958. The learned Judge accordingly ordered the application and permitted the amendment to be carried out. Against this order O.S., Appeal No. 52 of 1959 has been filed.

3. The main contention of Mr. K. Kuppuswami, learned Counsel appearing for the appellant in the two appeals, was that on the expiry of three months from the alienation made by the debtor, it could not be attacked in any petition for adjudicate ion of the debtor, though the insolvency petition itself was filed within three months from the date of the alienation, unless notice of such an application was served on the alienee before the expiry of three months. learned Counsel was unable to cite any authority for this position which we have no hesitation in holding is untenable. As the rule stood before 1st July, 1958, in an insolvency petition by a petitioning creditor, the only respondent contemplated is the debtor. But if an act of insolvency had been alleged in the petition, say an alienation, it was provided that notice should go to the alienee (Rule 6-A) of the insolvency petition, but the petition itself should only be deemed to be a petition against the debtor. Because the alienation was being attacked, notice was provided to enable

the alienee, whose rights may be affected by any adverse decision of the Insolvency Court, to appear and plead his cause. Once the insolvency petition has been filed in time, we are not concerned with the subsequent dates on which notice of the petition is served on the alienees and other parties interested. Delays may occur over which the petitioning creditor may have no control and it surely cannot be said that because of delays in Court notice is not actually served on the alienee within three months of the expiry of the date of the alienation in his favour, he completely escapes from an attack on the validity of the sale in his favour. We agree with Subrahmanyam, J., and Rajagopala Ayyangar, J., that the appellant has no technical objection which can prevail. The appeals must, therefore, be dismissed.

4. It is not disputed that the appellant will be entitled to defend the alienation in his favour on the merits. He has really, therefore, no grievance.

5. There will be no order as to costs.