
(1942) 08 MAD CK 0030
In the Madras High Court

Angadi Masumayya

APPELLANT

Vs

The Official Receiver

RESPONDENT

Date of Decision : 07-08-1942

Acts Referred:

Provincial Insolvency Act, 1920 — Section 28(5)

Citation : AIR 1943 Mad 72 : (1943) ILR (Mad) 349 : (1942) 55 LW 640 : (1942) 2 MLJ 504

Hon'ble Judges : Mockett, J

Bench : Division Bench

Judgement

Mockett, J.—The appellant is the insolvent in I.P. No. 44 of 1931 in the Court of the District Judge of Kurnool. He holds what are

described as the Masjid service inam lands granted for doing service in Gaffar Sab Mosque in Gaduthamadugu. He alleges in his petition, the

subject-matter of this appeal, that he is doing the service and that he has a right to enjoy the lands. The Official Receiver had claimed that the right

to let the lands is vested in him. The petitioner contends that he was entitled to delivery of possession of the lands concerned which ""by mistake

had been delivered to the Official Receiver. According to the Official Receiver since 1931 he had been in possession in the sense that he had been

letting out these lands to Mohammadan cultivators and he states that there is no complaint that the service was not rendered in the mosque till now.

The learned Judge refused the application of the appellant and the possession of the lands remained with the Official Receiver.

2. The insolvent appeals against that order. He has been represented before us by counsel, but the Official Receiver has not appeared. The

argument as put by the learned Counsel for the appellant is as follows. He says

that these lands are inalienable being service inam lands. We observe that that was conceded by the Official Receiver in the Court below and we think that the decision of a Full Bench of this High Court reported in *Neti Anjaneyalu Vs. Sri Venugopal Rice Mill (Limited)*, . , makes that position) sure. The Chief Justice in giving judgment (page 623) considered that Section 6, Sub-clause (d) of the Transfer of Property Act made these lands inalienable because it was opposed to the nature of the interest affected thereby. The learned Chief Justice gives cogent reasons why the transfer of an inam such as this is contrary to the interest of all concerned. But the question remains as to what happens in an insolvency. Does the Official Receiver stand in the shoes of the insolvent as ordinarily happens? Section 2"8 (5) of the Provincial Insolvency Act says:

The property of the insolvent for the "purpose of this section shall not include any property (not being books of account) which is exempted by the Code of Civil Procedure, 1908, or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree.

As we have already pointed out the Pull Bench held that such lands as these cannot be transferred and could not therefore be attached. Learned Counsel for the appellant in this case has been in a position to direct our attention to a decision of the Allahabad High Court which almost covers the position before us. In *Bhola Nath Vs. Chunni Lal and Another*, . , Sulaiman, A.C.J. and Bajpai, J., had a case before them concerning the ex-proprietary holdings under the Agra Tenancy Act. On the question whether they could vest in the Official Receiver, it appears to be quite clear from the judgment, though we have not the advantage of examining the Act, that the ex-proprietary holdings are not saleable that is to say they are not alienable. Sulaiman, A.C.J., discussing the topic proceeds:

As the exproprietary holdings do not vest in the receiver, it is quite clear that he has no right to obtain possession of those holdings so as to be able to cultivate the lands or sublet them to any sub-tenants he pleases. It is in this sense that the District Judge has held that no receiver of the ex-proprietary holdings can be appointed. This view is obviously right.

It is also quite clear that, as the Insolvency Court cannot deal with these ex-proprietary holdings, the receiver cannot assign the rents in advance which may in future become payable by the sub-tenants to the ex-proprietary

tenant; nor can the Court direct an attachment or seizure of such rents which will fall due in future.

3. The learned Judges also in 45 Madras have indicated their view that if the lands are alienated the interest of the holder and of those for whom he should perform the service will be prejudiced. It seems to follow from this that if the lands are to go out of the control of the holder and pass into the control of an official such as the Official Receiver--in this case it must be remembered that the Official Receiver is a Hindu while the insolvent is a Mohammadan--the performance of the services must obviously be in peril. The whole trend of authority is that these lands not only cannot be alienated, but cannot be transferred from the holder to an official such as the Official Receiver.

4. Accordingly the appeal must be allowed. We make no order as to costs as the appellant has shown no interest whatever in the earlier proceedings in insolvency.