
(1936) 08 MAD CK 0035
In the Madras High Court

A.Pr.L.M.L. Lakshmanan Chettiar

APPELLANT

Vs

K. Srinivasa Aiyangar and Others

RESPONDENT

Date of Decision : 28-08-1936

Acts Referred:

English Bankruptcy Act, 1914 — Section 81

Citation : (1937) ILR (Mad) 203 : (1936) 44 LW 657 : (1936) 71 MLJ 707

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—This miscellaneous second appeal raises a question as to the effect of an annulment in regard to the share of the

insolvent who was at the moment of adjudication a member of a Joint undivided Hindu family. The insolvent one Raghava Aiyangar and his brother

the first defendant were undivided brothers of a joint family owning certain immovable property. In 1922 the said Raghava Aiyangar was

adjudicated an insolvent by the High Court. Subsequent to his adjudication and before obtaining the order of discharge he appeared to have

borrowed from the plaintiff a sum of money on a promissory note. He died thereafter. Subsequent to his death the plaintiff filed in or about 1930

O.S. No. 1098 of 1929 on the said promissory note against the first defendant, and his sons, defendants 2 and 3, and also the fourth defendant

who was the widow of the said Raghava Aiyangar. A decree was passed in the said suit against the defendants for the amount claimed by the

plaintiff payable out of the assets of the said Raghava Aiyangar in the hands of the defendants. On 28th September, 1931, the adjudication order

was annulled and I find from the report of the Official Assignee that it was at his instance that the order of adjudication was annulled. The ground

for the annulment was that the creditors had been paid in full but in spite thereof the insolvent had not applied for annulment and that after the insolvent was dead the Official Assignee desired that the adjudication should be annulled and that he might be permitted to draw his commission on the amount paid to the creditors. The plaintiff filed an application for execution of his decree out of which this second appeal arises for attaching and selling a half share in the properties mentioned by him in the execution petition, The application was resisted on two grounds; that the properties were the separate properties of the first defendant; and even assuming they were joint family properties the first defendant had a half share on the date of adjudication, and on annulment they reverted to defendants 1 to 3 as joint family property and they have taken the same by survivorship and the creditor had no right to attach the same. Both the Courts have concurrently found that the properties were not separate properties but joint family properties wherein Raghava Aiyangar had a half share. The District Munsiff allowed execution to proceed; but the learned District Judge dismissed the execution petition on the ground that immediately on the annulment, the property vested in defendants 1 to 3 as joint family property, and it cannot be regarded as assets in the hands of the first defendant liable to be proceeded against for the debts of the said Raghava Aiyangar. This view of the learned District Judge has now been assailed before me as unsound by Mr. Seshadri Aiyangar. I am inclined to accept his contention. The legal consequences of a valid order of adjudication made on the insolvency of a member of a coparcenary in regard to his share in the joint family property may be thus stated.

2. The share of the insolvent vests in the Official Receiver. In regard to an insolvent who is a father having undivided sons, the right of the father to dispose of his sons' share in the joint family property for the discharge of debts which were neither illegal nor immoral also vests in the Official

Receiver. The insolvent does not cease to be a member of a joint family but still continues as a member thereof. In a recent decision of this Court

Venkatarayudu v. Sivaramakrishnayya ILR (1934) 58 Mad. 126, the following observations occur:

Neither the filing of the insolvency petition nor the adjudication of the applicant can sever the joint family status.

3. In that case it was held that the vendee from the Official Receiver of an undivided share of a member did not become a tenant-in-common with

the other members of the family and therefore was not entitled to claim mesne profits from the date of sale. Bankruptcy is an involuntary alienation.

On the question whether an alienation of a share of a member of a joint family effects a severance in status there has been a conflict of opinion.

One view is that it does effect a severance in status. Vide Soundararajam v. Arunachalam Chetty (1915) 29 M.L.J. 793, ILR 39 Mad. 159 and

Chinnu Pillai by guardian Ramachandram Pillai Vs. Kalimuthu Chetti, The other view is that it does not. The ground for this view may be thus

stated. The severance of a joint family can only be effected by a mode known and recognised by Hindu Law, that is, by what is called vibagha or

partition. The effect of a partition according to Hindu Law is:

Whether it is effected amicably or by a decree of Court that it breaks not only the joint ownership of the property, but also the family union, that is,

the corporate character of the family. Aiyagari Venkataramayya v. Aiyagari Ramayya ILR (1902) 25 Mad. 690.

4. The effect of an alienation may be to break up the joint ownership of the property but the corporate character of the family can only be

disturbed by a member. It is unnecessary for me to consider which view is correct. But there can be no doubt as to what the consequences of an

alienation are. They are thus stated by Mr. Justice Bhashyam Aiyangar:

An undivided member of a family though he may have alienated the whole or any part of his undivided share will continue to be a member of the

family with the rights of survivorship between himself and the remaining members in respect of all the family property other than what he has

transferred. No doubt such a member acts unfairly towards the rest of the family and if they are dissatisfied with his so doing their only remedy is to

become divided from him. Vide Aiyagari Venkataramayya v. Aiyagari Ramayya ILR (1902) 25 Mad. 690 .

5. The members of the family lose their right of survivorship in the share of the insolvent and it ceases to be joint family property so that on the

death of the insolvent the share which vested in the Official Assignee is not divested from him. Vide Fakirchand Motichand v. Motichand

Hurruckchand ILR (1883) 7 Bom. 438 and the observations of Wallace, J., in A.M.

Narayana Sah Vs. A. Sankar Sah and Others, :

...that by the insolvency of a coparcener of course for his personal debts, his share vests in the Official Assignee and is thus cost to the joint family

the...death of the coparcener before partition would not restore to the joint family the share which had vested in the Official Assignee.

6. If this is the true legal position, the share of the insolvent is in the hands of the Official Assignee not as joint family property but as separate

properly available for the benefit of the personal creditors of the insolvent. The question is what is the effect of an annulment on the said property in

the circumstances of this case when there has been a valid adjudication. Mr. Ramaswami Aiyangar argues that u/s 37 on annulment the property

reverts to the debtor. The effect of a reverter according to him is that the property regains its original character as joint family property and is taken

by the members of the family as if no partition had taken place t with benefits of survivorship; and thereafter it will not be available to the personal

creditors of the insolvent unless that share had been seized in execution and rendered available for the enforcement of the debts. Mr. Ramaswami

Aiyangar relied on two English cases, viz., Bailey v. Johnson (1871) L.R. 6 and Bailey v. Johnson (1872) L.R. 7 Ex. Cases 263 at 265 the same

case on appeal, for the position that the effect of an annulment is to remit the debtor to his original position at the moment of adjudication as if there

had been no insolvency, and therefore as at the moment of adjudication the debtor was a member of a joint family, the property went back to him

as joint family property. Construing an analogous Section 81 of the English Bankruptcy Act of 1869 Kelly, C.B., in Bailey v. Johnson (1871) L.R.

6 Ex. Cases 279 at 283 observes thus:

...the only sensible meaning which can be attached to the word "revert" is, that what was apparently the property of the trustee at the time of the

annulling of the bankruptcy, shall thereupon become the property of the person whose bankruptcy has been annulled, as if it had always been his.

7. This observation, in my opinion, does not support Mr. Ramaswami Ayyangar. If the language of Kelly, C.B., is to be given full effect it is this. At

the date of annulment it was the property of the trustee and on annulment it becomes the property of the debtor, that is, the property goes back to

the debtor with the same character in which it was held by the Official Receiver

while the bankruptcy continued. The annulment would not completely wipe out the effect of a valid order of adjudication. The bankruptcy is wiped out to this extent, viz., that the property goes to the debtor free from all claims in bankruptcy so that the debtor can deal with the property as if it is his own, that is, with all the original powers and rights which he would have had had there been no bankruptcy. In the same case *Bailey v. Johnson* (1872) L.R. 7 Ex. Cases 263 at 265 it will be seen that Blackburn, J., was not prepared to say that the effect of Section 81 in every case will be:

to go back to the beginning, and to place the bankrupt in the position of having always owned what is by the section to "revert" to him....

8. I agree with the remarks of Reilly, J., in *Jethaji Peraji Firm Vs. Tirupuramallu Krishnayya (dead) and Others*, :

Certainly it cannot be suggested that in this country annulment of adjudication puts the clock back as if the adjudication had never been.

9. It will be unsafe to rely upon observations in the cases decided in England where the conditions are not similar and where the conception of a

joint Hindu family is unknown. Once the effect of insolvency is to divest the share of the insolvent of its character as joint family property, it cannot

regain that character when it comes back to the insolvent on annulment unless he can by an unequivocal act of his own impress it with the said

character. u/s 37 of the Provincial Insolvency Act it reverts to the debtor as his property, that is, as his individual property, so that if on the date of

the reversion, he is not alive it will go to his heir under the law; and in this case the widow the fourth defendant. The property thus being not joint

family property defendants 1 to 3 have not taken it by survivorship. It is therefore available for the satisfaction of the debt of the plaintiff. I therefore

reverse the decree of the learned District Judge and restore that of the District Munsiff with costs.

(Leave refused.)