
(1939) 09 MAD CK 0015
In the Madras High Court

B. Veeranna Sha and Another	Vs	APPELLANT
The Official Receiver of Secunderabad		RESPONDENT

Date of Decision : 04-09-1939

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 64

Citation : AIR 1940 Mad 47 : (1939) 50 LW 701 : (1939) 2 MLJ 859

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—This appeal raises a question of private international law. In C.S. No. 420 of 1922 of the Original Side of

this Court three members of a joint Hindu family sued for partition of the family estate. One of the plaintiffs died and the other two were

adjudicated insolvents by an order of the District Judge of Secunderabad, dated the 15th October, 1C)28, on an application filed on the 27th

August, 1928. Secunderabad is not part of British India and the adjudication was therefore in law an adjudication by a foreign Court. On the 5th

December, 1922, a preliminary decree was passed in the partition suit. On the 15th June, 1926, a Bombay creditor of the plaintiffs obtained a

decree against them in the Bombay High Court and the decree was transferred to this Court for execution. In the execution proceedings which

followed the Bombay creditor on the 20th December, 1926, attached the preliminary decree which the plaintiffs had obtained in the partition suit.

Other creditors of the plaintiffs obtained decrees against them and nine of them also attached the preliminary decree before the order of

adjudication was passed. Three of the creditors obtained orders of attachment after the adjudication. Two of the creditors who attached after

adjudication are the appellants in the present appeal.

2. On the 18th April, 1937, the partition suit was compromised and in pursuance of the compromise the amount of Rs. 1,31,231-9-0 in cash

and Government securities was paid into Court. The Official Receiver of Secunderabad settled with seven of the creditors who had attached

before the adjudication for the sum of Rs. 66,926-1-0. We are told that two of the creditors who attached before judgment allowed their claims to

become barred by the law of limitation and one proved in the insolvency. After settling with the seven creditors there remained a balance of Rs.

64,305-8-0. The Official Receiver asked that this amount should be paid out to him. The application was opposed by the appellants, but was

granted. Under the compromise decree in the partition suit a sum representing 50,000 sicca rupees had to be paid into Court in addition to the Rs.

1,31,231-9-0. It was paid in and after reserving sufficient to meet the claim of the appellants which amounted to some Rs. 21,000, and the claim

of the other creditor who had also attached after the order of adjudication all the moneys were withdrawn by the Official Receiver. The appeal

concerns the right claimed by the appellants to withdraw the Rs. 21,000.

3. The appellants' case is that they are entitled in law to rateable distribution with the creditors who attached before adjudication and as there is

sufficient money to pay all the creditors they are entitled to be paid the full amount of their claim out of the moneys in Court. In the course of the

arguments the appellants' Counsel put forward an alternative claim, which was not advanced before Gentle, J., who heard the application. The

aggregate amount claimed by the seven creditors with whom the Official Receiver settled was Rs. 98,000. It is said that even if the appellants are

not entitled to withdraw the whole of the Rs. 21,000 they are entitled to receive out of the moneys in Court a sum representing the amount they

would have received if the Rs. 98,000 had been rateably distributed between them and the seven creditors. In rejecting the claim made by the

appellants before Gentle, J., the learned Judge I relied on the judgments in *Ananthapadmanabhaswami v. Official Receiver, Secunderabad* (1933)

64 M.L.J. 562 : L.R. 60 IndAp 167 : ILR 56 Mad. 405 and *Galbraith v. Grimshaw* (1910) A.C. 508.

4. In *Ananthapadmanabhaswami v. Official Receiver, Secunderabad* (1933) 64

M.L.J. 562 : L.R. 60 IndAp 167 : ILR 56 Mad. 405 an appeal

arising out of this very insolvency, the I Privy Council held that the adjudication by a foreign Court I operated as a private transfer within the

meaning of Section 64 of the Code of Civil Procedure. When a foreign Court adjudicates a person insolvent the only property in British India

which vests in the Receiver is the movable property which the insolvent was free to assign at the date of the adjudication and such property vests

by virtue of private international law. Having regard to Section 64 of the CPC the adjudication did not, however, affect the rights of a creditor who

had attached before the adjudication. The creditor was the Bombay creditor to whom I have already referred.

5. Section 64 of the CPC reads as follows:

Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the

judgment-debtor of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the

attachment.

Explanation: - For the purposes of this section, claims enforceable under an attachment include claims for the rateable distribution of assets.

6. By virtue of the provisions of Section 73 of the Code where assets are held by a Court and more persons than one have, before the receipt of

assets, applied to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not

obtained satisfaction, the assets, after deducting the costs of realization, shall be rateably distributed among them all. There are provisos to the

section, but they do not call for mention here. The appellants contend that inasmuch as Section 64 states that a private transfer of property which

has been attached shall be void as against all claims enforceable under the attachment and as the section expressly declares that ""claims

enforceable under attachment"" include claims for rateable distribution, they are entitled by virtue of S.73 to be treated in the same way as the

creditors who attached before the adjudication are treated.

7. Under the municipal law a creditor who has attached before adjudication but has not received payment is not a secured creditor. The

adjudication puts an end to the execution proceedings and the only course open

to him is to prove in the insolvency. The law of British India is the same as the law of England in this respect. An adjudication by a foreign Court, being a private transfer within the meaning of Section 64 of the Code of Civil Procedure, does not affect the position of a creditor who before the adjudication has attached movable property of the insolvent. He remains entitled to the benefit of his attachment. In deciding the appeal in *Ananthapadmanabhaswami v. Official Receiver, Secunderabad* (1933) 64 M.L.J. 562 : L.R. 60 IndAp 167 : ILR 56 Mad. 405, the Judicial Committee applied principles laid down by the House of Lords in *Galbraith v. Grimshaw* (1910) A.C. 508. In that case the adjudication was in Scotland, but before adjudication a creditor had attached personalty in England. It was held that the attachment was effective. Lord Thankerton who delivered the judgment of the Board quoted the following passage from "the speech of Lord Dunedin on *Galbraith's* case (1910) A.C. 508:

Now so far as the general principle is concerned it is quite consistent with the comity of nations that it should be a rule of international law that if the Court finds that there is already pending a process of universal distribution of a bankrupt's effects it should not allow steps to be taken in its territory which would interfere with that process of universal distribution; and that I take to be the doctrine at the bottom of the cases of which *Goetze v. Aders* (1874) 2 R. 150 is only one example.

8. Lord Thankerton then went on to say:

This means that, after the date of the foreign adjudication order, it will be recognised as effective but it is equally clear from the opinions expressed in *Galbraith's* case² that it will not be allowed to interfere with any process, at the instance of a creditor, already pending, even though such process is incomplete, provided that at that date the bankrupt's freedom of disposal was so affected by the process that he could not have assigned the subject-matter of the process to the Receiver.

9. But an attachment after adjudication by a foreign Court is entirely a different matter. The receiver of the foreign Court is entitled to what Lord

Macnaghten described in *Galbraith's* case (1910) A.C. 508 as the free assets of the bankrupt. I consider that the free assets must include assets

which are not required to meet a charge or an attachment in existence at the time of the adjudication. It is said on behalf of the appellants that

Section 64 of the CPC read with Section 73 puts the Indian Law on a different basis. I am unable to accept this contention. The Legislature could not have intended the provisions of these sections to override this rule of private international law. By reason of this rule the appellants were not in a position to attach after adjudication.

10. On behalf of the appellants Mr. Krishnaswami Aiyangar has laid stress on the following passage in Lord Thankerton's judgment in

Ananthapadmanabhaswami v. Official Receiver, Secunderabad (1933) 64 M.L.J. 562 : L.R. 60 IndAp 167 : ILR 56 Mad.405 :

In the present case, at the date when the foreign adjudication order was made, the appellant was entitled to the benefit of his prior attachment of

the decree in the Madras partition suit. The decree was thereby earmarked for the purpose of answering the Bombay money decree, and that

inchoate right would have ripened into execution and sale; it is no matter that u/s 73 of the CPC the appellant would have to share the proceeds of

sale with other decree-holders; it would still be a valuable right.

11. It appears to me that Lord. Thankerton must here have had in mind decree-holders who had also attached before adjudication. The position of

a creditor attaching after adjudication was not under consideration.

12. As the foreign receiver is entitled to all the movable assets of the insolvent which were free at the date of the adjudication and as I hold that the

free assets must be deemed to be the moneys left over after the satisfaction of the claims of the creditors who had attached before the adjudication

it follows that in my opinion the appellants are not entitled to anything by reason of their attachment. The adjudication prevented the attachment

having any validity and they were left merely with the right to prove in the insolvency. This disposes of both the points raised by the appellants.

13. The appeal fails and must be dismissed with costs.