

(1948) 09 MAD CK 0014
In the Madras High Court

Balammal

APPELLANT

Vs

The Official Assignee of Madras

RESPONDENT

Date of Decision : 29-09-1948

Acts Referred:

Citation : (1949) 1 MLJ 72

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—In July, 1942, the husband of the appellant was adjudged an insolvent; and before the end of the year the Official Assignee

took possession of some timber on the ground that it belonged to the insolvent. In 1942 or earlier, the appellant claimed that the timber was hers;

but on the 22nd February, 1943, despite her objections, the property was sold. Chandrasekhara Aiyar, J., before whom the matter came for

confirmation of the sale, ordered that the sale proceeds should be held by the Official Assignee pending further orders. On the 26th March, 1943,

some moveables were sold, which realised a sum of Rs. 225. On the 30th August, 1944, the Official Assignee applied for directions to distribute

certain assets in his hands as belonging to the insolvent. On the 11th December, 1944, Clark, J., passed an order on these applications, He said

that with regard to the houses sold it was the interest of the insolvent that had passed to the vendees, and so it was unnecessary for him to consider

whether or not the houses belonged to the insolvent. With regard to the Rs. 2225 which were the proceeds of the timber and moveable property

which is the subject of this appeal, the learned Judge was informed that the property had been sold absolutely and that the question as to the title to

the property had still therefore to be determined. Clark, J., therefore directed by the order of that date that the Official Assignee should for the

present retain in his hands that sum; and he added at the end of his order:

This will give an opportunity to the first respondent to take appropriate action to establish her right to the properties now represented by those

sums.

The first respondent, who is the appellant here, took no action at all. The Official Assignee therefore filed a subsequent application on the 30th

July, 1947, for permission to distribute this Rs. 2225; and the learned Judge in the order now appealed against directed the Official Assignee to

distribute that money, as the claim of the appellant, even if true, was barred by time.

2. The learned advocate for the appellant argues that the learned Judge was wrong in holding that the claim was barred by limitation, as the proper

Article of the Limitation Act to apply was not Article 48, as the learned Judge thought, but the residuary Article 120. For the purpose of this

argument Mr. Narasayya Chowdhury relies principally on (1884) L.R. 11 I.A. 59 (Privy Council) . In that case, a suit was filed by the owners of

certain logs of timber against one Modhoosoodhun, who had misappropriated them, and another for conversion of the timber, and a decree was

passed. The matter was taken in appeal to the High Court and subsequently to the Privy Council, and during the pendency of these proceedings

the judgment-debtor died and the brother of the judgment-debtor thereupon sold the logs of timber which, of course, he held for the benefit of his

brother's heir, the widow of the deceased judgment-debtor. In the course of execution, certain difficulties arose, and the decree-holder was unable

to proceed against all the properties of the judgment-debtor. So a fresh suit had to be filed. Their Lordships had to consider whether a suit lay for

the proceeds of the sale, and they held that it did; but that as it was a suit for the sale proceeds, Article 48 did not apply. They held that the brother

had not converted the logs, but had sold them on behalf of the deceased judgment debtor for the benefit of the widow, and that since there had

been no conversion by the brother, the suit against the brother and the widow was not a suit to which Article 48 would apply.

3. The learned advocate further argued that the Official Assignee is in the

position of a receiver and that he holds the property and the sale proceeds of the property for the benefit of the true owner. The duty of the Official Assignee is to administer the estate of the insolvent for the benefit of the creditors. He certainly does not hold any property that he takes into his possession as the property of the insolvent on behalf of any person who might subsequently establish a claim to the property. On the contrary, he holds the property adversely to the true owner if the true owner is not the insolvent. In support of his argument on this point, Mr. Narasayya Chowdhury has quoted Karanamurthi Thevar Vs. Ramanatha Thevar, which in our opinion has no application whatsoever. That was a case in which the real owner sued a benamidar for sums received by him; and the learned Judges held that the benamidar was in the position of a trustee and that the appropriate article was Article 120 and not Article 62.

4. The appeal is dismissed with costs.