

(1938) 09 MAD CK 0032
In the Madras High Court

Bonthala Subbamma

APPELLANT

Vs

Gadamsetti Surappa Company, by surviving partner
Gadamsetti Subbiah and Another

RESPONDENT

Date of Decision : 28-09-1938

Acts Referred:

Citation : AIR 1939 Mad 273 : (1938) 48 LW 788 : (1938) 2 MLJ 1045

Hon'ble Judges : Krishnaswami Aiyangar, J

Bench : Division Bench

Judgement

Krishnaswami Aiyangar, J.—This is an appeal from the order of the District Judge of Cuddappah vesting the¹ property in dispute in the Official Receiver and directing him to sell it and distribute the amount realised among the creditors. That property was acquired by the husband of the appellant in 1928 and sold by him to the appellant on 4th May, 1934. The appellant claims to have become the owner of that property by virtue of this sale.

2. The husband of the appellant had been adjudicated an insolvent by an order made on 30th January, 1915, under the provisions of Act III of 1907 which was then in force. Under that Act, there were no provisions such as are to be found in the Act of 1920 either obliging the Court to fix a time within which the insolvent should apply for a discharge or compelling the insolvent himself to apply for an order of discharge. It would appear that the appellant's husband was therefore under no obligation to apply for a discharge and in fact he did not apply for any discharge at all. After the adjudication, the Receiver seems to have taken possession of the estate, realised it and declared the final dividend sometime in 1915. The administration became thereby concluded and the Receiver accordingly sent to the District Court all the concerned papers relating to the insolvency, papers which we are informed no longer exist having been destroyed under the rules for the destruction of records. What happened after 1915 when the administration in insolvency was concluded, till 1928 when the property in question was sold does not clearly appear though sometime after 1915 - how

long after it is difficult for us to say - the insolvent must have begun earning monies either by doing business or otherwise. With such acquisitions as he must have made by 1928, he purchased the property and had remained in the enjoyment of it till the sale to the appellant in 1934 already mentioned.

3. The first respondent filed in 1936 the petition from which this appeal has arisen claiming that the sale by the insolvent conveyed no title to the appellant, as the property became vested in the Official Receiver, the moment it was purchased and has remained with him ever since, to be applied and administered according to the provisions of the Insolvency Act. This, contention based on Section 16(4) of Act III of 1907, corresponding to Section 28(4) of the present Act was upheld by the District Judge who has accordingly held that the sale in question was a nullity.

4. Against the order of the learned District Judge, the appellant has urged two objections; firstly that this property which was admittedly after-acquired property cannot on the principle of *Cohen v. Mitchell* (1890) 25 Q.B.D. 262, forthwith vest in the Official Receiver without an act of intervention done by him and consequently that the insolvent was at liberty to make a disposition of it binding upon the Receiver and the creditors. Secondly, that the conduct of the Official Receiver in having wound up the insolvency, made the distribution of the final dividend, and transmitted the papers to the Court is conduct by which he as well as the creditors were estopped from contending that the insolvency proceedings had not come to an end and from claiming that the Receiver as representing the creditors had a title to the property which he could assert as against a purchaser from the insolvent.

5. We regret that we have not had the assistance of counsel on behalf of the respondents in deciding this appeal, as they have not chosen to be represented before us. We do not think it necessary to express any opinion on the first of the points urged on behalf of the appellant which turns on the construction of the language of Section 16(4) of this Act which is, as pointed out in *Ma Phaw v. Maung Ba Thaw* ILR (1926) Rang. 125, somewhat different from that to be found in the Presidency Towns Insolvency Act or the English Statute. But we think that there is considerable force in the second objection and we accordingly uphold it. The conduct of the Receiver to which we have referred, must have been within the knowledge of the creditors and they must be regarded as having deliberately acquiesced in the position indicated by that conduct, namely, that the insolvency had become finally determined. From 1915 till 1928, neither the Receiver nor the creditors took any steps showing that they or any of them regarded the insolvency as still pending though during this period they were presumably aware of the acquisitions that were being made by the insolvent. We think that these circumstances are sufficient to bring the case within the principle enunciated by Lord Justice Bramwell in *Ex parte Bolland: In re Dysart* (1878) 9 Ch. D. 312. The facts of that case were no doubt somewhat different but the decision proceeded upon the basis mentioned at p. 321 where, the conduct and the statement of the

trustee in bankruptcy to the Bank were regarded as amounting to a statement by him that the liquidation was ended, a statement on which the Bank acted. We think that the circumstances present in this case warrant us in holding that the conduct of the Official Receiver and of the creditors amounted in effect to a statement similar in form and nature to the one that is referred to by the Lord Justice. Everybody concerned, the insolvent, the Official Receiver and the creditors all acted on the footing that the insolvency had closed, and we accordingly think that it is no more open to any of them now to get behind what must be regarded as a representation made by them, and revive the insolvency, for the purpose of challenging a sale bona fide made in the belief that there was no insolvency, a belief contributed to by all of them.

6. We therefore differ from the learned Judge and hold that the appellant has shown sufficient reasons for dismissing the petition of the creditor and we accordingly reverse the judgment of the learned District Judge and dismiss the petition with costs here and in the Court below to be paid by the first respondent.