

(1942) 07 MAD CK 0048
In the Madras High Court

Chinnaturai Muthiriyar alias Neelamega Muthiriyar	APPELLANT
Vs	
The Official Receiver	RESPONDENT

Date of Decision : 27-07-1942

Acts Referred:

Citation : AIR 1943 Mad 252 : (1943) 56 LW 70 : (1943) 1 MLJ 125

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—This appeal arises out of an application by the Official Receiver of Trichinopoly under Sections 4 and 5 of the Provincial

Insolvency Act made in 1938 to set aside a settlement deed executed by the insolvent in favour of his minor sons in the year 1927. The deed has

been set aside by the Courts below, the finding being that no title was ever intended to pass from the father to the sons.

2. It is argued in appeal that the decision of the Courts below is wrong because the interval between the execution of the settlement deed in 1927

and the adjudication of the father as an insolvent in 1936 was nine years and that Section 53 permits only two years' interval; and that even if

Section 53 is not exhaustive and Section 4 applies, a suit by the Official Receiver or any of the creditors u/s 53 of the Transfer of Property Act

would have been dismissed as barred by limitation. It is impossible that in exercising jurisdiction u/s 4 of the Provincial Insolvency Act, the

Insolvency Act should ignore the principles of limitation, so that if no suit would lie u/s 53 of the Transfer of Property Act, no application could be

successful u/s 4 of the Provincial Insolvency Act. The law is fairly clear that in matters of this kind, Section 53 is not exhaustive and that

applications can be made u/s 4 where the petitioner asserts that" the transaction which he wishes to set aside is a sham and nominal one. It is

therefore no impediment to the reception of this application by the Court u/s 4 that the alienation in question was more than two years before the

insolvency. On the further question that the Insolvency Court ought not to entertain an application which if filed as a suit u/s 53 of the Transfer of

Property Act would be dismissed as barred by limitation, I am in agreement with the argument for the appellants. But, for the respondent a case

decided by a Bench of this Court and reported in Guntur Narasimham and Another Vs. Nyapati Narayan Rao Garu, has been quoted. The

learned Judges who decided that case agreed that to a suit u/s 53 of the Transfer of, Property Act the article of the Limitation Act applicable was

Article 120. They differed in their view of the time at which limitation under that article began to run, but both rejected the view that limitation

began to run from the date of the alienation. Taking the view of Madhavan Nair, J., which is most favourable to the appellants in this case,

limitation begins to run from the time when the creditor who filed the suit is aware of the fraudulent transaction which he seeks to obviate. The

learned Counsel for the appellants does not seriously deny that the principles of this decision must be applied to the present case. But he argues

that a further finding of fact is necessary before it can be declared whether the application u/s 4 was made more or less than six years after the

creditors as a body had obtained knowledge of the transaction in question. It seems to me that it would be a sheer waste of time to call for any

such finding. In a case of this kind where there are a number of creditors of the insolvent, the Official Receiver would certainly be entitled to take

as the date from which limitation begins to run the date at which the last of these creditors became aware of the transaction and it is impossible that

all the creditors of"" the insolvent were all aware of the transaction so long ago as 1932.

3. In the result the appeal must fail and is dismissed with costs. (Leave refused).