

(1938) 01 MAD CK 0036
In the Madras High Court

D. Chockalingam Chettiar

APPELLANT

Vs

T.S.P.L.P. Palaniappa Chettiar and Another

RESPONDENT

Date of Decision : 24-01-1938

Acts Referred:

Citation : AIR 1938 Mad 947 : (1938) 48 LW 503 : (1938) 2 MLJ 585

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The appellant trust, through a former trustee, executed a mortgage bond in favour of the two insolvents and their brother. On this bond a mortgage suit was brought and a decree obtained against the plaintiff institution. In O.S. No. 8 of 1924 on the file of the Sub-Court, Negapatam, the plaintiff, another trustee, brought a suit to have it declared that the mortgage decree was not binding on the plaintiff trust and for refund of a certain amount which had been paid under the decree obtained by the insolvents and their brother. He was successful in the trial Court; but the insolvents and their brother, who were defendants 1 to 3 in the suit, filed a joint appeal against the decree in O.S. No. 8 of 1924. During the pendency of the appeal the first and second defendants became insolvents and died before the appeal came on for hearing. The appellate Court, apparently in ignorance of the fact that defendants 1 and 2 had become insolvents, declared that the appeal of defendants 1 and 2 had abated; and so the appeal against them was dismissed. The third defendant, on precisely the same grounds of appeal as defendants 1 and 2 had raised, was successful; and it was held that the mortgage in question was binding on the plaintiff institution. On the strength of this judgment and decree passed in appeal, the appellant has sought to prove for the amount of the decree debt in O.S. No. 8 of 1924 in the Insolvency Court; and the learned District Judge has held that the decree passed in O.S. No. 8 of 1924 and confirmed in appeal as far as the insolvents are concerned - is not binding on the creditors; and he has held that the debt is not a true one. The plaintiff trustee in this appeal contends that the decree was a proper one, free from fraud and collusion; and that therefore the Insolvency Court ought not to

have gone behind the decree and, secondly, that in fact the then Official Receiver did have knowledge of the pendency of the appeal and did not take the trouble to come on record; and that he is therefore precluded from claiming that the decree of the appellate Court is not binding on him. The third contention is that if the Insolvency Court goes behind the decree of this Court it should reconsider the whole question whether the mortgage debt is binding on the appellant institution.

2. It is not denied that in certain circumstances the Insolvency Court can refuse to admit a judgment debt. The leading case on the question as to how far an Insolvency Court should consider itself bound by a decree is *Ex parte Lennox* : In *re Lennox* (1885) 16 Q.B.D. 315 and it will be seen therefrom that no judgment or decree is binding on the Insolvency Court, that the business of an Insolvency Court is to ascertain whether a debt is true or not, and that although the judgment and decree are binding on the parties to it whether the debt is true or false and whatever the judgment and decree might be; yet the Insolvency Court is not so bound; for the Insolvency Court will not and should not ordinarily go behind the decree unless it has reason to believe that the decree was brought about by fraud or collusion or is unjust. As pointed out by Lord Esher in the case above referred to, a judgment is *prima facie* evidence of the correctness of the debt. He says:

It cannot be doubted that a judgment is *prima facie* evidence of a debt, and that a judgment or order to which a debtor has consented is far stronger evidence against him of the validity of the debt for which it purports to be given than a mere judgment by default. It is very strong evidence against him. Nevertheless, it seems to me that upon certain allegations being brought forward, the Court is entitled to inquire into the alleged debt; and the Court, exercising a judicial authority, is bound to do so upon a sufficient cause being shown.

3. This principle has been followed in *In re Van Laun Ex parte Chatterton* (1907) 2 K.B. 23 in which Cozens-Hardy, M.R., quotes with approval a passage in the judgment of Bigham, J., which was the subject of appeal:

The trustee's right and duty when examining a proof for the purpose of admitting or rejecting it is to require some satisfactory evidence that the debt on which the proof is founded is a real debt. No judgment recovered against the bankrupt, no covenant given by or account stated with him, can deprive the trustee of this right. He is entitled to go behind such forms to get at the truth, and the estoppel to which the bankrupt may have subjected himself will not prevail against him.

4. Reference has been made by the learned Advocate for the appellant to *Narasimha Sastri v. The Official Assignee of Madras* (1929) 59 M.L.J. 321 a judgment of Ramesam and Cornish, JJ. In that case there was only one creditor and only one debt; and it was contended by the insolvent that the decree was passed *ex parte*. The judgment-debtor, who became insolvent, contended that he was not properly served with summons in the case, and that the debt was a

fictitious one. Ramesam, J., in his judgment, states his opinion that it was not a case to which the principles enunciated in *Ex parte Lennox : In re Lennox* (1885) 16 Q.B.D. 315 and *In re Van Laun : Ex parte Chatterton* (1907) 2 K.B. 23 could be usefully applied; for if the debt was a fictitious one the Official Assignee had no jurisdiction at all. The learned Advocate for the appellant relies not so much upon the decision in this case as upon a remark in the judgment of Lord Esher in *In re Flatau : Ex parte Scotch Whisky Distillers* (1888) 22 Q.B.D. 83 to the effect that

That the Court of Bankruptcy is bound in every case as a matter of course to go behind a judgment is a preposterous proposition.

5. Applying the above principles to the facts before us, it seems clear that the Insolvency Court is entitled to go behind the decree of this Court above referred to if it is obviously an unjust decree which could not be enforced without doing injustice to the creditors represented by the Official Assignee. The decree against the insolvents and the 3rd defendant in O.S. No. 8 of 1924 was a joint decree; and there is no difference at all between the cases of the defendants and their brother the 3rd defendant - and in fact they filed a common appeal with common grounds of appeal. It follows therefore that if the legal representatives of the insolvents and the Official Receiver had been on the record they would necessarily have succeeded; so that it is quite clear that an injustice has resulted from the non-appearance on the record of the Official Receiver. The Insolvency Court was therefore entitled to go behind the decree and to say that the judgment debt of the appellant was not a true one.

6. It is next contended that even if the decree be re-opened the Insolvency Court ought to reconsider the question whether the mortgage debt was really binding on the plaintiff institution and whether the trial Court in O.S. No. 8 of 1924 was not right in giving a decree in favour of the appellant and this Court in appeal wrong. As has been laid down by the authorities cited above, if there is no reason to think that the judgment and decree are wrong, the Insolvency Court is bound to follow that judgment and decree. The Insolvency Court in this case would not be justified in considering whether Venkatasubba Rao and Cornish, JJ., in Appeal No. 361 of 1925 are right or whether the trial Court is right. There is naturally a strong presumption that the appellate Court was right; and only if the appellant was able to show that in some way that a miscarriage of justice had been brought about in the appellate Court would the Insolvency Court be bound to consider whether the decision of the appellate Court was right or not. The appellant has not been able to do that; and the lower Court was therefore justified in holding on the strength of the judgments in Appeals Nos. 360 and 361 of 1925 that the debt of the appellant was not a true one.

7. The present case is slightly different from those that have been quoted before me, in that it is alleged in the affidavits of the appellant filed in the Court below that the Official Receiver was aware of the existence of the proceedings and yet did not take the trouble to get himself brought on record. There is no reason to

think that there was a wilful default and that the Official Receiver who had charge of the insolvent's estate at the time of the hearing of Appeals Nos. 360 and 361 of 1925 failed or neglected his duty. Assuming, however, that the Official Receiver did negligently fail to bring himself on record, I cannot say on the principle enunciated above that this would in any way make the case of the appellant any stronger. If the Insolvency Court is entitled to go behind the judgment and decree, it should consider whether the alleged debt is true or not; and it matters not whether the Official Receiver was a party to the appeal or not.

8. The appeal therefore fails and is dismissed with costs of the 2nd respondent.