
(1937) 01 MAD CK 0005
In the Madras High Court

Gogineni Ankayya

APPELLANT

Vs

Official Receiver, Masulipatam and Others

RESPONDENT

Date of Decision : 22-01-1937

Acts Referred:

Citation : AIR 1937 Mad 589 : (1937) 45 LW 771

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—Two questions have been argued in this revision petition: (1) whether an interim receiver appointed u/s 20,

Provincial Insolvency Act, is entitled to set aside a sale of Immovable property in execution of a decree under Order 21. Rule 89, Civil P.C., and

(2) whether a person entitled to the distribution of the sale proceeds realized in execution of a decree in virtue of his being the holder of a decree is

entitled to notice under Order 21, Rule 92, Civil P.C. Respondent 2 in this case obtained a decree for money against one Hanumantha Rao, and in

execution thereof, the Immovable properties of the said Hanumantha Rao were brought to sale on 3rd October 1932 and purchased by

respondents 3 and 4. Subsequent to the sale, at the instance of some creditors, an application was made to the Insolvency Court to adjudge

Hanumantha Rao as insolvent and an application was also made in the said insolvency application for the appointment of an interim receiver of the

property of the insolvent. Respondent 1 was appointed interim receiver and by the power of appointment he was ordered to exercise all the

powers of an owner under Order 40, Rule 1 (d), Civil P.C., and he was also expressly empowered to act under Order 21, Rule 89, Civil P.C., to

set aside the sale of the said Immovable property after raising the necessary funds. Therefore his appointment as interim receiver divested the said

Hanumantha Rao of all control over the property and operated as an injunction restraining him from interfering with the possession of the same or

taking any action in regard thereto. He thus became disabled from acting and the interim receiver as it were became his statutory agent to do all

acts which he was entitled to do if he were not so disabled. The making of an application under Order 21, Rule 89 was an act which the judgment-

debtor Hanumantha Rao would have been competent to do but for the appointment of the interim receiver. The application therefore presented by

respondent 1 under the said section must be deemed to have been made by the owner for the time being within the meaning of the said rule as the

act of respondent 1 must be deemed to have been done for and on behalf of and as representing the said Hanumantha Rao. It is no doubt true that

the title to the property still remained in the judgment-debtor but he had been deprived of all control, in regard thereto and another had been

appointed to act for him in his stead. It is sometimes said that the receiver is an officer of Court and not an agent of the party. But this statement is

not strictly accurate because for certain purposes he does act as the agent of the real owner. As observed by Phear, J. in *Wilkinson v. Gangadhar*

Sircar (1871) 6 B LR 486 :

Whatever the receiver rightly does, with regard to the property he does it simply as the agent of the owner of the property or the person interested

in the property.

2. In this case the only owner is the said Hanumantho Rao and therefore the interim receiver in presenting the petition under Order 21, Rule 89,

must be deemed to have acted as his agent. The view I am taking is also supported by the decision of Jackson, J. in *O.S. Rarnachandra Aiyar,*

Official Receiver, Tanjore Vs. Sankara Aiyar and Others, where the learned Judge was inclined to the view that if an interim receiver appointed u/s

20, Provincial Insolvency Act, is expressly empowered by Court to take action under Order 21, Rule 89, Civil P.C., he would be an owner for the

time being within the meaning of the said rule. It is contended by Mr. Govindarajachari relying on certain observations in *C.R. Subramania Aiyar*

Vs. The Official Receiver and Another, that unless the receiver takes possession

of the property or the property is committed to his possession, the receiver cannot take action under Order 21, Rule 89, Civil P.C. He relied on both Order 11, Rule 1, Civil P.C., and Section 20, Provincial Insolvency Act. The argument of Mr. Govindarajachari is that Order 40, Rule 1(d) comes into operation only when the property has been committed to the possession of the receiver under Order 40, Rule 1, Clause (c). I am unable to agree with this contention. The word "and" before Clause (d) means "also" or "in addition to"; i. e., the powers conferred under 01. (d) are in addition to all or any of the powers conferred under Order 40, Rule 11 (a), (b) or (c). Again in Clause (d) it will be seen that power can be conferred upon the receiver to realize the property, i. e., to reduce the property into possession. It is obvious that this cannot relate to property of which the receiver has been put into possession. In support of the argument based on Section 20, Mr. Govindarajachari relied on the following observations in C.R. Subramania Aiyar Vs. The Official

Receiver and Another, :

An interim receiver has u/s 20 only the powers of a receiver appointed under the Civil Procedure Code, and he is not clothed even with those powers till he takes possession of the debtor's properties. This is clear from the section itself.

3. It seems to me that this is a very narrow interpretation of the section. What the section says is the Court may direct him to take immediate possession of the properties or of any part thereof. It does not necessarily follow from the language that it was intended to deal only with possession of property which the receiver is capable of taking possession from the insolvent direct. It may be, the property is in the physical possession of the insolvent or it may be in the possession of his tenant and in both cases it may be possible for the receiver to take immediate possession, in one case the actual physical possession and in the other case constructive possession by making the tenant attorn to him or directing the insolvent to do all that is necessary for the tenant to attorn to him. But in cases where the property is in the possession of a third party the receiver must be deemed to have been directed to do all that is necessary to take immediate possession. The word "thereupon" in Section 20 does not mean that he is not clothed with the necessary power to act in relation to the

property until he takes possession. On the other hand, it seems to indicate that on a direction being given by the Court empowering him to take immediate possession he gets clothed with all the powers that are necessary to enable him to get such possession and one of the powers contemplated under Order 40, Rule 1(d) is realization of the property which would also include reduction of the property into his possession. I am therefore of the opinion that the interim receiver in this case was competent to file an application under Order 21, Rule 89 to set aside the sale of the property in question. In view of this it is unnecessary to deal with the second point argued by Mr. Govindarajachari, though I must admit there is a good deal of force in the argument advanced by him that the language of Order 21, Rule 92, Civil P.C. is wide enough to include a person who is entitled to rateable distribution of the sale proceeds. In the result, the Civil Revision Petition fails and is dismissed with cost of respondent 3.