
(1921) 09 MAD CK 0014
In the Madras High Court

Gontu Appireddi APPELLANT
Vs
Gontu Chinna Appireddi and Others RESPONDENT

Date of Decision : 14-09-1921

Acts Referred:

Provincial Insolvency Act, 1920 — Section 6(b)

Citation : AIR 1922 Mad 246 : 66 Ind. Cas. 271 : (1921) 14 LW 639 : (1921) 41 MLJ 606

Judgement

1. In this case two creditors of one Chanda-varam Ramayya and his three undivided sons (Respondents 1 to 4) petitioned (i) that they might be declared insolvents (ii) that certain alienations made by Respondents 1 to 4 in favour of the 5th Respondent might be declared invalid and cancelled. The alienations took place about a month before the presentation of the petition which is dated 20th December 1918. The learned District Judge heard the petition of 19th March 1920 and in the same order not only adjudicated Respondents 1 to 4 insolvents but declared the sale deed which witnessed the alienations cancelled. The act of insolvency alleged and proved against the respondents 1 to 4 was these alienations u/s 6(b) of the Provincial Insolvency Act (V of 1920) i.e. they were held to be transfers with intent to defraud or delay creditors. The petition was presented u/s 7 and the debtors were adjudicated u/s 27(i) which runs thus - If the Court does not dismiss the petition it shall make an order for adjudication.".... There is of course no doubt that the learned District Judge was justified in making the order of adjudication but the question is was he right in going further and ordering the cancellation of the sale deeds in the same order. He apparently held a detailed enquiry to which the vendor was a party: whereas one would ordinarily expect that a much more

summary procedure would in the first instance meet the case. The question is governed by Section 53 of the act which provides that such transfers as are therein specified "shall be voidable as against the receiver and may be annulled by the Court". The section certainly contemplates action by the Receiver. It is true that at the time the order for cancellation was made the Receiver had not been appointed, but he was appointed later on the same day. In *Hemraj Champa Lall v. Rankishen Ram* (1917) 2 Pat. L.J. 101 it was held that until the Receiver refuses or declines to act no one else can do so because he is the person to set the proceedings u/s 36 (now Section 53) in motion.

2. We are inclined to respectfully adopt this decision. The other cases cited can be shortly dealt with. In *Kamleshwar Ram v. Bhavan Prasad*

(1917) 42 I.C. 845 the Allahabad High Court held that a proceeding to set aside a transfer should be taken in the name of "the Receiver and that

no proceeding should have been commenced (by the creditors) until after the appointment of a Receiver. It may well be that when the Receiver

fails to move in the matter a creditor may do so *Bikkamal v. Marwar Bank* (1919) 52 I.C. 188 Even there the Court held that in a case of

fraudulent preference the Receiver should either apply or be a party to the application. The Judgment in *Krishalli Ram v. Bholaimal* ILR 37 All.

252 does not deal with this question at all but simply with the jurisdiction of an Insolvency Court. There the Judge had referred a creditor alleging a

fictitious mortgage, to a suit instead of enquiring into the question himself as the court held he was bound to do. It does not appear, whether or not

a Receiver had been appointed in that case. Section 4 of the Act which was quoted for the respondents is inserted for the purpose of putting an

end to the conflict of decisions as to whether proceedings in the Insolvency Court constitute res-judicata or not.

3. It appears to us that what authority there is all points one way, viz., that it is for the Receiver to take action u/s 53 and not for the court to do so

on a petition for adjudication. We accordingly set aside that part of the District Judge's order which relates to the cancellation of the sale deeds to

the 5th respondent.

No costs in this Court.