

(1931) 01 MAD CK 0010
In the Madras High Court

In Re: Mr. P.C.V. Pantult, Advocate, High Court

Date of Decision : 08-01-1931

Acts Referred:

Evidence Act, 1872 — Section 41

Citation : (1931) 61 MLJ 229

Hon'ble Judges : Sundaram Chetty, J; Stone, J; Horace Owen Compton Beasley, J

Bench : Full Bench

Judgement

Horace Owen Compton Beasley, Kt., C.J.—This case arises on a complaint filed by one P. Kumaraswami Rao. The Tribunal of the Bar

Council to whom this complaint was referred for enquiry framed the following charge:

That between 1921 and 1923 you, P. C. Venkataramanayya Pantulu, now an Advocate of the High Court, Madras, and formerly a Vakil of the

said Court, taking advantage of a remittance in January, 1921, by you through one Piratla Subba Rao of a sum of rupees thirteen hundred to P.

Kumaraswami Rao in Madras on some other account and not by way of loan conspired with the said Subba Rao and one L. V. N. Sastry to

prefer a false claim against the said Kumaraswami Rao through and in the name of the said L. V. N. Sastry by filing a suit O.S. No. 282 of 1922

on the file of the District Munsif's Court at Cocanada as upon a promissory note alleged to have been executed by the said Kumaraswami Rao in

favour of the said Subba Rao and to have been endorsed by the said Subba Rao in favour of the said L. V. N. Sastry and alleged subsequently to

have been lost by the said L. V. N. Sastry and wilfully and fraudulently obtaining an ex parte decree against the said Kumaraswami Rao without

proper service of summons and all this with the ulterior purpose of utilizing the same against the said Kumaraswami Rao who was then making

some pecuniary claims against you; and further you had the said decree transferred to Madras for execution and had it executed by arresting the

said Kumaraswami Rao at or about the time he filed a suit against you in the Presidency Court of Small Causes, Madras, namely, Suit No. 9738 of

1923 and you have thereby made yourself guilty of misconduct which renders you unfit to continue in the profession.

2. The enquiry before the Tribunal has resulted in findings adverse to the Advocate. The Tribunal does not accept in its entirety the complaint of

Kumaraswami Rao. It disbelieves certain of his allegations. It, however, does not accept the respondent's answers with regard to all important

matters either alleged against him or appearing in the course of the enquiry to require an answer. It does not accept the whole of the complainant's

case and only accepts a part of the respondent's.

3. The history of this case is as follows: Kumaraswami Rao was admittedly on terms of close friendship with the respondent from about 1916 up to

1921 except for a short period in 1918 to 1919. He seems to have been more or less a dependent of the respondent and it seems clear that at no

time was his financial position a good one. One D. Seshagiri Rao, an Advocate of the High Court, was also at this time very friendly with the

respondent and appears to have been sharing the same business premises. In March, 1921, arising out of some business transactions, the

respondent and Seshagiri Rao filed a suit in the High Court against one Subramaniam Chetty claiming Rs. 7,000 from him. Subramaniam Chetty

then filed a suit against the respondent in the High Court and another suit against Seshagiri Rao also in the High Court setting up the case in each

suit that the respondent and Seshagiri Rao owed him sums of money. All the three suits ended in a victory for the respondent and Seshagiri Rao

but the appeals against the decrees in those suits ended in the appeals being allowed and the suits ordered to be remanded for fresh trial. They

were subsequently compromised. It seems to be a fact that Kumaraswami Rao was interesting himself in those suits and it appears to have been

supposed that he was in a position to assist the respondent in the litigation and it is admitted by the respondent that he believed that Kumaraswami

Rao might be useful to him and that he felt that he had to keep him in good humour. It seems probable that it was supposed by the respondent that

Kumaraswami Rao was in possession of correspondence or documents the production or suppression of which might assist the parties to the

litigation. At the latter end of January, 1921, Kumaraswami Rao after an urgent request by him to the respondent received by the telegraphic

money order sums amounting to Rs. 1,300 and it does not appear to be disputed by Kumaraswami Rao that the money was sent to him by one P.

Subba Rao. Whose money this really was is one of the important matters in this case. It is represented by Kumaraswami Rao that this money was

due to him from respondent on account of business transactions although this version is disbelieved by the Tribunal and was the respondent's

money and not Subba Rao. On the other hand the respondent alleges that this money was P. Subba Rao's money and that it was lent by P. Subba

Rao to Kumaraswami Rao at the request of the respondent. According to the respondent, this, therefore, was a loan from P. Subba Rao to the

complainant and he (the respondent) had nothing whatever to do with it beyond requesting Subba Rao to lend the money to Kumaraswami Rao.

The Tribunal has disbelieved the respondent's allegation that the money was Subba Rao's and also his denial that it was his (the respondent's). It

is alleged by the respondent that after the receipt of the money by Kumaraswami Rao the latter executed at Madras a promissory note in favour of

Subba Rao, dated the 28th January, 1921, payable on demand and bearing interest at 18 per cent. per annum. This allegation has been disbelieved

by the Tribunal and the history with regard to this alleged promissory note is another of the important matters in this case. It is a curious one. It is

alleged that the pronote was assigned by endorsement to one L. V. N. Sastry on the 29th January, 1922. L. V. N. Sastry is a near relative by

marriage of the respondent and a notice of demand was sent by a pleader at Cocanada, Mr. Kameswara Rao, on behalf of L. V. N. Sastry

addressed to the petitioner at 46, Thambu Chetty Street, Madras. This notice was returned undelivered through the Dead Letter Office in

February, 1922. The alleged promissory note is stated on the respondent's behalf to have been shown to Mr. Kameswara Rao, the Pleader, for

the purpose of the before mentioned notice and this statement is supported by the evidence of that gentleman and it may well be that a promissory

note purporting to have been executed by the petitioner was shown to him. It is alleged that after being shown to Mr. Kameswara Rao it was lost

by L. V. N. Sastry about the 14th February, 1922, at the Bezwada Railway-Station and L. V. N. Sastry had to file a suit, O.S. No. 288 of 1922,

in the District Munsif's Court of Cocanada upon the footing of a lost promissory note. The suit was filed against Kumaraswami Rao as the first

defendant and P. Subba Rao, the endorser, as the second defendant. The address of Kumaraswami Rao is given as 46, Thambu Chetty Street.

The first summons to Kumaraswami Rao was returned unserved as Kumaraswami Rao was not then at the address given, namely, 46, Thambu

Chetty Street. The date of the summons is 29th June, 1922. The endorsement on it by the bailiff, is as follows:

I went to the within-mentioned premises in search of the defendant where he could not be found but I found it is a hotel. The hotel-keeper told me

that there is no person living in that hotel by the name of the defendant. So I posted a copy of summons on the outer door of the House No. 46,

Thambu Chetty Street, Georgetown, at 10 a.m. on the 9th July, 1922.

4. A fresh summons was ordered on the 14th August and it was addressed to the defendant Kumaraswami Rao at the same address and was

again returned unserved with a similar endorsement by the bailiff to that which appears on the earlier summons. It must be noted that P. Subba

Rao, the 2nd defendant, filed a written statement contesting the suit, although on what ground it is neither stated nor apparent. L.V.N. Sastry then

obtained a decree ex parte against Kumaraswami Rao in this suit but gave up his claim against Subba Rao, the 2nd defendant, who did not press

for costs. In support of his claim L.V.N. Sastry filed an affidavit in which he stated that he was present when Kumaraswami Rao, the 1st

defendant, executed the promissory note in favour of the 2nd defendant, that he saw Kumaraswami Rao sign and that he knew his signature. The

statement that he was present when the 1st defendant executed the promissory note and that he saw him sign it has been admitted by L.V.N.

Sastry in his evidence before the Tribunal to be untrue. The decree in the suit which is dated the 22nd September, 1922, is as against the 1st

defendant Kumaraswami Rao alone. As the promissory note was alleged to have been lost L.V.N. Sastry, the plaintiff, filed an indemnity bond in

order to obtain his decree. This decree was subsequently transferred to the Court of Small Causes, Madras, for execution. On 9th August, 1923,

L.V.N. Sastry applied for a warrant of arrest without notice against Kumaraswami Rao and the application is supported by an affidavit dated the 8th August. Therein it is stated that the 1st defendant (Kumaraswami Rao) "is not possessed of any immovable or movable property sufficient to satisfy the decree" and is "unemployed". By this time the decretal amount had with interest risen to Rs. 1,930-8-0. A warrant for the arrest of Kumaraswami Rao was issued and he was arrested. When he was arrested on the 20th August he appeared before the Court and got himself adjudicated an insolvent. It must be noted that Kumaraswami Rao had not taken any steps up to then to set aside the ex parte decree passed against him in the District Munsif's Court of Cocanada. He says that he only learnt of this decree when the warrant of arrest was issued against him. L.V.N. Sastry filed his claim before the Official Assignee based on the ex parte decree obtained by him against Kumaraswami Rao. Kumaraswami Rao repudiated the ex parte decree as falsely and fraudulently obtained. The Official Assignee enquired into that claim and made his report on 11th January, 1929, rejecting it as false and on appeal from the Official Assignee's order Kumaraswami Sastri, J., upheld the Official Assignee's order on the 22nd January, 1929. Against this an appeal was filed, O.S.A. No. 25 of 1929. This appeal was disposed of by our learned brothers Ramesam and Cornish, JJ., whilst this matter was under enquiry by the Tribunal. The appeal was allowed. The judgment is reported in L.V. Narasimha Sastri v. The Official Assignee of Madras (1929) 59 M.L.J. 321 and L.V.N. Sastry's claim based on the ex parte decree in the Cocanada suit and also on the merits was allowed; and with regard to this appellate judgment a legal contention has been raised both here and before the Tribunal which has resulted in an argument which has necessarily occupied a great deal of our time. It has been argued that this last judgment is conclusive of the matter now before us and that it was neither open to the Tribunal nor is it open to us now to go into the question of the truth or otherwise of L. V. N. Sastry's claim. Before dealing with that contention, there are some other matters to which reference must be made. It is quite clear that at the time when Kumaraswami Rao received the remittance of Rs. 1,300 he was on friendly terms With or at any rate willing to assist the respondent in his litigation but his attitude changed later on. It is a fact that he was cited as a witness in Subramaniam Chetty's

suits for Subramaniam Chetty against Seshagiri Rao and the respondent, though he was eventually not examined. In connection with Kumaraswami

Rao's changed attitude it must be observed that on the 5th April, 1921, Kumaraswami Rao put forward an alleged claim against the respondent

for payment of Rs. 1,200, the balance stated to be due to him in connection with transactions he alleged he had had with the respondent for the

previous 2 1/2 years. The respondent disputed the claim as being false and fraudulent and made a counter-demand for Rs. 357 against

Kumaraswami Rao. It is alleged by Kumaraswami Rao that there immediately followed a settlement of his claim and the respondent's claim in the

presence of Mr. Ramachandra Raju, the respondent's then vakil, and Mr. Seshagiri Rao and it is said that the respondent agreed to pay

Kumaraswami - Rao Rs. 600 in full settlement; Kumaraswami Rao gave a notice of claim on the alleged settlement already referred to on 18th

November, 1922 (Ex. C) and on the 7th August, 1923, the, Official Assignee filed a suit against the respondent claiming from him the Rs. 600

agreed to be paid by him under that settlement. The plaint in the suit is Exhibit J. Although a previous warrant for the arrest of Kumaraswami Rao

had been taken out, it was not executed. It is significant that steps to arrest Kumaraswami Rao were again taken immediately the Official Assignee

filed the before-mentioned suit in the Court of Small Causes. The position, therefore, was that Kumaraswami Rao at one time a great friend of the

respondent and able to assist him in his litigation or embarrass him in it found himself under arrest at the instance of L. V. N. Sastry in execution of

the decree in the District Munsif's Court of Cocanada and sought the protection of the Insolvency Court; and when L. V. N. Sastry's claim was

investigated it was rejected by the Official Assignee and that decision was upheld by Kumaraswami Sastri, J., but was reversed on appeal by

Ramesam and Cornish, JJ.

5. This brings me now to the consideration of the important and difficult question of law raised by Mr. T. M. Krishnaswami Aiyar in the course of

his very able argument. That question is whether the judgment of the Appellate Court must be deemed to be a judgment in rem within the meaning

of Section 41 of the Indian Evidence Act. If it is, it is conclusive and any other Court is precluded from reopening the same question. It is argued

by Mr. T. M. Krishnaswami Aiyar that the finding of the Appellate Court that the debt claimed by L.V.N. Sastry as due to him from

Kumaraswami Rao is true is a conclusive finding u/s 41 of the Indian Evidence Act. What has to be decided is whether the judgment of the

Appellate Court confers upon or takes away from L. V. N. Sastry any "legal character". The decision of what is a "legal character" within the

meaning of that section is not free from difficulty. Mr. T. M. Krishnaswami Aiyar contends that in insolvency proceedings a declaration that a

person is a creditor in the in-solvency confers upon him a "legal character". He draws "a distinction between a person who is a creditor of an

ordinary debtor, not an insolvent, and the creditor of an insolvent and although he does not admit that the former does not possess a "legal

character" he contends that the latter certainly does because directly the claims of a creditor in insolvency are recognised, the Insolvency Act

confers upon him special rights and places upon him certain liabilities which he did not formerly possess or have placed upon him and that he thus

becomes clothed with a "legal character". He has of course to establish that position for his client because his client was not a party to the

insolvency proceedings. He has, therefore, to contend that the appellate judgment is a judgment in rem. The term "legal character" is not defined in

the Evidence Act nor in any other Act and we are therefore driven to the consideration of cases where it has been held that a person possesses a

legal character" or status. One of these is Ramakrishna Patter v. Narayana Patter ILR (1914) 39 M. 80 : 27 M.L.J. 634. That was a case u/s 42

of the Specific Relief Act. Under that section only a person entitled to any "legal character" or to "any right to property" can institute a suit for a

declaratory relief in respect of his title to such legal character or right to property and on page 82 the Division Bench state:

We take it that a, man's "legal character" is the same thing as a man's status." "A man's status or "legal character" is constituted by the attributes

which the law attaches to him in his individual and personal capacity, the distinctive mark or dress, as it were, with which the law clothes him apart

from the attributes which may be said to belong to normal humanity in general." "According to Holland, the chief varieties of status among natural

persons may be referred to the following causes: (1) sex, (2) minority, (3) patria potestas and manus, (4) coverture, (5) celibacy, (6) mental defect,

(7) bodily defect, (8) rank, caste and official position, (9) slavery, (10) profession, (11) civil death, (12) illegitimacy, (13) heresy, (14) foreign nationality, and (15) hostile nationality.

6. There must, of course, be other varieties, such as, for example, insolvency. To declare a man to be an insolvent is clearly to place beyond all

doubt the status of that individual and it is conclusive as against the whole world. But it is a very different thing to say that to declare a person to be

the creditor of an insolvent is to confer a status upon that creditor which is equally conclusive as against the whole world. Apart from an insolvency

the creditor's position arises out of a contractual relationship. Does the mere fact that his relationship is recognised in the Insolvency "Court confer

upon him a status? I think that it would be most undesirable to extend the scope of Section 41 of the Indian Evidence Act and that the description

legal character"" should receive a strict and limited construction. Mr. T. M. Krishnaswami Aiyar has referred us to cases where a presumptive

reversioner under the Hindu Law has been held to possess a ""legal character"" (20 CWN 738 (Privy Council) , a decision of the Privy Council u/s

42 of the Specific Relief Act) and a legatee or a beneficiary under a will has also been (Chinnaswami v. Hariharabadra ILR (1893) 16 M. 380 : 3

M.L.J. 121). In the latter case [it was held that the judgment of a Probate Court granting or refusing probate is a judgment in rem and therefore the

judgement of any other Court in a proceeding inter partes cannot be pleaded in bar of an investigation in the Probate Court as to the factum of the

will propounded in that Court. These decisions, though no doubt useful, do not, in my view, carry Mr. Krishnaswami Aiyar sufficiently far. On the

other hand, there is a decision of this Court which seems to me to place a very necessary limit on the scope of Section 41 of the Indian Evidence

Act. That is The Official Assignee of Madras v. The Official Assignee of Rangoon (1923) 46 M.L.J.. 580. There it was held by Sir Walter

Schwabe, C.J. and Ramesam, J. that an order of an Insolvency Court refusing to adjudicate a person insolvent on the ground that he was not a

member of a firm which had been declared insolvent is not a final order which conferred upon of took away from him any ""legal character"" within

the meaning of Section 41 of the Evidence Act and hence is not a judgment in rem and that being a partner in a firm is not a ""legal character"" as

contemplated by that section. On page 587 Sir Walter Schwabe, C.J., states as follows:

In this case the way the Court in Rangoon arrived at its decision was by saying that Annamalai Chetty was a member of the joint family and that he

had disclaimed any interest in the joint family property as against his creditors, that there was no evidence before it that he was a partner and,

therefore, it declared that he was not a partner. It would be a very remarkable thing if that is a binding decision on all the world that a partnership

did not exist. For instance, if a creditor here or elsewhere, were taking proceedings against Annamalai on the basis of the partnership, he could set

up the decision of the Rangoon Court as a judgment in rem binding on the party here who was not a party in Rangoon. I do not think that was the

intention of Section 41 at all.

7. This case, in my view, is one that is very much against Mr. Krishnaswami Aiyar's argument. If a partner does not possess a "legal character

then it is difficult to see how a creditor in an insolvency can be entitled to claim for himself such a character. The section does not use the words

legal right" but uses the words "legal character" and Mr. Krishnaswami Aiyar's argument in the main has been that a creditor has acquired a "legal

right" which is a very different thing from saying that he has acquired a status which he can hold as against the whole world. In the absence of any

authority for the contention that a creditor in an insolvency has a "legal character," I am not disposed to extend the scope of Section 41 of the Indian

Evidence Act to include such a person. Mr. Krishnaswami Aiyar in the alternative contends that the judgment of the Appellate Court declares L.

V. N. Sastry to be entitled to a specific thing, namely, the debt from the insolvent and that Section 41 of the Indian Evidence Act makes such a

declaration conclusive. Quite apart from the fact that, in my view, a debt is not a "specific thing" referred to in Section 41 of the Indian Evidence

Act, there is the difficulty that the declaration of the Court must be that a person is entitled to that specific thing absolutely and not as against any

specified person or, in other words, the declaration must be that L. V. N. Sastry is entitled to the sum he has claimed as against the whole world

absolutely whereas the declaration is merely that he is entitled to it as against the insolvent. Mr. Krishnaswami Aiyar is unable to point to anything in

the Insolvency Act which enables the Insolvency Court to declare the title of any person to any specific thing absolutely and not merely as against

another person and it is only in the former case that it will have the conclusive character as against the whole world. I have come to the conclusion

therefore that neither the Tribunal nor this Court is precluded from going into the question of the genuineness or otherwise of L. V. N. Sastry's

claim and I also make the observation that although it is true that the Appellate Court did consider L. V.N. Sastry's . claim not only on the footing

of the judgment debt but also on the merits it was not in my view, essential to consider anything more than the former question. Ramesam, J., after

holding that it is open to the Insolvency Court to go behind an ex parte decree and investigate the nature of the debt if there are grounds for so

doing, states:

Where there are no other creditors the reason for examining into the judgment debt especially when the debtor himself allowed the opportunity he

had to pass by becomes much less,

and later on observes:

I do not think this jurisdiction of the Official Assignee to enquire into debts could be used as a device to escape the execution of a decree where

the only debt, of the insolvent is the decree and there are no other debts. It seems to me that the insolvency jurisdiction should not be used as a

device to evade execution of a decree which has become final and unimpeachable as in the present case.

8. After those observations it was unnecessary to consider the matter any further and to examine also the question whether in fact there had been

the debt upon which the ex parte decree was based. Therefore, in my view, every finding of fact after this point was not. essential to the decision of

the Appellate Court allowing L. V. N. Sastry's claim. Cornish, J. says:

In my opinion these materials are not sufficient evidence either of collusion or of fraud or of miscarriage of justice

and it is quite clear I think that Cornish, J., based his decision chiefly on the grounds that there was not sufficient evidence to justify the Insolvency

Court setting aside the ex parte decree. There now remains to be considered whether the findings of the Tribunal upon the facts are to be

accepted. The Tribunal has disbelieved the petitioner's case that the respondent

was indebted to him in the sum of Rs. ,2,500 as alleged but has found that the remittance of Rs. 1,300 to the petitioner by P. Subba Rao was in fact of the respondent's money and at the time he made the remittance he did so with the mental reservation that he should claim it back after everything was over though he did not say so to the petitioner, that at the time he made the remittance he was expecting some help from the petitioner in connection with his suit against Subramaniam Chetty, that the petitioner did not execute any promissory note in favour of P. Subba Rao, that the ex parte decree was fraudulently obtained by giving an address for service known to be not the correct address and on a false affidavit proving execution and that L. V. N. Sastry and P. Subba Rao had no motive of their own to resort to any fraudulent procedure and they must have done this at the respondent's instance and on his behalf. I will take the Tribunal's finding upon the first point to be correct and will now deal with the other findings.

9. The first thing to be considered is whether the ex parte decree was fraudulently obtained and here we have been assisted by Mr. Krishnaswami Aiyar's very frank admission that he cannot possibly defend the procedure adopted in the obtaining of that ex parte decree. That decree was obviously fraudulently obtained.

10. [His Lordship then discussed the evidence and continued:]

11. I am satisfied that the findings of the Tribunal are right. The Tribunal has given this case the most careful consideration, that is apparent from the report. The members of the Tribunal are gentlemen of great experience and are not likely to have been misled by the evidence. The result is that the respondent has been shown to have been guilty of professional misconduct of a grave kind. He put up a case of a promissory note, and got a relative to sue Kumaraswami Rao upon it and it has been clearly proved, in my opinion, that no such promissory note ever existed. The respondent was sufficiently aware, I am satisfied, of the danger of putting forward a forged promissory note. He therefore invented the story of the lost promissory note and then deliberately took steps to keep Kumaraswami Rao in ignorance of the suit which had been filed against him. Even if there had been a genuine loan by Subba Rao to Kumaraswami Rao and a real promissory note, the procedure adopted in getting the ex parte decree of

which the respondent was not only aware but in which he was the prime mover was so fraudulent that that alone would be unprofessional conduct

on, the part of the respondent. But for the reasons I have already given, I am satisfied that the respondent was guilty of the graver acts.

12. There remains to be considered only the punishment to be inflicted upon him. It is difficult to imagine any more dishonourable conduct than that

of the respondent and but for two circumstances such conduct must have resulted in his being ordered to be struck off the rolls. These

circumstances are, firstly, that the money sued for was as the tribunal has found the respondent's although the procedure adopted by him to

recover it was wholly crooked and dishonourable and secondly, that there does seem to be some ground for believing that the petitioner was

blackmailing the respondent and that this was the real reason why the money was sent to him. Taking these matters into consideration in my view

the order of the Court should be that the respondent be suspended from practice for the period of five years.

Sundaram Chetty, J.

13. [After dealing with the facts, His Lordship continued as follows:] During the insolvency proceedings, the Official Assignee enquired into the

claim made by L. V. N. Sastry on the strength of the ex parte decree obtained by him and rejected it as false (vide his report, dated 11th January,

1929). The order of the Official Assignee was upheld by Kumaraswami Sastri, J. (Exhibit R.) Against that, an appeal was filed and it was disposed

of by Ramesam and Cornish, JJ. "(Vide Exhibit XIII.) The learned Judges allowed the appeal, holding that there were no adequate grounds for

vacating the ex parte decree passed against the insolvent and also stating that the debt must be regarded as proved. It is strenuously contended by

Mr. T. M. Krishnaswami Aiyar, on behalf of the respondent, that that judgment of the Appellate Court in insolvency proceedings should be

deemed to be a judgment in rem within Section 41 of the Indian Evidence Act and as such conclusive, so as to preclude any other Court from re-

opening the same: question. If this contention should prevail, the finding of the Appellate Court in its insolvency jurisdiction that the debt set up by

L. V. N. Sastry as due to him from the insolvent is true, should be taken to be conclusive. It is argued with great insistence that by reason of that

judgment the legal character of L. V. N. Sastry as a creditor of the insolvent must be deemed to have been declared so as to be operative as a judgment in rem against all the world.

14. In order to decide this question, which is not free from difficulty, the true scope of Section 41 of the Evidence Act has to be understood. That

section incorporates the law on the subject of "judgments in rem" as explained in the decision of Sir Barnes Peacock in *Kanhya Loll v. Radha*

Churn (1867) 7 W.R. 338 . According to that section, "a final judgment, order or decree of a competent Court, in the exercise of probate,

matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any

person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant

when the existence of any such legal character, or the title of any such person to any such thing, is relevant." The section further lays down that such

judgment, order or decree is conclusive proof, that the legal character conferred or declared accrued to that person at the time when such

judgment, order or decree was pronounced and that anything to which it declares any person to be so entitled was the property of that person at

that time. Such an effect seems to be of a limited character, and in order to make any such judgment, order or decree conclusive proof operating

as a judgment in rem, what was conferred on or taken away from a person should be a legal character within the meaning of that section.

15. As observed by Messrs. Woodroffe and Ameer Ali in the Law of Evidence, one of the main difficulties has always been to ascertain some

principle upon which to rest this class of judgments so as to determine what cases fall within it. The principle is lucidly stated in Phipson's Law of

Evidence (5th Edition) at page 387 as follows:

The principle of the conclusiveness of judgments in rem as regards persons is, that public policy for the peace of society requires that matters of

social status should not be left in continual doubt: and as regards things, that generally speaking, every one who can be affected by the decision

may protect his interest by becoming a party to the proceedings. In addition to it, it has to be remembered that a decision in rem not merely

declares the status of the person or thing but ipso facto renders it such as it is

declared; thus a decree of divorce not only annuls the marriage but renders the wife feme sole; an adjudication in bankruptcy not only declares but constitutes the debtor a bankrupt; a sentence in a Prize Court not merely declares the vessel prize but vests it in the captor.

16. The expression ""legal character"" has not been defined in any statute. Its meaning has to be understood in the light of the principles relating to judgments in rem which the legislature must have had in view in framing this section. The same expression ""legal character"" is found in Section 42 of the Specific Relief Act. That section says that only a person entitled to any legal character or to any right to property can institute a suit for a declaratory relief in respect of his title to such legal character or right to property. In construing the significance of that expression, a Division Bench of this Court has observed in *Ramakrishna v. Narayana* ILR (1914) 39 M. 80 : 27 M.L.J. 634 as follows:

We take it that a man's "legal character" is the same thing as a man's status.""
""A man's status or "legal character" is constituted by the attributes which the law attaches to him in his individual and personal capacity, the distinctive mark or dress, as it were, with which the law clothes him apart from the attributes which may be said to belong to normal humanity in general.

17. The chief varieties of status as set forth in Holland's Jurisprudence are also mentioned in that decision as illustrations. Now, what is it that the judgment (Ex. XIII) has declared? The claim of L. V. N. Sastry as a creditor of the insolvent was allowed; in other words, the debt alleged by him as due from the insolvent was found to be true.

18. Mr. Krishnaswami Aiyar in the course of his able argument contends that the declaration that L. V. N. Sastry is a creditor of the insolvent made by the Court in the exercise of insolvency jurisdiction confers upon him a legal character as contemplated in Section 41 of the Evidence Act.

Ordinarily, the right of a creditor is to recover his debt from the debtor. That arises from a contractual obligation. It cannot strictly be deemed to confer on him any status or legal character. It is, however, urged that as soon as he is recognised as a creditor to the insolvent's estate, the law gives him a position out of which certain special rights and duties flow. By virtue of the attributes which the law attaches to him, it is argued that a legal character may be deemed to have been conferred on him. The decision in

Rarmkrishna v. Narayana ILR (1914) 39 M. 80 : 27 M.L.J. 634

shows that a right claimed as arising out of a contractual obligation would not be a right to a legal character within the meaning of Section 42 of the

Specific Relief Act. The grant of probate by a Court in the exercise of probate jurisdiction has been held to be conclusive proof of the truth of the

will which has the effect of declaring a person to be an executor, and that is conferring on him a legal character. This is indicated by the decision of

the Privy Council in 20 CWN 738 (Privy Council) . From the observations of their Lordships, it may also be taken that a presumptive reversioner

under Hindu Law has a legal character entitling him to sue for a declaration u/s 42 of the Specific Relief Act. In Chinnaswami v. Harihmafoadra

ILR (1893) 16 M. 380 : 3 M.L.J. 121 it is stated that by the grant of probate of a will, the legatee or the beneficiary under the will acquires a legal

character. It has been held in the decision reported in The Official Assignee of Madras v. The Official Assignee of Rangoon (1923) 46 M.L.J. 580

that a declaration by the Insolvency Court that one is a partner or not a partner of a firm does not amount to the conferring of a legal character nor

the taking away of a legal character from a person within the meaning of Section 41 of the Indian Evidence Act. At page 587 the learned Chief

Justice observes that an order of the Insolvency Court refusing to adjudicate one Annamalai Chetty a bankrupt, on the ground that he was not a

member of the firm which had been declared insolvent, is not an order conferring upon Annamalai Chetty or taking away from him any legal

character within the meaning of Section 41 of the Indian Evidence Act which would operate as a judgment in rem binding on all the world. This

decision is, in my opinion, the nearest approach to the present case. It is argued that in consequence of the recognition of a person as a creditor to

the insolvent's estate in the course of the insolvency proceedings certain special rights and liabilities are created by the Insolvency Act. which may

not be applicable to the case of an ordinary creditor. As he is clothed with certain statutory rights and obligations, it is urged that he must be

deemed to have been clothed with a legal character. The same thing can be said even in respect of a partner. If a partnership is created by contract

among two or more persons, certain special rights and obligations are created by virtue of the provisions of the Indian Contract Act which are not

traceable to any contract between the parties. It is not easy to distinguish the position of a partner from that of a scheduled creditor in insolvency, because certain rights and duties imposed by the statute apply to both of them though those do not flow from any particular contract. If a partner has no legal character within the meaning of Section 41 of the Evidence Act as held in *The Official Assignee of Madras v. The Official Assignee of Rangoon* (1923) 46 M.L.J. 580, it is difficult to hold that a creditor whose debt is held to be proved by the Insolvency Court has acquired a legal character within the meaning of that section. If the expression "legal character" used in Section 41 denotes a status, the acceptance of Mr. Krishnaswami Aiyar's contention in the present case would amount to saying that "legal character" would mean a legal right, acquired not solely by a contract but by virtue, of a statutory provision. That would be too broad a definition of "legal character" and I do not think that such an unrestricted and wide scope could be given to that expression occurring in Section 41 which deals with judgments in rem, in the absence of any direct authority. The decisions in *Chahdreshmm Prasad Narain Singh v. Bisheskwar Pratap Narain Singh* ILR (1926) 5 Pat. 777 and *Kishorbhai Revadas v. Ranchodia Dhulia* ILR (1914) 38 B. 427 do not seem to be quite in point for purposes of the present question. I am therefore of opinion that the final judgment of the Insolvency Court (Exhibit XIII) cannot be deemed to have conferred a legal character on L. V. N. Sastry within the meaning of Section 41 of the Indian Evidence Act, in which case alone the declaration that he is a creditor of the insolvent would operate as a judgment in rem.

19. I may now refer to the alternative contention raised by Mr. Krishnaswami Aiyar that L.V.N. Sastry must be taken to have become entitled to a specific thing by reason of the finding given by the Appellate Court in insolvency jurisdiction (Exhibit XIII). Here again a difficulty arises in ascertaining what is meant by a "specific thing" in this section. Prima facie, it connotes tangible moveable property. It would be somewhat strange if an actionable claim such as a right to recover a debt from another person can be deemed to come under "any specific thing" mentioned in this section. It is not enough to show that under the judgment of the Insolvency Court one has become entitled to a specific thing, but his title to such a

thing must have been declared not as against any specified person, but absolutely. So far as I could see, there is nothing in the Insolvency Act for declaring the title of any person to a specific thing in the manner provided for in Section 41 of the Evidence Act. The title to the specific thing should be declared absolutely and not merely as against another person and in such a case only it would have the conclusive character as against the whole world. Such declaration may be made in the exercise of admiralty jurisdiction. However, reliance is placed upon a decision of the Allahabad High Court in *Pifaram v. Jkujhar Singh* (1916) 33 I.C. 798. In that decision, an adjudication by Insolvency Court as to the title of a claimant in respect of some houses, crops and moveable property, has been held to be conclusive proof of title in respect of the specific things claimed by the applicant within the meaning of Section 41 of the Evidence Act. That decision would no doubt be an authority which would help the respondent in this case, provided a chose in action or a right to recover a debt could be brought under "any specific thing" mentioned in Section 41. But it seems to me that even as a legal fiction, a right to recover a debt or a chose in action cannot be deemed to be a specific thing. It would be going too far if such an extended meaning is attached to it.

20. For the reasons mentioned above, I am of opinion that the final judgment (Exhibit XIII) does not amount to a judgment in rent within the meaning of Section 41 of the Indian Evidence Act, so as to bind persons "who were not parties or privies to that case. That being so, there is no legal bar to the Tribunal investigating into the matter at issue and coming to an independent conclusion on the merits. The materials for decision, by the Insolvency Court do not appear to have been so full as in the present enquiry. The learned Judges of the Tribunal have bestowed great care and attention over this case and due weight must be attached to the conclusions arrived at by them. I am clearly of opinion that the respondent's conduct in respect of the proceedings taken against Kumaraswami Rao which resulted in the passing of the ex parte decree is by no means honourable or honest. That a member belonging to the honourable profession of law should have stooped to have recourse to such objectionable and crooked methods is to be deplored by all right-minded men. In the exercise of the disciplinary jurisdiction of the High Court, a punishment

which would meet the ends of justice and serve the interests of the profession has to be awarded.

21. As for the punishment, I agree with my Lord in the order pronounced by him.

Stone, J.

22. This case raises questions of fact and of law. The question of law is of some importance and can be most conveniently considered after one

question of fact has been examined. I accordingly consider first that question of fact which can be expressed as follows: Was the respondent the

prime mover in the course of conduct which had for its purpose the securing of a judgment in proceedings (which may be referred to as the Sastri

proceedings) against the complainant without giving the complainant an opportunity to enter any defence?

23. It was conceded by the respondent's counsel, in the course of the argument, and in my view properly conceded, that if the Sastri proceedings

could be brought home to the respondent, his conduct in that matter could not be justified. The vital question thus became not ""Were those

proceedings well founded?"" but ""Was the respondent behind those proceedings?

24. [His Lordship dealt with the evidence and continued as follows:

My conclusion on this question of fact is that the respondent was behind these proceedings. The respondent by his counsel admits that these

proceedings cannot be justified. They are tainted at the source and throughout. If the respondent, an officer of the Court, either inspired them or

was responsible for the course they took he was in my view (a view I gathered was taken by, his counsel who founded himself on the fact his client

was not connected with or aware of these proceedings) guilty of professional misconduct. I am further of the opinion that this question was one

clearly raised by the petition herein.

25. On the merits therefore it follows that the report of the three experienced advocates who having heard and seen the witnesses have arrived at

the conclusion that the respondent is guilty of professional misconduct must be approved. The question remains whether the Court is precluded by

Section 41 of the Evidence Act from questioning the liability which was the subject-matter of the Sastri suit.

26. The question of law arises as follows:

Granted that the proceedings in Sastri suit were objectionable, still the decree of culpability is much less if it appears that Sastri was endorsee of a

promissory note than if it appears that there was no note and no debt and consequently that the Sastri suit was a swindle from beginning to end.

Thus although on the question of professional misconduct I consider the vital question to be as above stated, when one comes to consider the

punishment it is necessary to determine whether there was any debt at all. This issue, it was, argued, the Court was precluded from considering

because on appeal from the judgment of Kumaraswami Sastri, J. (which judgment upheld the decision of the Official Assignee disallowing the

Sastri claim in the insolvency of the complainant) Ramesam and Cornish, JJ., allowed the claim and one of the Judges used the following words:

Ramesam, J.--""We think the debt must be regarded as proved and we allow the appeal."" The debt here referred to is not the judgment debt but

the debt alleged to be due from the complainant herein which was the foundation of the Sastri suit. Cornish, J., does not use any language which

can be construed as amounting to a finding that the debt on which the Sastri case was founded is established. He limits himself to the question at

issue, viz., whether in all the circumstances the Court should exercise its discretion to go behind the judgment and he holds that there is no sufficient

evidence of collusion, fraud or miscarriage of justice to justify the Court's taking such a course. That is, he does not go behind the judgment.

Following the judgments delivered by Ramesam and Cornish, JJ., a decree was entered. The decree is in my view the decree made in the case and

is the document to be looked at when considering Section 41 of the Evidence Act. The decree decreed that the ""Appellant's debt is proved"". The

debt in question was the judgment-debt, not the debt on which the judgment was obtained ex parte. Clearly, therefore, in no view of the law unless

not the decree but the judgment is to be looked at and unless Ramesam, J.'s above quoted observation is to be treated as a judgment in rem, is

this Court, in proceeding between the complainant and the respondent herein, precluded from considering whether the allegation of indebtedness in

the Sastri suit was well founded.

27. The argument, as I understand it, is that the judgment in question is a judgment declaring that a debt is owed to S by an insolvent, that

accordingly it clothes S with a character he would not otherwise possess, for it makes him a creditor, and that although the term "legal character

does not embrace ordinary creditors it does embrace creditors in an insolvency, for such creditors, by the very fact of insolvency, have their rights

varied by act of law. The argument thus amounts to this: that even as insolvency alters the legal character of the insolvent so also it alters the legal

character of the creditors of the insolvent. I do not agree. "Legal character" here means something equivalent to status. See *Kanhya Lall v. Radha*

Churn (1867) 7 W.R. 338, *Gangadhur Roy v. Umasoondary Dossee* (1867) 7 W.R. 347 and *Ramakrishna v. Narayana* ILR (1914) 39 M. 80 :

27 M.L.J. 634. The legal character assigned to a person announces to all the world what the legal status of a person in question is. The meaning of

legal character" must be narrowly construed for it must be remembered that an action in rem is not an action against a thing but an action availing

against all the world. One must be cautious lest litigation between A and B be allowed unduly to affect the rights of C. The sort of danger is clearly

shown in *Official Assignee of Madras v. O.R.M.O.R.S. Firm* ILR (1926) 50 M. 541 : 52 M.L.J. 352. The point there taken was similar to the

point here taken and failed. In *The Official Assignee of Madras v. The Official Assignee of Rangoon* (1923) 46 M.L.J. 580 it was held that a

declaration, that A is a partner in a firm is not a declaration of legal character. The extraordinary consequence that would flow if a declaration of

partnership or non-partnership in litigation between A and B were held to conclusively bind C is there pointed out. Yet it can hardly be doubted

that the condition of being a partner much more nearly approaches status than the condition of being a creditor in an insolvency.

28. The decision of the Judicial Committee in 20 CWN 738 (Privy Council) does not assist. That case decides that where an action is founded

upon the vital allegation of intestacy once it appears that a Probate Court has affirmed the will of the alleged intestate the action fails in limine

because that decision is binding and conclusive, there is therefore a will, and there is therefore no intestacy. The cases cited in *Kishorbhai Revadas*

v. Ranchodia Dhulia ILR (1914) 38 B. 427 and *In re Ivory Rankin Hunkin v. Turner* (1878) 10 Ch.D. 372 amount to no more than this: that

where a Court of Probate has declared a will to be valid or has made a declaration as to next of kin, the fact of the will or of the declared next of

kin cannot be disputed in another Court. Neither case purports to construe Section 41. The case of (1875) L.R. 2 I.A. 169 (Privy Council) does

not, in my opinion, touch the point under decision. It does nor even establish that a reversioner is a person clothed with a legal character within the

meaning of Section 42 of the Specific Relief Act, for it is obvious from Sir Barnes Peacock's remarks at page 174 that the suit for a declaration of

title was one to which the reversioner was not in that case entitled. *Sripatro, v. Shankarrao* (1929) 32 Bom. L.R. 209 is of assistance only as

showing that a declaratory suit is not maintainable by a creditor as such; that is, the condition of creditor is not a legal character. This, however, is

conceded.

29. It is next argued that assuming that the judgment that the debt was proved does not confer a legal character, yet it declares a right to a specific

thing and to a specific thing not against a specific person but absolutely. Upon this latter point *Pitaram v. Jlmjhar Singh* (1916) 33 I.C. 798 is relied

upon. There the Allahabad High Court observed: "'We think the decision of the Insolvency Court amounts to a conclusive proof of title in respect

of the specific things claimed by the applicant not merely as against him, but absolutely, within the meaning of Section 4.1 of the Evidence Act.

There A was claiming certain specific articles which he alleged were his but which being in the possession of the insolvent had been taken by the

Receiver. He had two remedies: (1) to apply to the Insolvency Court, and (2) to institute a suit for recovery in the Munsif's, Court. He pursued (1)

and lost. He did not appeal but commenced suit No. (2). Obviously the earlier decision was binding on him on the ordinary principle of *res*

judicata. The above quoted observation would therefore appear to be obiter. I doubt whether a finding" of a bankruptcy or any other Court in a

contest between A and B as to whether certain property belongs to A amounts to anything more than a finding that as against B it belongs to A. I

cannot believe that in such a contest the rights of C to such property can be conclusively determined. It is no use urging that under the insolvency

rules C could afterwards come and claim. *Ex hypothesi* if the judgment in the suit between A and B is in rent, and conclusive against strangers C

would be met with a conclusive finding. I can well understand that in an admiralty action in rent against the ship there would be a declaration made

effective against the whole world, but as at present advised I find it difficult to conceive how otherwise the judgment could declare title to a specific

thing to be in A against the whole world as distinct from a specific person. However that may be, in this case the point does not arise for I am

clearly of the opinion that a decree declaring that A is entitled to a debt is not a declaration of title to a specific thing made not against a specific

person but absolutely. By the very nature of the case by the time you have made the chose in action a specific thing (assuming that it can be

regarded as a specific thing) to which I have doubts you have specified the debtor.

30. Finally I observe that a judgment in insolvency, declaring that the creditor's debt (i.e., a judgment debt) is a provable debt does not declare

that an alleged debt which merged in that judgment-debt is proved. In Chandreshwar Prasad Narain Singh v. Bisheshwar Pratap Narain Singh ILR

(1926) 5 Pat. 777 it is observed that "all that is essential to the decision that the executor was entitled to probate must be taken to have been

conclusively determined." It is argued, therefore, that it was essential to the decision arrived at by Ramesam and Cornish, JJ., to hold that the

alleged debt was proved and that therefore not only the judgment-debt but the alleged debt which was the foundation of the Sastri suit is

conclusively established against the world. I am not to be taken as assenting to the above citation, but assuming that it is a correct statement it is not

applicable, for it was not necessary for the Court in the insolvency proceedings to hold that the alleged debt in the Sastri proceedings was proved.

Judgment could have been given without any such finding of fact and one of the learned Judges (Cornish, J.) gave such a judgment. But even had it

been a necessary step I incline to the view that the observations to be found on page 348 of 7 Weekly Reporter [Kanhya Lall v. Radha Churn]

express the true position. Though it be necessary as a step to making a declaration which will operate in rem to find a fact that finding will not bind

third parties in subsequent proceedings.

31. I am accordingly of the opinion that the Tribunal was at liberty to consider whether the alleged liability founded upon an alleged promissory

note and sued for in the Sastri suit ever existed.

32. On this issue of fact I see no reason for thinking that the Tribunal arrived at a

false conclusion or one unsupported by evidence.

33. There remains the fact mentioned in the report at page 76, lines 40 to 44 of the printed case that this is a stale complaint. Whether this is very

material in considering the degree of delinquency is a matter of doubt. I concur in the view expressed by the Chief Justice as to the gravity of the

offence and as to the proper punishment therefor.

34. After the above judgments of Sundaram Chetty and Stone, JJ., were delivered, the following order of the Court is pronounced, viz.:

The Order of the Court is that the Advocate, P.C. Venkatramanayya Pantulu, be suspended from practice for the period of five years"" and pay the

fee for the appearance here of Mr. S. Duraiswami Aiyar for the Advocate-General which we fix at Rs. 750.