
(1943) 11 MAD CK 0017
In the Madras High Court

Jashi Parvatavardhanamma

APPELLANT

Vs

Adusumalli Venkataramiah and Others

RESPONDENT

Date of Decision : 10-11-1943

Acts Referred:

Citation : AIR 1944 Mad 235

Hon'ble Judges : Kuppuswami Ayyar, J;Kuppuswami Aiyar, J

Bench : Division Bench

Judgement

Kuppuswami Ayyar, J.—This is an appeal by a creditor in insolvency against the order of the District Judge of Ellore refusing to set aside a

mortgage deed executed by the insolvent and his sons so far as the document related to a transfer by the sons of the insolvent. Exhibit 11 is the

mortgage deed executed by Somayya the insolvent and his sons Venkateswara Rao and Venkata Subrahmanyam represented by the father as

guardian. The Official Receiver filed the petitions C. M. P. NO. 342 of 1938 u/s 53, Provincial Insolvency Act, for setting aside that mortgage.

The document was set aside only so far as it was executed by the father but so far as the execution of the document by the sons was concerned,

the learned Judge came to the conclusion that it could not be set aside as there was an attachment in respect of the sons' interest. The appellant

has filed this appeal after obtaining leave of Court u/s 75 (3), Provincial Insolvency Act.

2. When the appeal was taken up for hearing, it was stated by Mr. Munikanniah for respondent 3 and by Mr. Vallabhacharyulu for respondent 4

that they are entitled to go into the merits of the order of the District Judge that they are not in a position to do so as the entire records have not

been printed and that they were told that this is a case in which the parties are to file typed papers as printing had been dispensed with and it is only

after the case came in the ready list they noticed that the papers had been printed at the instance of the appellant. I mentioned to them that in case

that has to be gone into I would give them an opportunity to get the necessary documents typed and put into Court.

3. The only question argued before me is whether the insolvency Court had jurisdiction to go into the question as to whether the document Ex. 11

could be set aside so far as it was executed by the sons. u/s 53, Provincial Insolvency Act,

any transfer of property not being a transfer made before and in consideration of marriage or made in favour of a purchaser or incumbrancer in

good faith and for valuable consideration shall, if the transferor is adjudged insolvent (on a petition presented) within two years after the date of the

transfer, be voidable as against the receiver and may be annulled by the Court.

The Insolvency Court being a Court of special jurisdiction constituted under the Provincial Insolvency Act its jurisdiction and powers would be

limited to and governed by the provisions of that Act. u/s 53 of that Act, a transfer could be set aside by the insolvency Court only ""if the transferor

is adjudged insolvent."" In this case, it is the father that was adjudged insolvent and not the sons. The sons being eo nomine parties to Ex. 11 and

not having been adjudged as insolvents, the transfer under that document cannot be set aside so far as it related to them. In A.L.S.P.P.L.

Subramanian Chettiar Vs. Subbaraya Goundan and Others, it was held by Sundaram Chetti J. that the Insolvency Court had no jurisdiction to set

aside the alienation so far as the son of a Hindu insolvent was concerned. It is true that in Palaniappa Chettiar v. Official Receiver, Madura AIR

1937 Mad. 791 as also in Murugappa Mudali v. Official Receiver, Chittoor AIR 1943 Mad. 303 that decision of Sundaram Chetti J. has been

dissented from. But then, in Palaniappa Chettiar v. Official Receiver, Madura AIR 1937 Mad. 791 the question was not considered by Pandrang

Row J. in the light in which I have put it. It was stated in that ruling that as the father himself could convey the entire interest of the family in the

property by an alienation the document would convey the entire interest in the property and hence could be set aside. But the question as to

whether the conditions imposed by Section 53 of the Act could be said to have been fulfilled in a case like this was not dealt with by the learned

Judge. Similarly in the other case in *Murugappa Mudali v. Official Receiver, Chittoor* AIR 1943 Mad. 303 the reason given by Abdur Rahman J.

was that the son's interest vests in the Official Receiver when the Hindu father is adjudged insolvent. In *Virupaksha Reddi v. Siva Reddi* AIR 1943

Mad. 652 it was pointed out by a Bench of this Court that this view was not correct. In view of the fact that the basis for the decision in

Murugappa Mudali v. Official Receiver, Chittoor AIR 1943 Mad. 303 has not been approved by a decision of the Bench of this Court, I do not

think I will be justified in following it. In these circumstances, I find that apart from the question as to whether an attachment of the son's interest at

the instance of a creditor would deprive the Official Receiver of his right to bring the properties for sale by exercising the power vested in the father

to sell the interest of the sons in the joint family properties for a debt of the father, the insolvency Court had no jurisdiction to set aside u/s 53,

Provincial Insolvency Act, the document so far as it was executed by the sons or on behalf of the sons by the father as guardian. In the result the

appeal fails and is dismissed with costs of respondents 3 and 4.