

(1928) 03 MAD CK 0032
In the Madras High Court

K. Venkitarayan and Others

APPELLANT

Vs

V. Kesavan Pattar and Others

RESPONDENT

Date of Decision : 27-03-1928

Acts Referred:

Citation : AIR 1929 Mad 778

Hon'ble Judges : Reilly, J;Kumaraswami Sastri, J

Bench : Full Bench

Judgement

Kumaraswami Sastri, J.—This appeal arises out of a suit for partition filed by the plaintiffs who were then minors. Plaintiffs 1 to 3 are the appellants. Their father was one Kesavan Pattar. There was a partition between the plaintiffs' father and their uncle, Krishna Pattar. Kesavan Pattar, the plaintiffs' father, was declared insolvent and his interest in the property vested in the Official Receiver. The plaintiffs filed a suit for partition making various allegations of immorality, gambling and other vices against their father on account of which, they say, that he incurred debts and as such, those debts are not binding on them. The Official Receiver obtained possession of the property and during the pendency of this suit an injunction was obtained against the Official Receiver effecting a sale of the family properties. But it appears that another Official Receiver was appointed who had no notice of the injunction and he proceeded to sell the family properties. The law as then understood was that the insolvent's sons' share also vested in the Official Receiver and he could sell the property including the share of the son also. This, however, after the decision of the Privy Council in AIR 1925 18 (Privy Council) could not be good law. The principle of this decision will apply to "the Provincial Insolvency Act also as it will apply to the Presidency Towns Insolvency Act. It is also clear from the authorities in AIR 1925 18 (Privy Council) and Venkata Seetharama Chettiar v. Official Receiver, Tanjore AIR 1926 Mad. 994, and the recent decision of the Full Bench in the Official Assignee Vs. Ramachandra Aiyar and Others, that in a sale by the Official Receiver of an insolvent father's property his son's interest would not vest in the purchaser, after a suit for partition had been filed by the sons against their insolvent father.

The District Munsif dismissed the suit on the ground that the sons share also vested in the Official Receiver and therefore there can be no decree for partition. He was of opinion that the illegality and immorality alleged by the plaintiffs had not been proved. On appeal the District Judge also took the same view and he also dismissed the suit. He held that the trade was not ancestral or family trade and he also held that the immorality and illegality of the debts had not been proved.

2. It seems to us that having regard to the authorities that decision is untenable as the sale by the Official Receiver would not affect the interest of the sons. Therefore they are *prima facie* entitled to a decree for partition though in effecting it regard will be had to the debts which are payable by the father and which are binding on the sons and on the finding that the debts are neither illegal nor immoral, regard will be had to the equities of the purchasers of three items of property from the Official Receiver and they will be allotted on partition to the purchasers, defendants 1 to 7, if there are no other superior equities intervening. To make the meaning clear, if the price paid by defendants 4 to 7 is found to be fair and reasonable and as we have found that the debts of the father are neither illegal or immoral, the property purchased by defendants 4 to 7 will be allotted to them on partition if there are no other irregularities in the said purchase by them.

3. Mr. Anantakrishna Ayyar argues for the respondents that the insolvency does not take away the right of the father to deal with the properties as manager before a decree for partition is passed in favour of the minors. In the present case it is difficult to see how we can refuse partition to the minors as the decree for partition if passed will really relate back to the date of the plaint and effect a severance from that date. As regards the right of the father to sell the properties that right would not be deemed to exist where there is a severance of status on the son's claiming a share for partition. In this case there are also other questions which are difficult for us to determine in second appeal. For example, it is alleged on one side that the share of the father was very much more than what is represented to be the value of his share. It is said that the debts amount to over a lakh of rupees and the father's share would come to Rs. 30,000. On the other side it is alleged that the one-fourth share of the insolvent alone would be worth Rs. 90,000. There is no question now that the debts amount to a lakh of rupees, and if the allegation is true very probably the father's share alone will go to pay off a great many of his debts. Allegations are also made as regards the value of the property purchased by defendants 4 to 7. It is alleged that they purchased the properties at a low price and that, if those properties were sold in the partition suit, they would fetch a higher price. Here again there is no evidence before us and we cannot go into the question in second appeal. It may be that in the end the sons will have nothing after the partition is made and accounts are gone into but that is a question to be decided by the trial Court.

4. We think that the proper order will be to reverse the decree of both the Courts

below and remand the suit for disposal. The District Munsif will pass a preliminary decree for partition and take the necessary accounts. The accounts will be taken on the footing that the debts of the father are neither illegal nor immoral and that his sons cannot escape the liability created by their father. In passing a preliminary decree regard will also be had to the equities in favour of defendants 4 to 5. They will be given the properties which they have purchased if it is possible to do so in working out the partition. The parties are also allowed to adduce further evidence as regards the value of the properties or as regards the irregularities which the plaintiff allege against the sale to defendants 4 to 7. costs will abide and follow the result. The appellants will be entitled to a refund of the stamp fee paid by them. The Receiver will be entitled to take his costs out of the estate, if there are any funds in the estate.

Reilly, J.

5. I agree.