
(1947) 01 MAD CK 0014
In the Madras High Court

Kandaswami Pillai and Another

APPELLANT

Vs

T.N.C. Kandaswami Pillai and Others

RESPONDENT

Date of Decision : 10-01-1947

Acts Referred:

Provincial Insolvency Act, 1920 — Section 28(7)

Citation : AIR 1947 Mad 372 : (1947) 60 LW 200 : (1947) 1 MLJ 203

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—On 18th April, 1933, I.P. No. 27 of 1933 was filed to adjudicate the father of the petitioners herein an insolvent; and he was adjudged an insolvent on the 1st November, 1934. On the 8th March, 1940, the adjudication was annulled, because the insolvent had not applied for discharge within the time allowed; but at the same time the Court passed an order directing that the property should continue to vest in the Official Receiver. The first petitioner was born in April, 1934, and the second petitioner in May, 1939. They filed O.P. No. 37 of 1944 for permission to sue in forma pauperis to have the sale of their shares in the properties sold by the Official Receiver in 1939 and 1942 set aside. The learned Subordinate Judge dismissed the petition on the ground that the allegations contained in the draft plaint showed no cause of action.

2. It is argued here that as far as the first petitioner was concerned, he was born before his father was adjudicated an insolvent and so was entitled to share in the family properties as soon as he was born. It is further argued that in any event on the 8th March, 1940, when the adjudication was annulled, the petitioners acquired a right to the properties, which were family properties, and were therefore entitled to maintain a suit to have the alienation set aside.

3. With regard to the first point there is no doubt that the learned Subordinate Judge was right. Section 28(7) of the Provincial Insolvency Act states,

An order of adjudication shall relate back to, and take effect from, the date of the

presentation of the petition on which it is made.

4. It is argued that this has application only to certain aspects of the insolvency, though what aspects has not been stated. I find no reason for qualifying the application of Section 28(7), in the manner suggested; and the effect of this subsection is that the adjudication must be deemed to have taken place on 18th April, 1933, and that from that date the property therefore vested in the Official Receiver. That means that the property passed out of the hands of the insolvent before either of the petitioners was born; and they are in no better position with regard to that property than they would have been with regard to alienations made before they were born.

5. The argument of the learned Advocate for the petitioners with regard to the effect of the annulment of the adjudication on 8th March, 1940, is that it re-vested the properties in the insolvent, although the Official Receiver continued to administer the property from that date for the purpose of satisfying the debts of the creditors; and it is argued on the authority of *Noony Suryanarayanamurthi* represented by next friend and maternal grandfather *Chode-China Pattabhiramayya Vs. Noony Veerraiu and Others*, that the property reverted to the insolvent as family property. The learned Advocate relies on this dictum of *Patanjali Sastri, J.*, in that case,

It is not, in our opinion, correct to say that an insolvent coparcener's share ceases to be joint family property while it is vested in the Official Assignee merely because the other coparceners lose their right of survivorship or because it is not divested from the Official Assignee on the insolvent's death.

6. From this it is argued that when the petitioners were born, they acquired an interest in the family property which they were entitled to enforce after the adjudication was annulled. I am unable to accept this reasoning; because in the case above cited and other cases relied on by the learned Advocate for the petitioners, the learned Judges were concerned with the effect of a reverter to the insolvent upon his adjudication being annulled. In this case there was no reverter to the insolvent. Simultaneously with the order of annulment of the adjudication, there was an order continuing the vesting of the property in the Official Receiver. The effect of the vesting was to make him the legal owner of the property, although he could not do that he liked with it, but had to dispose of it in accordance with the directions of the Insolvency Court. If he was the legal owner of the property, then the insolvent at no time had any legal interest in the property after 18th April, 1933 and the two petitioners could at no time have acquired any right to the property. At all the relevant dates the property was the property of the Official Receiver.

7. In this view the learned Subordinate Judge rightly dismissed the application of the petitioners.

8. The petition is dismissed with costs.