

(1912) 09 MAD CK 0047
In the Madras High Court

Karray Mangiah Chetty

APPELLANT

Vs

Kanachi Ramiah Chetty and Others

RESPONDENT

Date of Decision : 16-09-1912

Acts Referred:

Citation : 17 Ind. Cas. 164

Hon'ble Judges : Ralph Benson, O.C.J.; Sankaran Nair, J

Bench : Division Bench

Judgement

1. Ramiah Chetty filed his insolvency petition and schedule of the 21st July 1897 and a vesting order was passed the same day. He obtained his personal discharge on the 23th September alleging that he had paid all his creditors. He applied in 1906 to have his petition dismissed, when Mangiah Chetty, the appellant before us, came forward to prove his claim, which was rejected by the Official Assignee. He applied to Mr. Justice Boddam, who rejected his application with costs to be paid to the insolvent on the 21st January 1907. This order was reversed by the Appellate Court and the case was remanded to the Commissioner in Insolvency for a re-hearing. The costs incurred up to the date of the appellate order were also to be dealt with by him. Wallis, J., again dismissed the application on the 16th November 1908 and ordered Mangiah Chetty to pay the costs of the application and the appeal to the insolvent's attorney.

2. It was argued before us, on behalf of Mangiah Chetty, that Mr. Justice Boddam's order of the 21st January 1907 is a subsisting order. We are of opinion that that order was set aside in appeal and the order on 16th November 1908 is the final order now in force.

3. Mangiah Chetty obtained a decree on the 17th December 1907 against Ramiah Chetty, the insolvent, and his son Adinarayana Chetty for Rs. 3,000 and costs in Original Suit No. 94 of 1905. Of this, a sum of Rs. 1,602 is still said to be due.

4. Ramiah Chetty and his son have now filed their insolvency petition and

schedule, and the vesting order was passed on the 1st July 1908.

5. Mangiah Chetty now applies that the costs he had been ordered to pay to the insolvent's Solicitor amounting to Rs. 615-4-0 might be set-off against the decree debt of Rs. 1,602 due to him.

Wallis, J.

6. has rejected the application and this is an appeal against his order. The setoff claimed in insolvency proceedings does not rest on the same principle as the set-off in ordinary suits which is intended to prevent a multiplicity of suits. The debt due by Mangiah Chetty is an asset of the insolvent's estate in which all the creditors of the insolvent are entitled to share while Mangiah Chetty is only entitled to his dividend. Section 39 of Sections 11 and 12 Vic. Ch. 21 in produces an exception to the ordinary rule of distribution of all assets among the creditors of the insolvent by enacting that where there has been mutual credit given to the insolvent and any other person or persons, one debt or demand may be set against another. The reason is obvious. The case before us in which Mangiah Chetty has to pay "costs" under a decree is obviously not a case of mutual credit.

7. The order for costs against him has nothing to do with the decree in his favour. They are two entirely different matters. There is no other provision of law which allows a set-off.

8. It is the practice in England to set off costs against costs in bankruptcy proceedings between the same parties But a petitioning creditor is not allowed to set-off his debt against costs. See *In re a Debtor* (1907) 2 K.B. 896.

9. It is pointed out in *Robarts v. Buee* 8 Ch. D. 198 that the Master of the Rolls decided in the case of *Collett v. Preston* 15 Beav. 458 that where the proceedings were different, one being an action at law on a covenant, and the other a suit in equity, there could not be set-off. That is in accordance with sound sense, and the distinction there taken was recognised by Vice-Chancellor Wood in the case of *Throckmarten v. Crowley* 3 Eq. 196 where set-off was allowed in regard to costs arising in the same suit, but not allowed where the costs had arisen in matters which were different." According to these decisions, Mangiah Chetty is clearly not entitled to set-off his debt against the costs payable by him.

10. We agree with the learned Judge and dismiss the appeal with taxed costs.