

**(1951) 08 MAD CK 0040**  
**In the Madras High Court**  
**Case No : A.A.O. No. 24 of 1951**

Konithala Chinna Subba Naidu

APPELLANT

Vs

Chandra Kuppa Naidu and Others

RESPONDENT

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**Date of Decision :** 27-08-1951

**Acts Referred:**

Limitation Act, 1908 — Article 142, 144  
Provincial Insolvency Act, 1920 — Section 37

**Citation :** AIR 1952 Mad 179 : (1951) 64 LW 1097 : (1951) 2 MLJ 585

**Hon'ble Judges :** Ramaswami Gounder, J; Govinda Menon, J

**Bench :** Division Bench

**Advocate :** D. Muni Ramiah and A. Balakrishna Rao, for the Appellant; V. Vedanthachari and T. Rangaswami Iyengar, for the Respondent

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## Judgement

Govinda Menon, J.—The order of the learned Subordinate Judge cannot be supported and has therefore to be set aside. The appellant was adjudicated insolvent in I. P. No. 9 of 1932 on 10-3-1933 and his properties of which the subject-matter of the suit formed a part, vested in the Official Receiver on 6-3-1934. The Official Receiver sold these properties to a third party on 2-5-1935 but as a result of proceedings about which it is unnecessary to discuss in the present context, that sale was set aside and the properties became revested in the Official Receiver. On 4-9-1935 the Official Receiver wrote to the Insolvency Court requesting that the order of adjudication should be annulled because the insolvent had taken no steps to get the order of discharge. The learned Subordinate Judge made an order annulling the adjudication in the following terms on 12-9-1935.

"The insolvent is absent. His advocate has no instructions. The adjudication order is annulled."

At the time this order was made, the learned Judge did not make any order u/s 37 of the Provincial Insolvency Act vesting the properties in the Official Receiver. Therefore the position came to this, namely, that by the order of annulment the

situation became as it was prior to the adjudication. Such being the case, it was open to the insolvent to get back possession of the property saddled with all the debts which he had to pay. The insolvent did not take any steps and, therefore, on 5-1-1937 despite the fact that the insolvency was annulled, the Official Receiver sold these properties to the present respondents. A petition to sue in forma pauperis was filed on 17-12-1938 by the quondam insolvent for recovery of possession of property from the alienee from the Official Receiver. Two points were raised before the lower Court, namely, firstly, whether the petitioner was a pauper, and secondly, whether the petitioner had no cause of action?

2. On the first point, the learned Judge found that the petitioner was a pauper.

3. On the second point, the learned Judge was of opinion that the provisions of Order XXXIII, Rule 5 (d. 1) Civil P. C. should apply, namely, that the suit appeared to be barred by law. The learned Judge was of opinion that from the moment the insolvency was annulled on 12-9-1935, the possession of the properties by the Official Receiver became adverse to that of the quondam insolvent and therefore he must be deemed to be a trespasser. Such being the case, since the suit was filed only on 17-12-1948, that is more than 12 years after the date when the possession became adverse, the suit is barred. In our view, the learned Judge is wrong. It has been held in "*Kuppasami v. Kausala Ramiah*", AIR 1919 Mad 8 by Wallis C. J. and Spencer J. that even in a case where the property vested in the receiver and the receiver was discharged, still the possession of the receiver would not be adverse to the persons who are really interested. The observations are as follows:

The possession of the Court through the receiver was therefore the possession of the insolvent. The receiver, defendant 3, has never yet been discharged and even if he had been discharged that would make no difference. He would still hold the property on behalf of the rightful owner, as observed in the note in *Karr on Receivers* at page 151 Edn. 4 citing *Horlock v. Smith* 1842 2 L. J. Ch. 157 .

Following this decision, we hold that even though the insolvency was annulled on 12-9-1935, the receiver continued to hold the property on behalf of the rightful owner, namely, the quondam insolvent. Therefore, the receiver's possession cannot be said to be adverse to that of the quondam insolvent nor that the receiver can be considered to be a trespasser. If that is so, the question of adverse possession, can arise, if at all, only when the Official Receiver sold the property on 5-1-1937, and the present suit being within 12 years of that date, there can be no bar of limitation.

4. Mr. T. Rangaswami Aiyangar for the respondents contends that the petition is barred by some other provision of the statute of limitation. The learned Judge has not considered that aspect of the case and we do not wish to express any opinion on that. It is open to him to raise any such defence in the suit. The order of the learned Judge is therefore set aside and Order P. No. 1 of 1949 is remanded to the lower Court to be registered as a suit and to be proceeded with

accordingly. The appellant will be entitled to the costs of this civil miscellaneous appeal.