

(1903) 03 MAD CK 0014
In the Madras High Court

Kothandarama Routh and Another

APPELLANT

Vs

Murugesu Mudali and Another

RESPONDENT

Date of Decision : 19-03-1903

Acts Referred:

Insolvency Act, 1848 — Section 7

Citation : (1904) ILR (Mad) 7 : (1903) 13 MLJ 372

Judgement

1. The question which has been principally argued in support of this second appeal is that the composition-deed to which among others the appellant was a party and which was executed after the order of the Insolvency Commissioner in the High Court was passed, and before the dismissal of the insolvent's petition and the re-vesting order, is inoperative to transfer the property comprised in the composition-deed to the plaintiff and other persons appointed as trustees and that it cannot therefore prevail against the attachment made by the appellant, though such attachment was made subsequent to the composition-deed.

2. Having regard to Section 7 of the Indian Insolvency Act, 1848, we think that this argument is untenable. That section provides that in case after the making of any vesting order, the insolvent's petition should be dismissed, the vesting order shall from and after such dismissal become null and void subject, however, to the condition that all acts done by the Official Assignee prior to the dismissal of the petition shall be good and valid, a saving which would be unnecessary if the re-vesting had not retrospective effect. We may observe that the section does not provide that the estate shall revert in the insolvent without any conveyance or assignment by the Official Assignee, though a provision is made in the earlier part of the

section for the vesting of the property in the Official Assignee without any conveyance or assignment by the insolvent. In our opinion the use of the phrase "" null and void"" has the effect of re-vesting the property in the insolvent retrospectively from the date of the vesting order, and provision is therefore made for validating all acts done by the Official Assignee in the interval between the date of the vesting order and the dismissal of the insolvent's petition.

3. The view which we take of Section 7 is in accordance with that taken by a division bench of this Court in Ramaswami Kottadiar v. Murugsea

Mudaliar ILR 20 M. 452.

4. Independently therefore of Section 43 of the Transfer of Property Act the composition-deed will be operative to vest the property in the trustees.

5. The attachment therefore was rightly raised on a claim made by the plaintiff as trustee under the composition-deed. The plaintiff is the only

trustee now alive except one who had renounced the trusteeship without the intervention of the court in accordance with a power contained in the

trust deed. It is clear that Section 244 of the CPC is no bar to this suit.

6. The second appeal therefore fails and is dismissed with costs of the 1st respondent.