
(1923) 03 MAD CK 0044
In the Madras High Court

Krishna Iyer

APPELLANT

Vs

The Official Receiver of Trichinopoly

RESPONDENT

Date of Decision : 19-03-1923

Acts Referred:

Citation : AIR 1925 Mad 381 : 75 Ind. Cas. 445

Judgement

1. The first objection taken to the Lower Court's order is that it was passed after an irregular trial, in that the witnesses did not depose before it.

The facts are that the proceedings began with a report from the Official Receiver in which he applied for the setting aside of an alienation, Exhibit

A, by the insolvent. The parties then, it is on the record, and it is not disputed, agreed that in the enquiry into this application, the statements of the

witnesses should be recorded by the Official Receiver. The objection here is that statements of the witnesses so recorded were not evidence and

that the lower Court was not entitled to pass a judicial decision on them. We desire to express the strongest disapproval of the lower Court's

procedure. It is clearly undesirable that, where a matter has to be decided on trial the Court should not hold the trial itself and retain the advantage

of seeing the witnesses give evidence following the course of the proceedings; and it is further undesirable that it should delegate its duty to a

person, such as the Official Receiver in the present case whose interest and duty may conflict in the conduct of the proceedings. But, at the same

time, we must hold that *Jainab Bibi Saheba v. Hyderally Saheb* (1920) 43 Mad. 609, applies and that the consent of the parties was sufficient to

validate the procedure employed. We can, therefore, only express the hope that the lower Court will not take a similar course in further

proceedings of this nature.

2. This objection failing, we turn to the merits. The lower Court dealt with them in very general language; but we think that its decision is right.

Exhibit A was executed within five months of the insolvent's petition. It is a usufructuary mortgage; but possession of the property has not passed,

the insolvent's family continuing to occupy it under a rent deed, Exhibit G. The alienee, here appellant, admits that he has never received any rent.

In fact, the amount of rent secured by Exhibit G is identical with the total income of the insolvent's family, that which they receive for looking after

the timber business said to have been started by the alienee on the premises. The alienee does not know how much the Municipal Tax of the house

is; and he has even never entered the portion of the building occupied by the insolvents: and, although he says that his accounts are being kept in

the up stair of the premises, he could not say whether they were actually there at the time of the enquiry. The insolvents had no property except the

house dealt with in Exhibit A.

3. The consideration for Exhibit A is evidenced mainly by accounts, and although the accounts may have been kept in the course of business, there

is no security of any value for their having been. In fact, one material entry of Rs. 910 is, in our opinion, open to distinct suspicion. It is said that a

large portion of the consideration for Exhibit A, Rs. 2,000 alleged to have been paid to Palaniappa Chetty must be regarded as genuine.

Palaniappa Chetty was undoubtedly a creditor for that amount under Exhibit K and, if he had not actually been paid, he would have proved in the

insolvency. There is no doubt that Palaniappa Chetty was a creditor; and there is some reason for holding that he has been paid in accordance with

the endorsement on Exhibit A. But it does not follow that he was paid with the money raised by means of Exhibit A. Palaniappa Chetty is not

examined. The endorsement referring to the payment is made by one Gnanikkam Pillai on behalf of the alienee; but Gnanikkam Pillai is not

examined. In these circumstances, we do not think that the payment under Exhibit K is on any better footing than the others enumerated in Exhibit

A.

4. It is said further that the alienee is a timber merchant of Palghat and that he is not shown to have had any previous connection with the insolvent.

He, however, was, as the account show, legally, indebted to one Appavu Pillai, father of Gnanikkam, already referred to, and connected in

business with the insolvents. There is, therefore, nothing in the alienee's favour in this part of the case and there is, in any event, the absence of

evidence that the alienee made any reasonable inquiry as to the insolvent's position.

5. We confirm the lower Court's decision and dismiss the appeal with costs.