

(1917) 07 MAD CK 0005
In the Madras High Court

L. A. L. Alagappa Chettiar

APPELLANT

Vs

Nagaratna Mudaliar and Others and Aiyathorai Mudaliar,
Minor By Next Friend Sundara Mudaliar and Others

RESPONDENT

Date of Decision : 31-07-1917

Acts Referred:

Provincial Insolvency Act, 1920 — Section 22

Citation : 42 Ind. Cas. 789 : (1917) 6 LW 445

Hon'ble Judges : Phillips, J

Bench : Single Bench

Judgement

1. Petitioner is a creditor of 3rd respondent, an insolvent. First respondent in Civil Revision Petition No. 793 of 1916 is a son of the insolvent and

claimed the properties in dispute under a Will of his grandfather, between whom and the insolvent there was a partition in 1908. First respondent in

Civil Revision Petition No. 797 of 1916 (called hereafter 1st respondent) is an alienee from the minor. The properties left by Will to the minor

were sought to be sold by the creditors and at the request of the petitioner, the Official Receiver on 10th April 1915 ordered the sale of half the

properties. First respondent in 797 of 1916 then put in a petition asking that the properties should not be sold as they did not belong to the

insolvent. On 21st April 1915 the Official Receiver passed the following order: I have no jurisdiction to decide whether the insolvent has a saleable

interest. That is a matter which should be decided by a Court having jurisdiction in a regular suit between the future purchaser and the applicant. Of

course this claim will be notified at the time of the sale and the purchaser will purchase with knowledge of the claim. I have no reason to stop the

sale. Petition rejected."" On the 23rd April 1915 the 1st respondent put in a

petition u/s 22 of the Provincial Insolvency Act. The District Munsif held that the petition did not lie u/s 22, but held that the Court had inherent power to review the conduct of its servant, the Official Receiver, and allowed the petition. The District Judge did not go into the question of jurisdiction but dismissed the appeal on the merits. It is now contended on behalf of the petitioner 14 Ch. D. 458. that the petition did not lie u/s 22, (2) that if it did not it was out of time, (3) that the Court has no inherent power to deal with such a petition.

2. The second point can briefly be disposed of, for the order of the Official Receiver complained of was passed on 21st April 1915, and the petition was filed two days later, and was well within the time allowed.

3. As regards the first point, the question for decision is whether the petitioner in Original Petition No. 545 of 1915 was aggrieved by the decision

of the Receiver within the meaning of Section 22 of the Provincial Insolvency Act. In *Ex parte Sidebotham*, *In re Sidebotham* (1), James, L. J.,

held that "a "person aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has

wrongfully deprived him of something, or wrongfully refused him something or wrongfully affected his title to something.

4. This definition was considered in *Ex parte Official Receiver*; *In re Reed* (2) and Lord Esher, M. R., interpreted it at pages 177 and 178 as

including a man against whom a decision has been pronounced which has wrongfully...refused him something...which he had a right to demand;

while Lopes, L. J., remarked at page 181: I am not at all prepared to say that a man, who has asked something which he is authorised and entitled

to ask under the Act, has not, when his application is refused, suffered a legal grievance. "This case was referred to and approved in *In re Lamb*,

Ex parte Board of Trade (1894) 2 Q. B. 805., where Kay, L. J., remarked: When two persons are in the position of litigants before the High

Court and the decision of the Court goes against one of them, how can it be said that he is not a person aggrieved by the decision?" In *Mujuluri*

Sivaramayya v. Singumuhanti Bhujanga Rao 37 Ind Cas 773 a Bench of this Court held that the decision must be such as to affect the right

claimed, and not merely to impede the person concerned in his assertion of it, and that is the view taken in *Hanseswar Ghosh v. Rakhal Das Ghose*

20 Ind. Cas. 683 but in neither of these cases was any reference made to Ex parte Official Receiver; In re Reed (1887) 19 Q. B. D. 174., or to In

re Lamb; Ex parte Board of Trade (1894) 2 Q. B. 805.,, whereas in Thiruvengkatachiar v. Thangayi Animal 29 Ind. Cas. 294. these two cases

were followed and a creditor was held to be aggrieved by the failure to publish an order which was likely to depreciate the value of the insolvent's

property which was to be sold under that order. This act did not actually deprive the creditor of anything to which he was legally entitled, but it

tended to render the task of recovering his dues more difficult, and as such he was held to be aggrieved. In the present case the order of the

Receiver had no effect whatever on the legal rights of 1st respondent, but it was likely to involve him in property which, as has now been found, was really his. Aggrieved"" is a somewhat wider term than injured, and if we adopt Lord Esher's definition

that a person is aggrieved if a decision has been pronounced which has wrongfully refused him something which he had a right to demand, the 1st

respondent is clearly aggrieved by the decision of the Receiver for he had a right to demand that his own property should not be sold by an officer

of the Court as belonging to someone else.

5. In this view it is unnecessary to decide whether a Court has inherent power to review all acts of an Official Receiver, for the petitions come

within Section 22 of the Provincial Insolvency Act. The petitions are accordingly dismissed with costs.