

(1917) 07 MAD CK 0017
In the Madras High Court

L.A.L. Alagappa Chettiar

APPELLANT

Vs

Naganatha Mudaliar and Others

RESPONDENT

Date of Decision : 21-07-1917

Acts Referred:

Provincial Insolvency Act, 1920 — Section 22

Citation : AIR 1918 Mad 497 : (1917) 33 MLJ 612

Judgement

1. Petitioner is a creditor of 3rd respondent, an insolvent. First respondent in C.R.P. No. 798 of 1916 is a son of the insolvent and claims the

properties in dispute under a will of his grandfather, between whom and the insolvent there was a partition in 1908. First respondent in C.B.P. 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

C.B.P. No. 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 sale and the

purchaser will purchase with knowledge of the claim. I have no reason to stop the sale. Petition rejected". On 28rd 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 petitioner (1) that the petition did not lie u/s 22(2) that if it

did lie, it was out of time, (3) that the court has no minaret power to deal with such a petition.

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 2 days later, and was well Within the time allowed.

As regards the 1st point the question for decision is whether the petitioner in O.P. 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 (1880) 14 Ch. D. 458. 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.

2. This definition was considered in ex-parte Official Receiver: In re Beed Bowen & Co. (1887) 19 Q. B.D 174 and Lord Esher, M.R.

interpreted it at pp. 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 the Board of Trade (1894) 2 Q.B.D. 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 Sivaramiah v. Bhujanga Bow (1917) M.W.N. 75, 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 Huneswr v. Bakkal Das

(1913) 18 C.L J. 369.; but in neither of these cases was any reference made to Ex parte Official Receiver, In re Reed Bowen & Co. (1887) 19

Q.B.D 174 or to In re Lamb: Ex-parte The Board of Trade (1894) 2 Q.B.D. 805; whereas in Thiruvengkatachariar v. Thangayi Ammal ILR

(1915) M 479. 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 the 1st respondent, but it was likely to involve him in difficulties

in asserting his title to the 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 belonging to some one else.

3. 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.