

(1950) 09 MAD CK 0001

In the Madras High Court

Case No : Letters Patent Appeal No's. 58, 59 and 71 to 74 of 1950

Mallampati Kondayya and Others

APPELLANT

Vs

The Official Receiver and Others

RESPONDENT

Date of Decision : 29-09-1950

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24, 24(1)

Citation : AIR 1951 Mad 676 : (1951) ILR (Mad) 763 : (1951) 64 LW 139 : (1951) 1 MLJ 97

Hon'ble Judges : Rajamannar, C.J;Viswanatha Sastri, J

Bench : Division Bench

Advocate : M.S. Ramachandra Rao, T. Lakshmiah and K. Srinivasamurthi, for the Appellant; K. Krishnamurthi, (in No. 58 and 59/50), M.S. Ramachandra Rao, M. Krishna Rao and V. Parthasarthy, (in Nos. 71 to 74/50), for the Respondent

Judgement

Viswanatha Sastri, J.—These five appeals under Clause 15 of the Letters Patent arise out of orders passed in the course of an insolvency

petition I. P. No. 3 of 1949 on the file of the court of the Subordinate Judge, Nellore. One China Kondiah was adjudicated an insolvent in I. P.

No. 3 of 1949 on 12th October 1949 on a creditors' petition. The Official Receiver of Nellore filed I. A. No. 208 of 1950 in I. P. No. 3 of 1949

for a declaration that an assignment of the insolvent's rights under a timber contract made by him in, favour of his brothers-in-law was collusive,

nominal and devoid of consideration and that the insolvent retained the benefit of the said contract. He also applied for an order setting aside the

assignment and for being put in possession of the timber which was the subject matter of the contract. The Official Receiver also filed another

application I. A. No. 209 of 1950 for taking possession of logs of timber" alleged to have been cut and transported by the assignees from the

insolvent but which really belonged to the insolvent. The learned Subordinate Judge appointed an advocate of Rajahmundry as a Commissioner to

take possession of the logs of timber claimed to belong to the insolvent. Thereupon the appellants in L. P. A. No. 58 and 59 of 1950 applied in I.

A. No. 276 of 1950 for an order that the timber from coupes Nos. 46 and 36 belonged to them under contracts entered into by themselves and

were therefore not liable to be seized by the Commissioner. The court by its order directed the commissioner to take charge only of those logs of

timber bearing the mark "'Coupe No. 19'" without interfering with logs bearing mark "'Coupe No. 36 and 46'". The learned Judge also directed that

all other logs not bearing mark "'Coupe No. 19'" should be released by the commissioner. This order was passed on 6-4-1950.

2. The Official Receiver of Nellore applied to this court during the midsummer vacation in C. M. P. No. 4393 of 1950 and C. M. P. No. 4394 of

1950 for a transfer of I. P. No. 3 of 1949 from the Court of the Subordinate Judge of Nellore to this court, for an order directing the

commissioner who had already been appointed by the Subordinate Judge's court of Nellore to seize the logs of timber which bore no number but

which the Official Receiver alleged belonged to the insolvent, and for a further order for retransmission of the records to the Court of the

Subordinate Judge of Nellore immediately this court made an order giving directions to the commissioner. The Court of the Subordinate Judge of

Nellore happened to be closed for the midsummer holidays and therefore these applications were filed in this court and were dealt with by Basheer

Ahmad Sayeed J. C. M. P. No. 4393 of 1950 was ordered and the records of I. P. No. 3 of 1949 were called for. C. M. P. No. 4394" was also

ordered and the commissioner was directed to seize all logs which did not bear any coupe number in addition to the logs which bore coupe No.

19. The records in I. P. No. 3 of 1949 were also directed to be retransmitted to the Sub-Court, Nellore. These orders were made by the learned

vacation Judge ex parte on 3-5-1950. Against these two orders L. P. A. Nos. 58 and 59 of 1950 have been filed by the assignees from the

insolvent of his rights under the timber contract. A person professing to be a creditor of the insolvent filed C. M. P. Nos. 5333 to 5335 of 1950 on

the file of this court for calling for the records in I. P. No. 3 of 1949 to this court for a direction that the commissioner appointed in I. P. No. 3 of

1949 should be directed to seize all logs except those bearing Nos. 36 and 46 for the removal of the commissioner already appointed by the

learned Subordinate Judge of Nellore & for the appointment of a fresh commissioner in his stead. These petitions also came on for disposal before

Basheer Ahmed Sayeed J., who passed an order ex parte in C. M. P. No. 5334 of 1950 on 14-6-1950 appointing Mr. Yella Reddi, an advocate

of Rajahmundry, as an interim commissioner pending the disposal of the main application (C. M. P. No. 5335 of 1950) for removal of the

commissioner already appointed. C. M. P. No. 5335 (sic) to 5335 of 1950 came on for final hearing before Fanchapagesa Sastri J. on 27-7-

1950 and the learned Judge dismissed them on the ground that the applicant had not dealt fairly with the court and had failed to disclose previous

applications made by the Official Receiver for the same reliefs. The learned Judge did not go into the merits of these applications. L. P. A. No. 71

of 1950 is filed against the order of Panchapagesa Sastri J, dismissing C. M. P. No. 5333 of 1950, an application for calling for the records of I.

P. No. 3 of 1949 to this court. L. P. A. No. 72 of 1950 is against the order in C. M. P. No. 5334 dismissing the application for the appointment

of an interim commissioner, L. P. A. No. 73 of 1950 is directed against the order dismissing C. M. P. No. 5335 of 1950 for removal of the

commissioner appointed by the learned Subordinate Judge of Nellore. When these appeals came on for hearing, Mr. M. S. Ramachandra Rao, the

learned advocate for the appellants in L. P. Nos. 56 and 59 of 1950 took a preliminary objection that the applications which had been made

during vacation time to Basheer Ahmed Sayeed J. were incompetent and the orders passed by the learned Judge on those applications were

without jurisdiction.

3. The power of this court to remove to its own file insolvency proceedings pending in mofussil courts and to pass interlocutory orders in respect of

those proceedings is sought to be rested on Clause 13 of the Letters Patent or Section 24 of the Civil Procedure Code. Clause 13 of the Letters

Patent applies to suits and it has been held by the decision of a Full Bench of this Court in "Krishna Mudaliar v. Sabapathi Mudaliar, ILR 1945

Mad 389 : AIR 1945 Mad 69 that the clause empowers this Ct to remove a case filed in a mofussil court to its file for trial and determination but

not merely to pass an interlocutory order and then to retransfer it to the court from which it was withdrawn. To this extent the Full Bench dissented

from the view of Ramesam J. in *Jumna Bai Vs. S. Rm. M. Rm. Ramanathan Chettiar* represented by guardian ad litem Muthayee Achi alias Chittal

Achi and Another, . From the applications presented to this Ct and the orders passed by the learned Judge, it is clear that this Ct was not called

upon to transfer to its own insolvency jurisdiction I. P. No. 3 of 1949 and dispose of it--such a course is not permissible for other reasons as will

be shown presently--but merely to call for the records in I. P. No. 3 of 1949 for the purpose of passing certain interlocutory orders and then

retransfer the case to the file of the Ct of the Subordinate Judge of Nellore in which the insolvency petition had been pending previously. In the

view of the learned Judges of the Full Bench, clause 13 of the Letters Patent would not apply to such a case.

4. u/s 24 CPC the High Court is empowered to withdraw any suit or other original proceeding pending in any Ct subordinate to it and try or

dispose of the same or transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same. It is open

to question whether Section 24 empowers this court to withdraw to its file an interlocutory application in a suit or original proceeding pending in a

subordinate court keeping the suit or the original proceeding itself on the file of that court. Section 24 CPC presupposes that the court which

withdraws a suit, appeal or other proceeding from a court subordinate to it to its own file would have jurisdiction to try and dispose of the same.

The mere fact that a power to withdraw a suit, appeal or other proceedings from a Subordinate Court is conferred by Section 24(1)(b) CPC

would not invest the court so empowered with jurisdiction to try the suit, appeal or other proceeding if the jurisdiction to try the case is "excluded

by other enactments. So far as insolvency is concerned, the original jurisdiction of this court is limited by the provisions of the Presidency Towns

Insolvency Act and this Ct has no original jurisdiction over insolvency proceedings which are cognizable by courts in the mofussil. It cannot transfer

to its file an insolvency proceeding pending in a mofussil court and dispose of it in the exercise of its original insolvency jurisdiction. Nor can the

application for transfer be entertained on the Appellate Side of this court, for the original side of the court cannot be said to be a ""court

subordinate"" to this court within the meaning of Section 24(1)(b)(ii) CPC so as to attract the operation of that clause. This court would not be

competent to try or dispose of"" the insolvency proceedings sought to be transferred within the meaning of Section 24(1)(b)(ii), Civil P. C.,

because in the exercise of its original insolvency jurisdiction, it is bound by the provisions of the Presidency Towns Insolvency Act and cannot

administer the law as laid down in the Provincial Insolvency Act, For these reasons it was held by Curgenven J. in the case in Goculdoss

Jumnadoss and Co. and Another Vs. N.M. Sadasivier and Others, , that the High Court has no power u/s 24(1)(b) CPC to transfer an insolvency

petition pending in a subordinate Ct in the mofussil to the original side of this court to be tried in its original insolvency jurisdiction. The decision

rightly interprets the scope and meaning of Section 24(1)(b) CPC and we are in respectful agreement with the conclusions of the learned Judge. It

follows that the applications for transfer of the proceedings in I. P. No. 3 of 1949 made to this court as well as the orders made by the learned

Judge on those applications were both without jurisdiction.

5. The result is that L. P. A. Nos. 58 & 59 are allowed with costs and L. P. A. Nos. 71 to 73 of 1950 are dismissed, but without costs.

6. L. P. A. No. 74 of 1950--This is an appeal filed against an order of the learned Judge of this court refusing to transfer I. A. Nos. 208 and 209

of 1950 in I. P. No. 3 of 1949 pending on the file of the Court of the Subordinate Judge of Nellore to the Court of the Subordinate Judge of

Rajahmundry for trial in the exercise of the insolvency jurisdiction of the latter court. The objection to the appeal is that it is directed against an

order refusing a transfer and such an order has been held to be not a ""judgment"" and therefore not open to appeal under Clause 15 of the Letters

Patent. See "Narasa Reddi v. Tar Mohamed", 51 Mad 330: AIR 1928 Mad 209. For this reason this appeal has to be dismissed. There will be

no order as to costs.