

(1937) 01 MAD CK 0028
In the Madras High Court

Marreddi Seshireddi

APPELLANT

Vs

The Official Receiver and Another

RESPONDENT

Date of Decision : 25-01-1937

Acts Referred:

Provincial Insolvency Act, 1920 — Section 28(2)

Citation : (1937) 46 LW 719 : (1937) 2 MLJ 29

Hon'ble Judges : Horace Owen Compton Beasley, J

Bench : Division Bench

Judgement

Horace Owen Compton Beasley, Kt., C.J.—The plaintiff filed a suit against the Official Receiver in an insolvency claiming half the amount of

the costs which he had paid as an unsuccessful co-defendant in a partition suit filed against him, the debtor and others. The decree so far as it

relates to costs, and to the petitioner is against him jointly and severally. His claim in the suit filed by him is that as he was forced by reason of the

terms of the decree for costs to pay up the whole of the costs he is entitled to claim from the debtor half the amount which he (the petitioner) was

compelled to pay. The lower Court has dismissed the suit on the ground that the leave of the Court to file the suit had not been obtained as is

required by Section 28(2) of the Provincial Insolvency Act. A few further facts must first be stated; and these are that the suit in respect of which

the costs were awarded against the present petitioner was a suit for partition brought by a younger brother of the debtor claiming that certain

alienations which had been made were to be set aside--and for this purpose the alienees were made party defendants--and also to have declared

void certain bonds executed. During the pendency of that suit the debtor who was the second defendant in it was adjudicated an insolvent and

after his adjudication the decree in the partition suit and also as regards the costs was passed. There is, therefore, if the plaintiff's claim for contribution is good, a debt, i.e., the decree for costs, to which the debtor had become subject after his adjudication but before his discharge and for the purpose of seeing whether the leave of the Court is required when a suit in respect of such a debt is filed Section 34 of the Provincial Insolvency Act has to be examined. The position being as I have already stated the question is whether it is a debt that is provable or not. It is provable if in respect of it the debtor had incurred before adjudication any obligation to the plaintiff-petitioner, that is to say, the debtor must, where the debt is incurred after his adjudication and before his discharge, have been under an obligation to the claimant before the date of the adjudication and it is only if he was that the suit debt will be one provable in insolvency. The position I think is quite clear where a claim for costs is made against an insolvent's estate, the order for the payment of costs being subsequent to the date of the adjudication. The position is this, that if a plaintiff starts a suit against another person and during the pendency of the suit that other person becomes an insolvent and subsequent to the adjudication a decree is obtained, the plaintiff can prove in the insolvency both as regards the amount obtained under the decree and as regards the costs awarded, the costs being added to the decretal amount. This position has been clearly stated in the judgment of Lindley, L.J., in *In re British Gold Fields of West Africa* (1899) 2 Ch. D. 7 and since then that decision and the words of Lindley, L.J., have been frequently cited in other English decisions relating to the English Bankruptcy Act. But there is this all important condition which is also laid down in that the debt in respect of which the costs are an incident must be one which itself is provable in insolvency. Therefore what has to be seen here is whether the decree in respect of which the order for costs was made is one which is provable in insolvency and that is why an examination of Section 34(2) becomes so necessary. The question is, what obligation was the debtor under towards the plaintiff-petitioner previous to the adjudication It is argued that he was under some contingent liability to pay him the costs of the suit or something towards them. I do not agree. There was no liability whatsoever to do so until the decree had been passed, that is to say, so far as the plaintiff-petitioner is concerned. It could have been argued that if the facts had

been those which Lindley, L.J., had in mind, certainly the debtor was under an obligation not only to pay the decretal amount to the plaintiff but also the costs which were incidental to the decree but it seems to me--and this appears to be conceded in the argument on behalf of the respondent--that in the present case, that is the suit in which the costs were awarded, the plaintiff in that suit, it being a partition suit, had no debt which was provable in the insolvency by reason of his decree and that therefore also he had no debt so far as it related to costs which was provable in insolvency. I think that the petitioner here is in even a stronger position than the plaintiff in the partition suit would have been. He was a co-defendant and it cannot be said that during the pendency of the suit the debtor was under the obligation, contingent or otherwise, towards the present petitioner. The obligation only arose when the order for costs was made which was subsequent to the adjudication. In my view, therefore, having regard to the words of Section 34(2) of the Provincial Insolvency Act this suit debt was not one provable in insolvency. It follows, therefore, that leave of the Court to file the suit was not necessary and the lower Court's order dismissing the suit for the reason that no such leave had been obtained was wrong. This petition must, therefore, succeed with costs here and the order of the lower Court set aside and suit remanded for disposal according to law.