
(1930) 07 MAD CK 0006
In the Madras High Court

Moonrumugamkondan Asari

APPELLANT

Vs

Chockalingam Asari

RESPONDENT

Date of Decision : 30-07-1930

Acts Referred:

Provincial Insolvency Act, 1920 — Section 28

Citation : AIR 1930 Mad 913 : (1931) ILR (Mad) 5 : 129 Ind. Cas. 33 : (1930) 32 LW 449 : (1930) 59 MLJ 629

Hon'ble Judges : Horace Owen Compton Beasley, C.J

Bench : Division Bench

Judgement

Horace Owen Compton Beasley, C.J.—The question referred to us for decision is--

Is it open to an undischarged insolvent to maintain a suit regarding his after-acquired properties subject to the right of the Official Receiver to

intervene in such proceedings?

2. In our view, upon the facts of this case this question does not arise and we are not disposed to enter into any further discussion of this question

which is purely one of academic interest.

3. The facts of the case may be quite shortly stated. The insolvent was the plaintiff in the District Munsif's Court. He was also an undischarged

insolvent. His case as set out in the plaint was that he got emeralds from one Sita Lakshmi Ammal for sale and that he gave them to the defendant

in the suit for sale. The value of the emeralds was fixed, so he alleges, at Rs. 1,000 and it was agreed that the excess realised by the defendant by

the sale should be shared equally between the plaintiff and the defendant. He sued to recover the emeralds or Rs. 1,000 the price of the emeralds

and for Rs, 250 being his share, as he alleged, of the profits made by the

defendant on the allegation that the defendant sold the emeralds for Rs.

1,500 and he asked for the return of the emeralds in case they were not sold by the defendant. Amongst other contentions the defendant raised the

plea that: the plaintiff was an undischarged insolvent and was consequently not entitled to sue. An issue was taken upon that contention and the

District Mun-sif found that the plaintiff was an undischarged insolvent, but that he could maintain the suit for recovery of the articles bailed. I wish

to draw particular attention to the fact that the articles were described by the District Munsif as articles bailed. Then there was an appeal and the

first Appellate Court fixed the value of the emeralds at Rs. 800 and gave the plaintiff a decree for that amount only. The case came up on second

appeal to this Court and the question of the maintainability of a suit by an insolvent with reference to after-acquired property was raised and in

view of the fact that a Letters Patent Appeal raising this very point was then pending decision by a Full Bench, our learned brother Anantakrishna

Aiyar, J., adjourned the case until the Opinion of the Full Bench was delivered. The Letters Patent Appeal, however, abated and the matter again

came before our learned brother who, in view of what appears to be a difference of view in a case decided by Krishnan and Odgers, JJ., in

Kuppu Ramanatha Aiyar (dead) and Others Vs. Thoguluva S. Nagendra Aiyar, and a later decision of the Privy Council in (1927) L.R. 54 I.A.

190 (Privy Council) referred the case to us.

4. Upon the facts of this case the plaintiff's suit was divided into two parts: (1) relating to his commission of Rs. 250--that claim has been held

against, and (2) for the return of or the value of the emeralds which he handed over to the defendant for sale. In our view, the first essential in the

appellant's case is that the emeralds themselves or their cash value should vest in the Receiver as the after-acquired property of the insolvent u/s

28 of the Provincial Insolvency Act. That section deals both with the actual property of an insolvent at the time of his adjudication and property

which may pass into his possession after the adjudication. In the case of property coming into his possession after adjudication--it is after-acquired

property--that shall forthwith vest in the Receiver. There is another class of property dealt with in that section and that is the reputed property of

the insolvent. Upon the facts of this case the value of the emeralds can in no

sense of the word be described as the property of the insolvent. His own case was that this property was given to him by Sita Lakshmi Ammal for sale. He was a jeweller and goldsmith and so was the defendant. So that in the ordinary course of business, according to his own case, these emeralds were entrusted to him for sale. That statement in his case completely negatives any position occupied by him other than as a bailee of goods for sale and it is important to remember that this statement that there had been an entrustment to the insolvent of these emeralds as a bailee is not controverted anywhere in the written statement of the defendant. Clearly the emeralds were not the property of the insolvent but it has been urged before us that although they are not the property of the insolvent, they may yet be his reputed property.

5. Where goods, precious stones and such like things are given into the hands of a goldsmith or a jeweller either for the purpose of being converted into ornaments or for sale, they are given to him in the ordinary way of his business; and assuming that at the time of his adjudication he is in possession of those jewels, clearly they are not his jewels at all but they are the jewels of the bailor and as such, being easily identifiable, do not pass to the Receiver in the insolvency. The further question arises as to what is to happen if he has recovered the proceeds of the sale. Here again if those proceeds have not been inter-mixed with the money belonging to the creditors and can easily be identified, the money does not vest in the Receiver but this case is a stronger one from the respondent's point of view because the jewels had been parted with and the insolvent had no money in his possession which he had received in respect of the sale. He claims in his suit to get that money from the defendant. If he succeeds, no one, I think, would contest that that money is clearly ear-marked as money belonging to the real owner of the jewels, namely, Sita Lakshmi Ammal up to the extent of the agreed value Rs. 1,000 and is not available at all for distribution by the Receiver amongst the creditors in the insolvency.

This matter, I think, is made perfectly clear by the notes to Section 38, which is the vesting section, in the English Bankruptcy Act of Williams on Bankruptcy," 13th Ed., p. 229. The marginal note is "Trusts arising from employment of bankrupt," and the note says:

Lastly, then, there is the third class of trusts where the bankrupt has not the

general, but only a special property, e.g., where property is vested in the bankrupt as an agent, such as a factor, etc. Such property, so long as it or its proceeds remain distinguishable from the mass of the bankrupt's property, will not pass to the trustee of the creditors.

6. Then again at page 230 it is stated:

It is always to be remembered that, although goods in the hands of an agent may be easily distinguishable, they may yet, on the bankruptcy of the agent, pass to his trustee if the principal has permitted the agent to have a possession not consistent with the ordinary usages of trade, and raising a reputation of ownership in the bankrupt.

7. Here the case for the plaintiff uncontradicted by the defendant in his written statement is that there was no entrustment at all which was not

consistent with the ordinary usages of trade. As before stated, the insolvent was a jeweller and goldsmith and he himself says that the emeralds

were entrusted to him for sale--that is what a jeweller and goldsmith does--and it cannot be said that the emeralds or their value were the reputed

property of the insolvent. Under these circumstances and upon the facts of this case the question before us really does not arise. It would arise if

the property were property which vested in the Official Assignee or the Receiver as the case may be. Therefore we decline to decide the question.

We need express no opinion upon what would happen had the property been the after-acquired property of the insolvent. With regard to the claim

for Rs, 250 no question arises with regard to that because that claim has been disallowed in all the Courts.

8. The case must, therefore, be dealt with by the referring Judge in the light of these observations.