
(1926) 03 MAD CK 0038
In the Madras High Court

Muthuswami Chettiar

APPELLANT

Vs

The Official Receiver of North Arcot and Another

RESPONDENT

Date of Decision : 09-03-1926

Acts Referred:

Provincial Insolvency Act, 1920 — Section 53

Citation : AIR 1926 Mad 1019 : 97 Ind. Cas. 407 : (1926) 51 MLJ 287

Judgement

1. In this case the appellants name was included in the insolvent's schedule of creditors. Another creditor put in an application before the Official

Receiver u/s 53 of the Provincial Insolvency Act asking that the mortgage in favour of the appellant should be treated as a nominal transaction

unsupported by consideration. The Official Receiver held an enquiry and passed an order that the appellant's debt would not be included in the

schedule. The appellant appealed u/s 68 to the District Court, where objection was taken as to the jurisdiction of the Receiver. The objection was

overruled. On the merits the District Judge confirmed the order of the Official Receiver. Objection is again taken in this Court to the jurisdiction of

the Receiver to pass any order in the matter and reliance is placed on Appireddi v. Appireddi ILR (1921) M 189 . The facts of that case are not

the same as those of the present one but the principle would appear to be applicable here. What the petitioning creditor wanted was an

adjudication that the mortgage deed in appellant's favour was not a binding transaction, and as stated in the petition, it was substantially an

application to declare the instrument void as against the Receiver u/s 53. It has always been held that such applications are to be decided by the

Court and not by the Receiver as against whom the instrument is sought to be declared void, as this would in effect make the Official Receiver the

Judge in his own case.

2. It is, however, contended for the respondents that an application u/s 53 is unnecessary, as the Receiver was merely exercising the powers given

to him u/s 80(b) to frame a schedule and to admit or reject proofs of credits. So far as the framing of schedules is concerned, the matter need not

be discussed, but such schedules of debts can only be framed after the admission or rejection of proofs. We must, therefore, consider whether in

this case the Receiver can be deemed to have rejected proof of the creditor within the meaning of Section 80. Section 32 is the section applicable

to proof of debts and that lays down that when an order of adjudication has been made, all persons alleging themselves to be creditors of the

insolvent shall tender proof of their respective debts by producing evidence. The appellant here did not allege that he was a creditor but merely put

in a counter to a petition wherein the allegation was made that the mortgage in his favour was a void transaction. This can in no sense be termed

tendering proof of his debt. If the Receiver was exercising his power of framing a schedule, that is to say, altering and amending the schedule filed

by the debtor, which is the main schedule in insolvency proceedings, Section 50 is applicable which lays down that where the Receiver thinks that

a debt has been improperly entered in the schedule, the Court may, on an application of the Receiver, expunge such entry. Clause (2) gives

power to the Court to do so in certain cases on the application of the creditor or of the debtor. Nowhere is the power given, to the Receiver to

expunge a debt entered in the schedule of the insolvent. The order made by the Receiver is, therefore, wholly without jurisdiction.

3. The case relied on by the respondents in Dronadula Sriramulu Vs. Ponakavira Reddi, has really no bearing on this question. That case was

concerned with the question of the jurisdiction of the Insolvency Court in transactions which do not come within Sections 53 and 54, and that has

nothing to do with the present case, in which a transaction which does come within Section 53 is concerned. It will of course be open to the

Receiver to take action u/s 53 if so advised, or, if he thinks it is the better course, to ask for the expunging of the debt, though what effect that

would have on the transaction so far as the appellant is concerned, is not clear and need not be discussed.

4. The appeal is allowed and the order of the District fudge is set aside with costs throughout.