

(1927) 04 MAD CK 0024
In the Madras High Court

M.W. Elliot, Official Receiver

APPELLANT

Vs

Kopparapu Subbiah

RESPONDENT

Date of Decision : 12-04-1927

Acts Referred:

Provincial Insolvency Act, 1920 — Section 75(3)

Citation : AIR 1927 Mad 869 : (1927) ILR (Mad) 815 : (1927) 26 LW 248 :
(1927) 53 MLJ 742

Hon'ble Judges : Odgers, J;Curgenvin, J

Bench : Full Bench

Judgement

Odgers, J.—When this appeal first came on we adjourned it to see if the appellant, the Official Receiver of Cuddappah, had obtained leave

of the District Court to appeal, or, if not, to enable him to apply to it for the leave. This is required as the matter falls u/s 75(3) of the Provincial

Insolvency Act and the appeal is not as of right. The District Judge has now on application made to him held that the appellant should have applied

for leave prior to filing the appeal in the High Court. The words of the sub-section are

may appeal to the High Court by leave of the District Court or of the High Court,

and the question is do they enact that leave is a condition precedent to sue. It is contended that it must be so, otherwise the provisions as to

limitations for filing the appeal would be unmeaning. There is no doubt that this appeal was filed within 90 days but the objection is that it was not

really an appeal when it was filed, as it was not accompanied by a leave to appeal or a petition asking for the same. It seems to me that it is a

mistake on the part of the officer who admits these appeals not to examine them to see if leave has either been obtained or there is at least a

petition for it. The words of Walsh, J., in Balli v. Nand Lal 33 INDE CAS 773 may be quoted in this connection. The question may have to be

raised hereafter as to whether in view of the provisions as to limitation, an appellant u/s 75(3) must first be granted leave or must obtain leave

before he appeals, but for our present purpose it is enough to say that the question seems not to have been so far raised and such authority as there

is seems in favour of granting leave with retrospective effect. In Ananthanarayana Aiyar v. Sankaranarayana Aiyar ILR (1923) M 673, Spencer

and Devadoss, JJ., held that an application for leave may be filed after the period of limitation had elapsed and that an appeal could not be held to

be out of time for that reason. If it were, it could be excused u/s 78. In C.M.A. No. 314 of 1924, Ramesam and Madhavan Nair, JJ., permitted an

appeal to be amended so as to make it one filed u/s 75(3); they then gave leave to appeal. That appeal was originally filed as of right u/s 75(2).

We had ourselves previously adjourned the case to allow petitioner to obtain leave to appeal from the District Court. This was clearly a recognition

of the retrospective effect of the Court's leave. In Balli v. Nand Lal (1916) INDCAS 773 (Allahbad High Court), there was no leave and the

Court allowed the case to be argued as the practice of the Court was not thoroughly settled. The same remark seems to apply here and it would

be a good thing to settle the practice. The Allahabad Court therefore looked into the appeal and found there were no grounds to support it. Walsh,

J., said he, could regard it as a sufficient ground to refuse leave if he found that such an appeal had been admitted as a matter of course when there

is only an appeal by leave. Piggott, J., pointed out that there had been cases in that Court where leave to appeal had been granted after hearing the

arguments but that such proceeding should not form the general practice. It was, however, nowhere assumed that leave was a condition precedent

to the right of appeal. We have also been referred to a somewhat similar case under the Pensions Act. Mahomed Azmat Ali Khan v. Lalli Begaum

(1882) 9 IA 8 : LR 8 C 422 where the words are

No Civil Court shall entertain any suit except as hereinafter provided.

and a Civil Court

shall take cognisance of any such claim upon receiving a certificate from the Collector.

2. Their Lordships held that the Court might proceed with the suit after receipt of the certificate, for the suit had been begun without it. It therefore

seems to me that, as the authorities go at present, the District Judge was wrong and we have power to grant the leave now for which a petition has

been put in; and we have heard sufficient of the case to lead us to think that it is a case in which leave ought to be granted. The merits will therefore

be argued.

Curgenven, J.

3. I agree.

4. This Appeal against order again came on for hearing on the merits, the Court delivered the following

Odgers, J.

5. I have already dealt with the question as to the necessity of leave being obtained as a condition precedent to the right of appeal. I now come to

consider the case on its merits.

6. The learned District Judge has held that, in respect of Ex. I which is a transfer of the entire property of the Insolvent in trust for distribution to his

creditors, the trust is inoperative with respect to the immovables which therefore Become vested in the Official Receiver but that it is operative as

regards the moveables which are therefore vested in the trustee. It is perfectly obvious on the face of it that it is highly inconvenient, to say the least,

that part of the assets of an insolvent should be administered under the direction of the Court, i. e., by the Official Receiver, and part should be

administered privately by the trustee who presumably would be more or less guided by the wishes of the insolvent himself, so that prima facie one

is not inclined to uphold an order of this sort. But of course if it is correct in law there is nothing more to be said. Mr. Somayya for the appellant

has strongly urged on us that, apart from all other considerations, the principle enunciated in *Manmohan Das v. N.C. Macleod* (1902) MR 26 B

765 is the one to be applied here. In that case the Bombay High Court held, relying on *Marks v. Feldman* (1870) LR 5 QB 275 that a transaction,

such as the one in question, though perfectly valid as between the parties, if bankruptcy supervenes and the transferor is adjudicated, becomes a

fraudulent preference and invalid against the assignee, not under any express provision in the Bankruptcy laws, but as contrary to the spirit and

principle of those laws; and Sir Lawrence Jenkins, C.J., says that the principle enunciated in *Marks v. Feldman* (1870) LR 5 QB 275, does not

depend on the doctrine of relation back which under the English Law goes back to the first available act of bankruptcy but under the Indian only to

the date of the petition. It has been strongly contended on the other side that the whole theory of *Manmohan Das v. N.C. Macleod* (1902) MR 26

B 765 is wrong now-a-days because it is based on Section 24 of the Insolvent Debtors Act which was the only section under which a fraudulent

preference could then come and secondly that the English case on which it is based does really depend in spite of the declaration of Kelly, C.B.,

on the theory of relation back in the English Law. It is further contended that now that we have Sections 53 and 54 in the Act invalidating certain

transactions by the insolvent there is no scope for the importation of a general principle such as may have been imported with justification under the

old Section 24. The argument is that the Act is self-sufficient and self-contained and that unless a transaction is voidable by its provisions it must be

held protected. Interesting as the discussion in *Manmohdn Das v. N.C. Macleod* ILR (1902) B 765 is, it is not to my mind necessary to decide at

the present moment whether in fact there is the principle dehors the Insolvency Law which would render invalid the transfer to an assignee of his

entire property by a man subsequently adjudicated.

7. The terms of Ex. I in this case are important. It is dated 10th January 1924 and is called an agreement of consent"" executed by the insolvent.

The deed recites that his"" cloth business is in difficulties, his creditors are worrying him and he has no means to fully discharge their debts. So he-

has put in possession of the trustee his entire properties, accounts, documents relating to the business, piece goods and the house. He also

promises to deliver some bundles of cloth to the trustee on the next day and recites delivery of the lock and key of the shop in token of having put

the trustee in possession thereof. The trustee is to sell all the piece goods, accounts, documents, etc., but, when sold, the transferor himself is to

execute a sale deed of the house. Towards the end of the document he again repeats ""I have put you in possession of all the documents relating to

piece goods, accounts etc."" Ex. II is a document of even date by 10 of the creditors out of 40, called an agreement, consenting to the sale of this

property of the Insolvent and a payment of Rs. 250 to the insolvent. It is perfectly clear to my mind that this document is really not $\frac{1}{2}$ a transfer

but one constituting the so-called trustee Subbiah an agent for the sale of this property. "If I am wrong and it is a transfer, then the question is, does

it infringe the provisions of S. 53 of the Provincial Insolvency Act which begins "any transfer of property" and this transfer of property is said in

Section 2(f) of the Act to include "transfer of any interest in property and the creation of any charge upon property". It is all very well to say that

the Insolvency Act is self-contained, but any transfer of property must mean, I think, a transfer recognised by the general law. If this is a transfer

and if it is a trust for creditors, it must conform to the requirements of the Law of $\frac{1}{2}$ Trusts, that is to say, Sections 4, 5 and 6 of the Trusts Act

must be satisfied. If so, a mere declaration of trust with regard to moveable is clearly not enough as laid down in *Alagappa Chettiar v. Lakshmanan*

Chettiar (1918) INDCAS 253 : MLJ 267, a decision of a Bench of this Court, where the learned Judges were of opinion that there were no

words of transfer to be found in the document, and no distinction either with regard to the immovables or the moveables, and *Seshagiri Aiyar, J.*,

said that the document was one and indivisible and it was never the intention of the parties that the moveable property should be taken without the

immovable, and that if there were no words, conveying the Immovable property you cannot say there is anything in the document which would

convey the moveable. There may be provisions in a document of transfer which are separable and the invalid part may then be separated from the

valid part and the latter can be given effect to while the former fails, and some attempt has been made here to introduce the analogy of partition

deeds of both Immovable and moveable properties. The answer to that is that here it is perfectly obvious from Ex. I that the trustee was intended

to take everything. "I have put in your possession my entire properties"; and in the next sentence the house is mingled with the accounts and the

documents and the piece goods. If this document therefore is to be construed as one entire document, if one part of it is bad, the whole of it is bad.

That is really enough to dispose of the matter. But I think that, under the provisions of Section 53, the transfer, if it is a transfer, may also be

impugned. In other words, the trustee is not a purchaser in good faith and for valuable consideration. It is true that in *The Official Receiver of*

Trichinopoly Vs. S.A. Somasundaram Chettiar and Others, , Sadasiva Aiyar and Moore, JJ., held that the responsibility undertaken by a person to

whom pro-perities are transferred in consideration of his taking such onerous work fell within the expression ""valuable consideration"". Hence the

creditors in that case who undertook to be trustees of the insolvent's properties for the benefit of the rest and had been discharging the duties of

trustees came within the protection afforded to trustees for valuable consideration. With great deference I am unable to agree with the decision

unless it can be distinguished on the ground that we have no proof here that the transferee ever undertook any onerous work or had been

discharging the duties of a trustee. It seems to me perfectly clear from the judgment in Ex parte Hillman : In re Pamfrey (1879) 10 Ch. D. 622 that

a trustee of a post nuptial settlement of leaseholds for the benefit of the settlor's wife and children is not a purchaser within Section 91 of the

Bankruptcy Act. Jessel, M. R., said that the word ""purchaser"" means a ""buyer in the ordinary commercial sense. In Hance v. Harding (1888) 20

QBD 732 this case in 10 Ch. D. was explained. In the former case, the father of the settlor had conveyed certain lease-hold properties to trustees

on trust for the benefit of the settlor's children. At the same time the settlor assigned a policy of insurance on his life to the same trustees for a like

purpose. There was no intention to delay or defeat the creditors of the settlor and the transaction was perfectly bona fide. The only point was

whether the settlement was valid, and the settlor's father, the settlor having become bankrupt, was a purchaser in good faith and for valuable

consideration. The Court of Appeal held that he was, because the father gave something in order to induce the son to give something. In this there

was ample quid pro quo and this was the meaning to be applied to the word ""purchaser"". As pointed out in Ex-part e Hillman : In re Pamfrey

(1879) 10 Ch. D 622, the trustees had not given something to procure something for other persons nor did they give anything at all. The case in Ex

parte Hillman : In re Pamfrey (1879) 10 Ch. D 622, according to Lord Esher, decided that such purchasers as those were not purchasers within

the section and that In order to constitute a purchaser within the section there must be valuable consideration. Both cases were considered in In re

Pope : Ex parte Dicksee (1908) LR 2 KB 169 by the Court of Appeal. In that case there was a settlement post nuptial made by a bankrupt within

two years of his bankruptcy in favour of his wife and children in consideration of the wife refraining from taking divorce proceedings against the

bankrupt. The majority of the Court of Appeal held that there was valuable consideration according to the findings of fact in the Court below and

that the purchaser is equivalent to a buyer, following *Hance v. Harding* (1888) 20 QBD 732. On the other hand, it is something more than a

conveyancing term and is not satisfied by a deed such as an assignment of leaseholds, which might render the assignee a purchaser within the

Statute of 27 Elizabeth, Ch. 4.

8. I therefore think that Ex. I comes within the mischief of Section 53 and that the trustee so-called is not a purchaser in good faith and for valuable

consideration. "" That he was not a purchaser in good faith is, I think, evident from the mere recitals in the deed. He must have known from these

that the transferor so-called could not pay his debts in the ordinary course of business and was in financial difficulties.

9. It has been observed that although the assignment of all the man's property is an act of insolvency under the Provincial Insolvency Act, Section

6(a), it is not for that reason necessarily void. This has recently been pointed out by *Coutts Trotter, C.J.*, and *V. V. Srinivasa Aiyangar, J.*, in *The*

Official Assignee of Madras v. O. R. M. O.R.S. Firm (1926) 52 MLJ 352, that though an act of bankruptcy is a ground for adjudication, it does

not necessarily follow that the adjudication extends to and comprises all the legal consequences in all the various aspects of the act. By that I

understand the learned Judges to mean that, although a certain act of a man may be sufficient to adjudicate him an insolvent, it does not necessarily

mean without more that the act is for example a fraudulent preference u/s 53. For these reasons the order of the District Judge cannot be supported

with regard to the moveable properties mentioned. The Civil Miscellaneous Appeal must therefore be allowed with costs.

Curgenvén, J.

10. Within three months of presenting his petition, the debtor in Insolvency Petition No. 13 of 1924 on the file of the District Court of Cuddappah

executed a deed under which he purported to transfer the whole of his property, moveable and immovable, to a trustee (now the respondent) for

the purpose of realising its value and distributing the proceeds amongst his

creditors. This transaction has been impugned by the Official Receiver, and in his order now under appeal the learned District Judge, while holding that the assignment was invalid so far as it related to the Immovable property, upheld it as regards the moveables.

11. Three separate lines of argument have been employed to show that the assignment deed is voidable or void:

(a) u/s 53 of the Provincial Insolvency Act.

(b) As opposed to the spirit and policy of the Insolvency Law.

(c) As regards the moveables as not meeting the requirements of the Trusts Act.

12. With regard to (a), Section 53 declares to be voidable as against the receiver a transfer of property made-within two years of the order of

adjudication and otherwise than "in favour of a purchaser or incumbrancer in good faith and for valuable consideration". This transaction took place

within the two years; and it is therefore for consideration whether the three conditions required to protect it from voidability, that the transferee is a

purchaser or encumbrancer, that he acted in good faith, and that there was valuable consideration, were satisfied.

13. It would seem at first sight that both the first and the last were wanting. As to the first, there is no suggestion that the transferee is an

"encumbrancer" and if by "purchaser" is meant a "buyer", as that term is used in the Transfer of Property Act, it would require him to be a party to

a "sale" as defined in Section 54 of that Act, a definition which cannot be made applicable to a transfer of the nature under consideration. A ½

more extended significance has however been given to the term "purchaser" in The Official Receiver of Trichinopoly Vs. S.A. Somasundaram

Chettiar and Others, , a case decided u/s 35 of the Provincial Insolvency Act of 1907, corresponding to the present Section 53, by Sadasiva Aiyar

and Moore, JJ., That too related to a transfer of property by a person who subsequently was adjudicated, for the purpose of distributing his assets

among his creditors. Sadasiva Aiyar, J., appears to assume that "purchaser" means no more than "transferee". Moore, J., following an English

case, Hance v. Harding (1888) 20 QBD 732, held that "purchaser" in the section is used not in the ordinary legal sense of one who has bought a

property under a contract of sale and purchase, but means a person who has given valuable consideration. The facts of Hance v. Harding (1888)

20 QBD 732 were these. The settlor, by post nuptial settlement made in pursuance of an arrangement between himself and his father, assigned a policy of insurance upon his life to trustees on trusts for the benefit of his children, the settlor's father at the same time conveying certain leasehold property to the trustees on similar trusts. The settlor became bankrupt and the Official Receiver claimed the money payable under the policy on the ground that the policy was void u/s 91 of the Bankruptcy Act of 1869 which, like the Indian Act, exempts a transfer ""in favour of a purchaser or encumbrancer in good faith and for valuable consideration"". It was found that the transaction was entered into in good faith and not with any intention to defeat or defraud the settlor's creditors. Lord Esher, M. R., after exonerating the parties from any imputation of improper motive, proceeded to hold that the settlor's father was a purchaser within the meaning of the section because he had given something to get something for other person, vis., the family of his son, and he had given it to induce his son to give up his interest in the insurance policies; that is to say, he held that a "purchaser", as used in this context, means no more than a transferee for valuable consideration. Sir James Hannen, the other learned Judge who decided this case, makes this clear by saying that the word must not be treated as a conveyancing term, but must be considered as applying to cases where there is a quid-pro-quo. Reference is made in this case to a decision of the Court of Appeal, Ex parte Hillman : In re Pamfrey (1879) 10 Ch. D 622, where a construction has been given to the word ""purchaser"" as used in this connection. Jessel, M. R., who delivered the leading judgment in that case, expressed the view that it meant a "buyer" in the ordinary commercial sense, not a "purchaser" in the legal sense of the word. The question arose in that case whether an assignment on trust for the benefit of the settlor's wife and children was void u/s 91 of the Bankruptcy Act upon the settlor being adjudicated a bankrupt, and Lord Esher says:

it is impossible to say that in any sense of the word the trustee for the settlor's wife and children is a "buyer" of the settled property.

14. No distinction can, I think, be drawn between the circumstances of that case, in its essentials, and the present case of a transfer to a trustee for the benefit of the creditors. As is pointed out in Hance v. Harding (1888) 20 QBD 732, not only were the trustees of the settlement in the earlier

case not purchasers but also they had given nothing at all in the shape of a consideration, and so too here, if there was a transfer it appears to me that it was without consideration. It is true that in *The Official Receiver of Trichinopoly Vs. S.A. Somasundaram Chettiar and Others*, in similar circumstances, consideration was found to have been given on the ground that it was constituted by the responsibility undertaken by the transferee as trustee. In support of this proposition Sadasiva Aiyar, J., relied upon *Narayan Coomari Debi v. Shajana Kanta Chatterjee* ILR (1894) C 14. In that case, however there was an agreement to pay an executor a salary in consideration of discharging his duties as executor, and it is clear that the rendering of services which the executor was under no legal obligation to render was good consideration for the remuneration. But can it be said here that the assumption by the transferee of responsibility for distributing the assets, although it satisfies the definition of consideration as something done or promised at the desire of the transferor, was consideration for the transfer? What really happened, as it seems to me, was that the trustee here gave his services gratuitously and Math-cut consideration of any benefit accruing to him from the transfer, which was merely an arrangement enabling him to render those services. For this reason and following *Ex parte Hillman : In re Pamfrey* (1879) 10 Ch. D. 622, I must respectfully differ from the view taken in *The Official Receiver of Trichinopoly Vs. S.A. Somasundaram Chettiar and Others*, and hold that there was no consideration. In applying the section, it remains to consider whether the transfer was "made in good faith". On behalf of the respondent it is argued that this condition was satisfied inasmuch as there was no intention to benefit one or more creditors at the expense of the remainder. No doubt it may be said that the parties to the transaction in good faith intended to secure an equitable distribution of assets. But I am inclined to think that something further is needed in order to exempt the transfer upon this ground. It is not disputed that the transferor was at the time in embarrassed circumstances or, in fact, actually insolvent. He filed his petition less than three months later. A transferee who takes without knowledge of his transferor's financial condition may be exonerated on the ground of good faith, but can the same be said with regard to a transfer which is in violation of the principles of the insolvency law? An act is not done in good faith which is done without due care and attention; and it

seems to me that, had the parties exercised due care and attention, and acquainted themselves with the effect of their action, they would have discovered that it did violate those principles. The transfer by a debtor of all or substantially all his property to a third person for the benefit of his creditors generally is by Section 5 of the Provincial Insolvency Act declared to be an act of insolvency. The effect of such an act, both under English and under Indian Law, has been considered by Jenkins, C.J., and Starling, J., in *Manniohandas v. N.C. Macleod* ILR (1902) B 765, a decision which has a bearing upon another aspect of the present case. Two debtors executed a deed of assignment to trustees in favour of their creditors, and the transfer, as an act of insolvency, was made the foundation for a petition by certain creditors who did not assent to it. The question was whether the deed could be avoided. The insolvency law then in force was the Indian Insolvent Act (Stat. 11 and 12 Vict, C. 21), and the learned Judges give reasons, which it is unnecessary to consider, for their inability to avoid the transactions u/s 24. They then consider whether it is voidable or void upon other grounds. Under the English Law an act of insolvency, such as this, is ipso facto void, but one reason at least for this is that a bankruptcy relates back to any acts of bankruptcy which the debtor may have committed, whereas in India the vesting of an insolvent's property takes effect by relation only from the filing of the petition. The doctrine of relation back therefore cannot be invoked to invalidate the transferee's title. The learned Judges however refer to the view repeatedly enunciated, that an assignment by a trader of all his assets is vitiated by the fact that it contravenes the spirit of the Bankruptcy laws, and is void not merely because the title of the assignee prevails by relation back.

15. In particular, they derive authority for this view from the Privy Council case *Khoo Kwat Siew v. Wool Talk Hwat* (1891) LR 19 IA 15 : ILR 19 C 223 and apply it to the case before them as not being dependent upon the theory of relation back. I am not at the moment concerned with the voidability of the transfer as an act of insolvency, but only with the contention that it contravenes the principles of the insolvency law. That proposition, I think, cannot be questioned. The Insolvency Law provides machinery for the preservation and distribution of an insolvent debtor's

assets and any private arrangement which would defeat that purpose must be in conflict with the intention of the law.

It has undoubtedly been long settled

says Lord Eldon in *Dutton v. Morrison* (1809) 17 Ves. Jun. 193 : 34 E.R. 77

that if a trader conveys all his estate and effects, that is an act of bankruptcy, as it seems upon two principles, first, that by that act the trader

necessarily, perhaps not intending it, deprives himself of the power of carrying on his trade, secondly, that he endeavours to put his property under

a different course of application and distribution among his creditors from that which would take place under the Bankruptcy law.

16. In my view the parties to such a transaction cannot be said to be acting in good faith if the consequence of their act is such an infringement. I

think therefore that neither was the transfer for valuable consideration nor was it undertaken in good faith, that, if it amounted to a valid transfer at

all, it is voidable u/s 53.

17. The second ground for avoiding the transfer deed is (b) that it is opposed to the spirit and policy of the Insolvency Law. I have already

substantially dealt with this point in considering the question of good faith u/s 53 and inasmuch as I have held that the assignment is voidable under

that section it seems unnecessary to establish that it would be also voidable as offending against the general principles of Insolvency. For such a

proposition, as I have already said, the decision in *Manmohandas v. N. C. Maclead* ILR (1902) B 765 affords authority. That decision, however,

was under the old Indian Insolvency Act, which contained no provision similar to the presents, 53. It is therefore arguable that since statutory

provision is now made for the avoidance of transfers as such and not merely of fraudulently preferential transfers, the transfer must be avoided

under that section or not at all. Assuming that section not to apply to a case of this description, it would certainly be anomalous that an insolvent

could transfer the whole of his property to a trustee for distribution and on the next day file his petition, whereupon the receiver would be incapable

of touching any of the estate. It would be an anomaly that the Insolvency Act should make such a transfer an act of insolvency and yet contain no

provision for setting it aside. I have no doubt that the framers of the Act deemed that Section 53 would sufficiently provide for such a case, as I

think it does. That being so, I do not think it is necessary to look outside the Act for grounds for declaring the transfer void.

18. (c) The third and the last line of argument is that the assignment deed does not satisfy the requirements of the Trusts Act and that for more than

one reason. u/s 4 the purpose for which a trust may be created must be lawful and a purpose is not lawful if it is of such a nature that, if permitted,

it would defeat the provisions of any law. In my view the purpose of the trust here is designed to defeat the provisions of the Insolvency Act. Apart

from this, u/s 5 no trust in relation to moveable property is valid unless the document declaring it, if it be non-testamentary, is registered or unless

the ownership of the property is transferred to the trustee. As already stated, the document in the present case is unregistered so that no trust

would have been created unless the ownership of the moveables was transferred to the trustee. I am unable to extract such a conclusion from the

trust deed, Ex. I. It recites no doubt that the debtor puts his trustee in possession of all his properties, but there is nothing to show that more was

meant than that he should hold them for purposes of sale, and, in fact, in the case of the only piece of Immovable property, a house, he himself

undertakes to execute a sale-deed in respect of it to any purchaser, which shows that he at least retained the ownership of the house. I think it may

be inferred that he also retained his title to the moveables. If this be so, then there was neither a valid trust nor a valid transfer, so that it would not

even be necessary to resort to Section 53 of the Act to recover the property. A further argument has been used that the transfer purported to be of

the entire effects of the debtor and that he had no intention of making a transfer of only a part. Since therefore the transaction so far as the

Immovable property is concerned has been set aside, the whole should be set aside. There is some authority for this view in *Pothi Naicken v.*

Naganna Ndicker (1915) 30 MLJ 62, a case relating to partition, where it was held that in the absence of any clear intention that the moveables

should be partitioned apart from the immovables, the document which for want of registration could not affect the immovables did not even affect

the moveables. The principle would appear to be that when there is an entire contract and part of it cannot be enforced, the whole of it goes,

whereas it is otherwise when an instrument contains two or more distinct contracts in which case they are severable. It is unnecessary in the present

case to stress the inconvenience which would arise from an administration of the Immovable property by a receiver under the Insolvency Act. and

of the moveables by a private person, and I think it may well be taken not to have been the intention of the executant of the deed that this

consequence should ensue. I consider accordingly that under the Trusts Act also the deed would be invalid.

19. I agree therefore with my learned brother that the order of the learned District Judge so far as it declares the respondent to be a duly

constituted trustee in respect of the moveable property should be set aside with costs and the Official Receiver empowered to take possession of

the moveables as Well as of the house.