

**(1928) 03 MAD CK 0027**  
**In the Madras High Court**

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| Official Assignee of Madras   | Vs | APPELLANT  |
| Ranganayaki Ammal and Another |    | RESPONDENT |

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**Date of Decision :** 26-03-1928

**Acts Referred:**

**Citation :** AIR 1928 Mad 784

**Hon'ble Judges :** Waller, J

**Bench :** Division Bench

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**Judgement**

Waller, J.—This case raises a somewhat difficult question. The insolvent has drawn out the deposits that stood to his credit in the Railway

Provident. Fund. With part of them he redeemed some of his wife's jewellery and the balance he handed over to her. The question is whether the

Official Assignee has any claim on them. It is strenuously contended on behalf of the insolvent and his wife that the Official Assignee has no such

claim. Section 3 (1), Provident Funds Act of 1925 is, no doubt, very widely expressed, but it seems to me that the short answer to the question

propounded is that the sub-section is intended to protect compulsory deposits, only so long as they remain deposited in the fund. A number of

decisions has been cited, but most of them do not touch the point that has now arisen. Veerchand v. B.B. and C.I. Ry. [1905] 29 Bom. 259, was

the case of a depositor who had retired from service, but had not yet drawn out his deposits. The decision was that they could not be attached

while "in the company's hands" The Secretary of State for India in Council Vs. Raj Kumar Mukherjee and Others, was a similar case and was

similarly decided. Richardson, J., remarked:

2. In other words, so long as the deposits subsist in the fund so long, at any

rate, both as matter of legal construction and in the common and ordinary way of speaking, they are properly and correctly described as compulsory deposits u/s 4 of the Act, they are not liable to attachment.

3. In *Hindley v. Joynarain Marwari* [1919] 46 Cal. 962, Rankin, J., observed:

Whether the employee is in the service or out of the service, whether he be alive or dead, his share is unattachable in the hands of the institution.

4. The only case that is really in point is *Nagindas Bhukandas v. Ghelabhai Ghulabdas* [1920] 44 Bom. 673. Though, as here, the insolvent drew

out what stood to his credit in the fund and paid it over to his wife, the Judges held that the Official Receiver had no claim on that amount, Crump,

J. at the close of his judgment, remarking:

Even if it be assumed that the learned Judge (who took the view that the receiver had a claim) has correctly apprehended the law, the point is

surrounded with so much doubt that the insolvent may well have entertained a bona fide belief that the amount in question was entirely at his

disposal.

5. Daniels, J., in *Devi Prasad Vs. Secretary of State for India in Council*, , (objector) said of this decision that it was not necessary to go to such a

length. In fact no other decision has gone nearly so far. What it decides is that compulsory deposit remains a compulsory deposit for all time even

after it has been repaid and has reached the hands of the depositor. I could understand the Act providing for the depositor taking his deposit free

of all debts incurred by him while he was in the company's service. Such a provision is made in Sub-section (2) of Section 3, where, in the case of

a deceased depositor, his dependant takes the sum free of all debts contracted either by the depositor or by the dependant before the depositor's

death. No such provision is made in Sub-section (1), but the Bombay decision, as I understand it, would exempt the deposit from liability for all

debts whether contracted before or after it has been drawn out from the fund. As Rankin, J., pointed out in the case already cited, the difference

between Sub-section (1) and (2) is that the first does not go as far as the second. In the result I hold that the Official Assignee has a claim on the

sums drawn by the insolvent from the fund. To be mentioned again on 26th.

6. Application No. 765 of 1927. There will be an order for the wife to pay to the Official Assignee Rs. 3,000, the amount of the fund handed over

to her. The payment for the redemption of the jewels is clearly a fraudulent preference. The man was in involved circumstances and preferred his wife to all his other creditors. The payment was clearly voluntary. The Official Assignee will have a charge on the jewels, which must be handed over to him, to the extent of Rs. 600.