
(1925) 10 MAD CK 0033
In the Madras High Court

O.S. Rarnachandra Aiyar, Official Receiver, Tanjore	APPELLANT
Vs	
Sankara Aiyar and Others	RESPONDENT

Date of Decision : 02-10-1925

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 89
Provincial Insolvency Act, 1920 — Section 20

Citation : AIR 1926 Mad 357 : (1926) 23 LW 145 : (1926) 50 MLJ 239

Hon'ble Judges : Jackson, J

Bench : Division Bench

Judgement

Jackson, J.—The petition is to revise the order of the District Judge, West Tanjore, in C.M.A. No. 29 of 1924.

2. One V. Mahadeva Aiyar was judgment-debtor in O.S. No. 407 of 1923 on the file of the Court of the District Munsif of Mannargudi. On 7th

April, 1924, a creditor applied to have him adjudicated insolvent. On 8th and 9th April property of his was sold in execution of the decree. On

24th April the Official Receiver was appointed interim Receiver u/s 20 of the Provincial Insolvency Act. On 9th June the interim Receiver

deposited moneys under Order 21, Rule 89, Civil Procedure Code, to have the sale set aside and the District Munsif of Mannargudi set it aside.

The District Judge reversed the order of the District Munsif. Hence the petition.

3. The point for determination as correctly stated by the learned Judge in his second paragraph is whether the interim Receiver by virtue of his

appointment u/s 20 of the Provincial Insolvency Act had power to act under Order 21, Rule 89, Civil Procedure Code. He was appointed after

the sale and therefore cannot be said by his appointment to have been vested in an interest by virtue of a title acquired before such sale. He can

only come in under Order 21, Rule 89, Civil Procedure Code, if he is held to be "" owning such property, "" if, that is to say, by virtue of his

appointment u/s 20 of the Provincial Insolvency Act, he stands in the place of the owner.

4. Section 20 of the Provincial Insolvency Act attracts the provisions of Order 40 of the Code of Civil Procedure. Rule 1 of which provides (a)

that the Court may appoint a Receiver; (c) commit the possession, custody or management of such property to the Receiver; (d) confer upon the

Receiver certain powers including the protection of the property.

5. In the present case the Court appointed the Official Receiver, Receiver of the properties with no other provision except that he should take

steps to see that the properties were not sold for Government kist. It is difficult to see how this order could possibly make the Receiver a quasi-

owner of the property. It is argued that some one had to protect the property and since it had been taken out of the owner's hands, "" the Receiver

must be presumed to have been the proper person to act. Even assuming that the owner had been removed from the possession and had no right

to protect the property and the Receiver considered it his duty to act, his proper ordinary course would be to apply to the Court for power to act,

and, as a matter of fact, this is exactly what he did. He wrote on 28th May, 1924, requesting sanction to move the Munsif to set aside the sale.

This letter was mislaid by the Judge till 26th June. Meanwhile the Receiver had informed the judge on 9th June that he was about to file his

application under Order 21, Rule 89, Civil Procedure Code, in anticipation of sanction and on 10th June he filed such application with an affidavit

asserting that he was entitled to present it as the interest of the judgment-debtor had vested in him. It does not appear from the record that any ex

post facto sanction was ever accorded by the Judge. In these circumstances, it is impossible to hold that the Receiver's action was authorised. The

statute entirely provides for the contingency and he attempted to obtain sanction as contemplated by the statute; and there is no room for assuming

that inherent power vested in the Receiver from the mere fact that he had been appointed as such.

6. Where the Indian statute is clear and sufficient nothing is to be gained by a reference to English case-law. Official Receiver of Coimbatore v.

Kanga (1921) 167 MLJ 53 is not directly in point, for there the Receiver whose powers are discussed is one appointed after adjudication Under

Act III of 1907. Petitioner relies upon the phrase "the obtaining of leave is a matter between the Receiver and the Court." The Receiver had the

power vested in him u/s 18 of that Act, and he was in the position of a Receiver u/s 28 of the present Act; he had in himself the power to sue, and

whether he obtained permission of the Court was a matter between him and the Court.

7. In the present case without the order of the Court he has not the power.

8. In *Akula Paradesi v. Dhelli Jagannadha Rao* ILR (1904) M 157 it is held "apart from any express power to sue conferred by the Court,

Receivers would have a right of action by virtue of mere possession." This is an obiter dictum following upon a consideration of English authorities

with little bearing upon the point actually in question in that case.

9. The word "confer" in sub-clause (d) of Order 40, Rule 1 would seem to suggest that until the Court made specific provision the Receiver is not

inherently endowed with a right to sue. But even if it is held that "mere possession" gives such a right, it is doubtful if it would extend to making an

application under Order 21, Rule 89, Civil Procedure Code. At any rate in this case the Receiver can only sue qua owner and mere possession

cannot be said to put the Receiver in the position of the owner. If he were claiming an interest by virtue of title acquired before the sale his mere

possession would more easily support such a claim but I confess to considerable doubt whether in India a Receiver put into mere possession under

Order 40, Rule 1(c), can arrogate to himself powers to be conferred under Order 40, Rule 1(d).

10. Nor do I think that he can be vested with such powers by operation of Section 56 of the Provincial Insolvency Act. This section provides for

the appointment of a Receiver for the property of the insolvent at the time of adjudication or afterwards. Such property shall thereupon vest in the

Receiver and the section allows the Court to demand security from such Receiver and to provide for his remuneration, it also allows the Court to

eject a trespasser, and also to mulct a Receiver for malfeasance. There comes the fifth sub-clause on which the petitioner relies "the provisions of

this section shall apply, so far as may be, to interim Receivers appointed u/s

20." It can hardly be argued from this that u/s 56 the property vests in the interim Receiver with all the incidents of Section 28. Section 20 is still the section governing the interim Receiver's powers and he shall only have such of the powers conferrable on a Receiver appointed under the CPC as the Court may direct.

11. Accordingly there is no ground for revision. The petition is dismissed with costs of the 1st respondent.