
(1940) 04 MAD CK 0053
In the Madras High Court

Paleti Chandrayya and Others

APPELLANT

Vs

Yeruva Chinnappa Reddi and Others

RESPONDENT

Date of Decision : 05-04-1940

Acts Referred:

Provincial Insolvency Act, 1920 — Section 37

Citation : AIR 1941 Mad 753

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—This civil miscellaneous second appeal is from the order of the learned District Judge of Guntur confirming the order of the Additional Subordinate Judge of Guntur dismissing the petition filed by five creditors of an insolvent Thomas Reddi in I. p. No. 42 of 1923 on the file of the District Court of Guntur for the grant of certain reliefs against respondents 1 and 2 in the appeal. Respondent 1 is another creditor of the insolvent and respondent 2, P.V.S. Rao, is the special receiver, Guntur. Several questions of law were argued during the hearing of the appeal. In order to appreciate them, a statement of facts is necessary. Thomas Reddi was adjudicated insolvent on 8th January 1924. The adjudication was annulled on 7th December 1927, by reason of the insolvent failing to apply for his discharge in time. While annulling the adjudication, the District Judge of Guntur passed the following order:

I think that in the interest of the general body of creditors the property should vest in Mr. P.V.S. Rao, Official Receiver and order accordingly.

2. On 17th March 1928 one Yeruva chinnappa Reddi, respondent 1 herein, as assignee of a promissory note dated 10th May 1922 executed by Thomas Reddi instituted a suit in the Court of the Subordinate Judge of Guntur for recovery of a sum of Rs. 11,466-10-0 against the Official Receiver, Guntur, and Thomas Reddi. The debt due under the said promissory note was included in the schedule of debts filed by the insolvent. Both the defendants were ex parte and the following decree was passed:

Suit decreed for the plaintiff against defendant 2 (Thomas Reddi) and his properties in the hands of defendant 1 (Official Receiver) for the suit amount, costs and interest (further interest at six per cent, per annum) as prayed for.

3. This decree was passed on 31st March 1928. During the pendency of the suit, Chinnappa Reddy got an order for attachment before-judgment of the moneys in the hands of the Official Receiver. Within four days of the obtaining of the decree Chinnappa Reddi filed an execution petition (E. p. No. 25 of 1928) for recovery of a sum of Rs. 7415 in the hands of the Official Receiver to the credit of the estate of the insolvent. The Official Receiver opposed the application on the ground that in spite of the annulment the insolvency must be deemed to continue, that the petition for execution was incompetent and that the amount in his hands was liable to be distributed among all the creditors of Thomas Reddi. His contentions were negatived and he was directed to deposit the money into Court. Accordingly the said money was deposited into Court and was drawn by the decree-holder, Chinnappareddi. No appeal was preferred against the said order and it became final. It was incumbent on the Official Receiver to have obtained the directions of the insolvency Court before-the payment of the money into the executing Court. He should have also carried the matter in appeal having regard to the form-of the order passed by the District Judge in vesting the property in him. His explanation is that on legal advice he dropped further proceedings and the advice was not to prefer an appeal in view of the decision in Arunagiri Mudaliar v. Official Reciver of North Arcot 1926 M.W.N. 950. After drawing the said money from Court, Chinnappa Eeddi filed a second execution petition (E. P. NO. 42 of 1929)" for attachment of certain decrees obtained by the Official Receiver against the debtors to the estate of the insolvent. The Official Receiver opposed the application urging the contentions which he raised in the prior execution petition. The learned Subordinate Judge upheld the objections of the Official Receiver and dismissed the petition. C.M.A. No. 182 of 1931 was filed against the said decision and the order of the learned Subordinate Judge was reversed on the ground that the Official Receiver was bound by the rule of res judicata by reason of the order in the prior E.P. No. 25 of 1928 and the decree-holder was competent to proceed" with the execution. One of the points in controversy was as to the effect and scope of the said decision which was delivered by the learned Judges Curgenvan and King, and reported in Chinnapareddi v. Official Receiver, Guntur AIR 1935 Mad. 835. The Official Receiver seems to have learnt subsequently that the said Chinnappa Reddi with a view to help Thomas Reddi and as benamidar for him got an assignment of certain debts subsequent to the date of the annulment from various creditors who proved their debts in insolvency, and they were fictitious. He therefore sought to expunge the said debts from the schedule of the creditors filed by Thomas Reddi in insolvency and get appropriate reliefs in consequence thereof. He filed an application (C.P. No. 11 of 1932) in the said I.P. No. 42 of 1928 praying for the following reliefs:

(1) To order the entries relating to the respondent to be expunged from the schedule of creditors and (2) to direct the respondent to refund the sum of Rs.

7415 improperly received by him; or in the alternative to declare that in any case the respondent is not entitled to participate in the assets now realised and available for distribution or in any future distribution unless and until all the other creditors are paid an equal amount of percentage as the respondent has already received, and order necessary amendments to be made in the schedule.

4. It will be seen from the allegations in the petition that the Official Receiver alleged that the debt which formed the subject matter of the decree in o. Section No. 19 of 1928 was a bogus debt and that the other debts assigned to the respondent were also of a similar nature cooked up in the interests of the insolvent-and that consequently the respondent was not a true and bona fide creditor entitled to any dividend; and, in the alternative, alleged that even supposing that the debts assigned to the respondent were all true and the assignments were all real and bona fide, the respondent having already received a sum of Rs. 7415 far above any dividend that he could get, it was not just and equitable that Chinnappa Reddy should be allowed to participate in the assets available for distribution which would give the other creditors a dividend of only about 15 per cent. The basis on which various reliefs were asked will be clear from the allegations above referred to. The Official Receiver not only asked for a refund of its. 7415 but also wanted an injunction that Chinnappa Reddy should not participate in the assets which he had then in his hands and in effect that he should not be allowed to take away any more moneys for appropriation of his decree debt in C.S. No. 19 of 1928. On the date of the said petition, E.P. No. 42 of 1929 was pending and no amount was paid into the execution Court nor drawn by Chinnappa Reddy. The learned District Judge Mr. Chandrasekhara Iyer was of the view that as the Official Receiver was a party to the decree in C.S. No. 19 of 1928 he must be held to be bound by it and it was there, fore not open to him to obtain the relief which he sought, namely, to expunge the debt which became the subject-matter of the said decree and in regard to the prayer for the refund of Rs. 7415 the Official Receiver having submitted to the attachment and paid over the moneys it was not open to him to seek a refund. His final conclusion was as follows : "I hold that this petition must fail on the preliminary ground mentioned by me above." He did not deal with the other reliefs sought in the petition. Against this order c. M. A. No. 21 of 1934 was preferred to the High Court. It was heard by Stone and Pandrang Row JJ., and their decision is reported in Srinivasa Rao v. Chinnappa Reddi AIR 1936 Mad. 125. The learned Judges were of opinion that in regard to the debt which ended in a decree it may be that the matter was barred by res judicata, but the learned District Judge was wrong in dismissing the petition. They observed as follows:

The debts shown in the schedule as owed to the respondent are numerous. One of those debts has after annulment been the subject-matter of a suit to which the receiver was made a party and to which the insolvent was the principal defendant. That suit ended in a decree giving to the plaintiffs the right to attach the assets of the insolvent in the hands of the receiver. Having that in mind the learned District Judge has treated it as a matter of res judicata that all the debts

and not merely the subject-matter of that suit, were owing. He has not gone at all into the question whether the other debts were not true debts. It will therefore have to go back for a determination whether the debts other than the debts the subject-matter of the suit should or should not be expunged... Remanded accordingly for disposal on the merits as to the debts other than the debts the subject-matter of the suit O.S. No. 19 of 1928.

5. One of the points in controversy raised in this appeal is as to the scope and effect of this decision. This order was passed on 28th August 1935. A few days before the order in this appeal was pronounced five creditors of the insolvent presented the application out of which this second appeal arises for the following reliefs:

(a) To remove respondent 2 from the estate vested in him on 7th December 1927 u/s 37, Provincial Insolvency Act, and vest the same in some fit and proper person with directions to complete the administration with the least possible delay; (b) for a declaration that the decree obtained by respondent 1 against respondents 2 and 3 in O.S. No. 19 of 1928 on the file of the Sub-Court, Guntur, is a nullity and that it is not binding on the property vested in respondent 2 u/s 37, Provincial Insolvency Act; (c) that the E. Ps. filed in that suit O. Section No. 19 of 1928 as E.P. Nos. 25 of 1928 and 42 of 1929 are incompetent in so far as they seek to affect such properties as aforesaid; (d) to direct respondent 1 to hand over the amount of Rs. 7415 with interest thereon at 9 per cent, from 11th August 1928 up to the date of payment to some person authorised by the Court for distribution among the creditors; (e) for an injunction restraining respondent 1 not to proceed with his E.P. No. 42 of 1929 on the file of the Sub-Court, Guntur, or with any other proceedings in execution of O.S. No. 19 of 1928 on the file of the Sub-Court, Guntur ; (f) for directing respondent 2 to pay over to the person to be appointed by the Court in his place all moneys now with him and all the papers, documents etc., and the decrees and debt bonds taken by him ; (g) in case the amount of Rs. 7415 cannot be recovered from respondent 1 in accordance with the orders of this Court to direct respondent to pay Rs.7415 or any portion thereof which amount cannot be recovered from respondent 1.

6. The learned Subordinate Judge dismissed the petition as in his opinion the matters urged must be decided in a regular suit. During the course of his order after referring to the various proceedings already had, he stated thus:

In view of these conditions and events I hold there is much force in the contention of the respondent and that it. would be more satisfactory if a regularly framed suit be filed for setting aside the decree if there were grounds enough for the same... Further, as pointed out by the learned vakil for the respondent, the payment of money already made to respondent 1 has not been set aside and unless the payment made is set aside and their Lordships stated in Ex. 5 that the Court of execution had jurisdiction enough to pass orders in execution, it cannot be that by virtue of a mere petition u/s 4 the petitioner should be entitled to get an order for refund of the money. The creditors would

be perfectly entitled to file a regular suit, there being also a question germane to the matter whether they should file a suit representing the other body of creditors or not. Even if they should impugn the conduct of the Official Receiver in the suit on the ground of negligence, that is also a matter which they must establish in a suit and they would be entitled to do so : *Rama Vilas Nidhi Ltd. v. Pera Nacikem* AIR 1936 Mad. 161. The respondent's vakil is also justified in contending that the orders passed by the High Court in E.P. No. 25 of 1928 and in C.M.A. No. 182 of 1931 operate as res judicata.

7. Against this order an appeal was preferred to the District Court and the learned District Judge was of the opinion that it was not necessary to refer the party to a regular suit as all the reliefs sought in the petition were concluded by orders in prior proceedings. He gave the following reason for his conclusion:

I think, however, that so far as the substantial prayers in this petition are concerned, namely, prayers Nos. 2, 8 and 4, the order of this Court in C.P. No. 11 of 1932 and the order of the High Court in the appeal therefrom, that is Exs. 6 and 7, operate as res judicata. C.P. No. 11 of 1982, as I have already stated, was a petition by the appointee, viz., the present second counter-petitioner with the following prayers : (1) to expunge from the schedule of creditors the entries relating to Chinnappa Reddy, that is, the present first counter, petitioner and (2) to direct him to refund Rs. 7415 improperly received by him. In his order, Ex. 6 my learned predecessor dismissed that petition holding that the decree of the Sub-Court cannot be got rid of nor the moneys paid thereunder recovered by means of that O.P. So far as these findings are concerned, the order of the High Court Ex. 7 has not reversed them. The High Court remanded that O.P. No. 11 of 1932 for determination of certain other debts which were sought to be expunged by that O.P., It follows therefore that so far as the expunging of the decree and the refunding of Rupees 7415 realised by the first counter-petitioner under that decree are concerned, the final order of the High Court Ex. 7 is conclusive. It operates as res judicata because the appointee, respondent 2 must be deemed to have filed O.P. No. 11 of 1932 in his capacity as the representative of the general body of creditors. The full Bench ruling in *Veeraya v. Official Receiver, Guntur* AIR 1935 Mad. 826 authority for the position that for certain purposes the insolvency proceedings continue even after annulment.

8. He did not deal with the other prayers in the petition but however dismissed the appeal. It is against this decision the above civil miscellaneous second appeal has been preferred. The order of the learned District Judge was passed on 7th December 1936 and the present appeal was filed on 16th March 1937. Subsequent to the filing of this appeal respondent 1 drew a sum of Rs. 3928-5-10 from Court. It is necessary to explain the circumstances under which the said sum was so drawn. Subsequent to the date of the decision in *Chinnapareddi v. Official Receiver, Guntur* AIR 1935 Mad. 835 the decree-holder seems to have amended his petition (E. P. No. 42 of 1929) by also asking for an attachment of any moneys collected since the date of the filing of the petition

and the attachment was ordered. Before the learned Subordinate Judge referred the parties to a regular suit by his order dated 4th March 1986, respondent 1 made an application to him requesting that the amount which he had attached might be paid over to him on his furnishing security of immovable property to the satisfaction of the Court but that application came for disposal after 4th March 1936 and the learned Subordinate Judge accordingly passed the following order on 12th March 1936:

The respondents creditors are given time till the reopening of this Court to file an appeal against the order of the additional Subordinate Judge dismissing their petition or to file an original suit as suggested in the order, Otherwise a cheque will be issued to the petitioner upon his furnishing security. Call on 28rd June 1936.

9. There was an appeal against the order of the learned Subordinate Judge referring the matter to a regular suit as aforesaid. While dismissing the appeal the learned District Judge passed the following order:

This is a sort of application for attachment before judgment. I have heard the C.M.A. itself. I do not think this is a fit case for directing respondent 1 to furnish security for the amount already taken by him. With regard to the amount that he might hereafter take respondent 1 should not be paid any unless he gives security to the satisfaction of the lower Court. Order accordingly.

10. What the learned Judge was referring to as the amount already taken by respondent 1 was the amount of Rs. 7000 drawn by him in pursuance of the order on E.P. No. 25 of 1928. The amount in respect of which the learned Judge was directing to give security was the amount which was claimed in pursuance of the prayer made in E.P. No. 42 of 1929. It will be noticed from this order that though the learned Judge dismissed the appeal of the creditors, still he directed security to be given in respect of the amount claimed in E.P. No. 42 of 1929. It may be that the learned District Judge wanted security to be given because an appeal might be preferred to the High Court and until the disposal of the appeal there should be security or the matter may have to be disposed of by Court in the exercise of its jurisdiction in insolvency. Anyhow, the order clearly indicates that the applicant can only withdraw the money on his furnishing security. After the learned District Judge passed this order, the original petition for the withdrawal of the money which was adjourned by the learned Subordinate Judge by his order dated 12th March 1936 seemed to have been ultimately disposed of by an order dated 21st September 1936 in and by which the Subordinate Judge who was then presiding over the Court directed the issue of a cheque to the petitioner. But the amount could only be drawn on security because the order which governs the parties was the order of the District Court passed on 7th December 1936. An application was presented on behalf of the creditors to the Sub-Judge inviting his attention to the order dated 7th December 1936. In spite of it, the learned Subordinate Judge would not accede to the request of the creditors to move even the District Court nor to direct security being taken. He

passed the following order on 21st September 1937:

Application dated 11th December 1935 u/s 161 and Rule 163 of the C.E.P. requesting to order payment of the money due to the petitioner under the decree on furnishing immovable property security. This application coming on this day before me in the presence of this Court doth order and decree that a cheque for Rs. 3928-5-10 be issued in favour of Mr. V. Krishna Sastri, pleader for plaintiff decree-holder. No order as to costs.

11. On the very next day, the creditors moved the District Court to rescind this order. It appears from a letter dated 22nd September 1937 addressed by the vakil for the petitioner to the vakil for respondent 1 that he mentioned to the Sub. Court at 11-20 A.M. that he would move the District Court for orders to stop the issue of a cheque and that one of the vakils for the respondent was present in Court at 12.30 P.M. An order was passed by the District Court to the following effect: " The Sub-Judge is requested to stop the issue of the cheque for ten days." In spite of it, the cheque was issued by the learned Subordinate Judge and a letter was received by the advocate, for the creditors that the cheque was duly cashed at 12-40 p. M. and the amount was paid over to the party immediately. I cannot help remarking that the action of the learned Subordinate Judge in issuing the the cheque was highly arbitrary and calls for a serious comment. It seems to me that respondent 1 and his advocates also acted improperly in withdrawing the money. However the money was drawn and Mr. Kameswara Eao has put in an application before this Court that the prayer No. (e) may be amended or a prayer may be added that respondent 1 be directed to refund the moneys which he has drawn from Court in pursuance of the order dated 21st September 1937 and I give him leave accordingly to amend the said petition by adding the necessary prayer.

12. On these facts the questions which arise for decision are (1) whether all or any of the reliefs are barred by the decision in O.P. No. 11 of 1932 and the order passed by the High Court on appeal therefrom, *Srinivasa Rao v. Chinnappa Reddi* AIR 1936 Mad. 125, whether all or any of the reliefs are barred by the decision in *Chinnapareddi v. Official Receiver, Guntur* AIR 1935 Mad. 835 and *Srinivasa Rao v. Chinnappa Reddi* AIR 1936 Mad. 125, whether the insolvency Court can call upon respondent 1 to refund the moneys which he has drawn from Court in execution of his decree and if so, what is the sum he is bound to refund. Before dealing with each of these questions, it is necessary to note the exact scope of the order passed by the learned District Judge u/s 37, Provincial Insolvency Act. The legal consequence of adjudication in bank, ruptcy is that the ownership of the insolvent in all the property owned, and possessed by him on the date of adjudication is divested from him and vested in the Official Receiver. As observed by Mellish L. J. in *Oriental Indland Steam Co. Ex. parte Scinde Ry. Co.* (1874) 9 Ch. A 557 :

In bankruptcy, the whole estate, both legal and beneficial, is taken out of the bankrupt, and is vested in his trustees or his assignees.

13. So until the property is again revested in the insolvent, the insolvent has no title to the said property. On annulment of the adjudication, Section 37 provides that the property may revest in the insolvent provided the Court does not vest the property in any person whom it appoints. Therefore, if the Court chooses to appoint a person and vests the property in him, the insolvent gets no title to the said property by reason of the said annulment. The effect of such vesting was fully considered in a decision of the Full Bench reported in *Veeraya v. Official Receiver, Guntur* AIR 1935 Mad. 826 . King J. who delivered the judgment on behalf of the Full Bench explained the scope of the said decision in *Chinnapareddi v. Official Receiver, Guntur* AIR 1935 Mad. 835

It was there held that when the property of an insolvent is vested in the Official Receiver or any other appointee u/s 87, it is the insolvency Court which retains control of it and the insolvency Court must direct its disposal in the interests of the general body of creditors.

14. As regards the powers of the appointee, they were thus stated in *Veeraya v. Official Receiver, Guntur* AIR 1935 Mad. 826:

He has only such powers as are necessarily implied by the vesting order which are... to carry out the directions of the Court, and those... directions... should, so far as the realization and distribution of the debtor's property are concerned, be in accordance with the provisions of the Insolvency Act.

15. It is thus clear that the property comes completely under the insolvency Court and can only be disposed of under its direction. It is also clear that the property can only be distributed equally among all the creditors whose debts have been duly proved and no one creditor has got a right to appropriate the money of the insolvent to the exclusion of other creditors. The order which was passed in this case u/s 37 is clear; that is, that the property was vested in the Official Receiver in the interests of the general body of creditors. Thus, there is a statutory trust created by virtue of the order u/s 37 in favour of the creditors. When respondent 1 obtained the decree in O.S. No. 19 of 1928 he was himself one of the creditors entitled only to participate in a rateable distribution of the property vested in the Official Receiver. The decree which he obtained, namely, that he could recover the amount from the property in the hands of the Official Receiver can only mean that he could have satisfaction of the decree from the moneys in the hands of the Official Receiver in accordance with the provisions of the insolvency law. When B.P. No. 25 of 1928 was filed, the Official Receiver very properly opposed the application. As pointed out by King J. in *Chinnapareddi v. Official Receiver, Guntur* AIR 1935 Mad. 835, the order of the learned Subordinate Judge directing an attachment of the moneys and the payment there out to respondent 1 is wrong. The view taken in *Chinnapareddi v. Official Receiver, Guntur* AIR 1935 Mad. 835 is that the order passed in E.P. No. 25 of 1928 operates as res judicate. Subsequent to the date of the said decision, the Official Receiver filed C.P. No. 11 of 1928 in I.P. No. 42 of 1923 for a declaration that the debt on which the decree was obtained in O.S. No. 19 of 1928 was a

bogus one and should be expunged from the schedule of creditors by the insolvent and for a refund of the said sum of Rs. 7415 drawn by him in pursuance of the order in E.P. No. 25 of 1928. The learned District Judge, Mr. Chandrasekhara Ayyar, declined to expunge it on the ground that the Official Receiver was a party to the said decree and it was not open to him to go behind it. In regard to the refund of Rs. 7415, he declined to order the refund on the ground that it was the duty of the Official Receiver to have raised an objection and to have preferred a claim on that finding and that he submitted to the judgment and handed over the moneys and that he cannot be heard to say that he was wrong in doing so and that he was not well acquainted with his rights.

16. It is unnecessary for me to consider the correctness or otherwise of this order because this order was made the subject of appeal to this Court and the learned Judges, Stone and Pandrang Row JJ. who heard the appeal came to the conclusion that the said debt could not be expunged from the schedule. There is thus a decision by the insolvency Court that the said debt could not be expunged and, therefore, the relief which has been prayed for as incidental thereto must also be deemed to have been negatived by the insolvency Court, that is the order directing the refund of Rs. 7415. The decision of the learned District Judge in this case so far as he observes that the decree of the Sub-Court in O.S. No. 19 of 1928 cannot be got rid of nor the moneys paid there under recovered, must be held to be binding on the creditors, being thus an order passed in Court in insolvency having power to make orders regarding the disposal of the property vested in the Official Receiver u/s 87 of the Act. The appeal must therefore fail in so far as the petition seeks a refund of fee sum of Rs. 7415.

17. The next question is, is the relief in respect of the sum drawn in pursuance of E.P. No. 42 of 1929 barred either by the decision reported in Chinnapareddi v. Official Receiver, Guntur AIR 1935 Mad. 835 or the decision of Stone and Pandrang Row JJ. reported in Srinivasa Rao v. Chinnappa Reddi AIR 1936 Mad. 125. So far as the scope of the latter decision is concerned, the view taken by the learned District Judge in this case is wrong. Mr. Chandrasekhara Ayyar in his order did not deal with and dispose of the prayer in regard to E.P. No. 42 of 1923, and he omitted to do so. He also failed to notice that the relief in regard to the moneys attached in pursuance of that B.P. was a relief independent of the reliefs prayed in regard to the refund of Rs. 7415. The relief was not prayed as one to be granted in consequence of or incidental to the expunging of the debt in O.S. No. 19 of 1928; it was put upon quite a distinct basis as stated in Sub-Clause (h) of para. 3 of the said petition which has already been extracted. The learned Judges, Stone and Pandrang Row JJ. also did not deal with this matter but confined themselves solely to the question of the expunging of the debt which was the subject-matter of O.S. No. 19 of 1928. This relief remained unaffected by the decisions of Mr. Chandrasekhara Ayyar or Stone and Pandrang Row JJ. Mr. Konda Kotayya sought to argue that by virtue of the rule of constructive res judicata the appellants' right must be held to be barred. I am unable to appreciate this contention. The rule of constructive res judicata can

only apply to matters actually decided by the judgment and to all matters which are necessarily deemed to have been decided by that judgment. Seshagiri Ayyar J. in *Muthammal v. secretary of State* AIR 1915 Mad. 106 , quotes the following passage in *Bigelow on Estoppel*, which, in my opinion, correctly sets out the doctrine of constructive *res judicata*:

A former judgment or verdict is conclusive between the parties to contested causes of all necessary inferences arising from it as well as of the matters actually in issue.

18. But where the relief prayed is not dependent on the adjudication of a particular matter in issue, by no conceivable reason it could be said that that matter must be deemed to have been also decided by the judgment. Mr. Konda Kotayya argued that as Mr. Chandrasekhara Ayyar dismissed the petition he must be deemed to have declined the relief in respect of the prayer concerning E.P. No. 42 of 1929. But his judgment was appealed against and the whole matter was set at large and the appellate judgment confined itself only to the decision of a particular matter in issue, i.e., the expunging of debts and did not deal with other matters arising in the petition. Therefore, any finality that might be constructively implied by the decision of Mr. Chandrasekhara Ayyar was taken away by the appeal. The next question is whether the relief is barred by *res judicata* by reason of the decision in *Chinnapareddi v. Official Receiver, Guntur* AIR 1935 Mad. 835. All that the said case decided was that the decree is executable by reason of the prior decision in E.P. No. 25 of 1928. It seems to me that for more than one reason the power of the insolvency Court to call upon the first respondent to refund the money which he was not entitled to receive or the right of the creditors to request the Insolvency Court to make such an order remains unaffected by the said judgment. In the first place, the question whether one creditor is entitled to appropriate the money which is intended for the distribution among all the creditors in priority to other creditors can only be adjudicated in the presence of the creditors by the Court which has jurisdiction in Insolvency and the Official Receiver cannot be held to represent the creditors in regard to the decision on this question of priority. Further, the order of an executing Court that the decree is executable does not, in any way, affect the power of the Insolvency Court over the fund at its disposal.

19. The view that is strongly pressed upon me by Mr. Konda Kotayya is that in *Chinnapareddi v. Official Receiver, Guntur* AIR 1935 Mad. 835, the learned Judges took the view that an executing Court has jurisdiction to make an order that the property in the hands of the Official Receiver is liable to be attached and therefore it is no longer open to the Official Receiver to question the propriety of that order. But that decision does not say that any dealing by the Official Receiver of the said fund without the orders of the insolvency Court can be held to be binding upon the Court or the creditors. To define the operation of the rule of *res judicata* laid down in *Chinnapareddi v. Official Receiver, Guntur* AIR 1935 Mad. 835 the position of the Official Receiver in E.P. No. 25 of 1928 must be

clearly understood. When the order in E.P. No. 25 of 1928 was passed, the view taken in *Arunagiri Mudaliar v. Official Receiver of North Arcot* 1926 M.W.N. 950 was that an appointee u/s 37, Provincial Insolvency Act, held the property vested in him for the benefit of the insolvent and as his property. The Official Receiver acted in the belief that this view of the law was correct. He therefore could not have represented and did not represent the creditors. By no conceivable reason could the order passed against him in the said execution petition be held to be an order passed in a representative capacity against him so as to bind the creditors. The order could only be said to bind the Official Receiver in his individual capacity, that is, as representing the debtor, if at all he represented him. The question therefore is, what is the power of an insolvency Court to direct a creditor to refund a sum of money which he has received in excess of what he would be justly entitled to otherwise than through the process of an insolvency Court? The property of the insolvent is vested in an Official Receiver or trustee in bankruptcy in trust for the general body of creditors for an equal distribution among them. No creditor is entitled to seize any portion of the said property and appropriate it to the satisfaction of his debt otherwise than through an order of the insolvency Court. In *Oriental Inland Steam Co. Ex. parte Scinde Ry. Co.* (1874) 9 Ch. A 557 at page 560 a similar question arose in the winding up of a company. The Oriental Inland Steam Company, was a company which had its chief office in London and carried on business in India. On 8th November 1867, the company was ordered to be wound up in London and on 23rd May 1867 before the order of winding up, the Seinde Company which carried also business in England obtained judgment against the Oriental Inland Steam Company for a large sum of money and after the order of winding up they proved their debt in liquidation on 12th March 1868. On 28th January 1869 the Seinde Company in execution of their judgment attached certain property in India and realised a considerable sum of money. The question was whether the Seinde Company was entitled to appropriate it in satisfaction of their debt. It was held they could not. James L.J. during the course of the judgment made the following observations:

The English Act of Parliament has enacted that in the case of a winding up the assets of the company so wound up are to be collected and applied in discharge of its liabilities. That, makes the property of the company clearly trust property. It is property affected by the Act of Parliament with an obligation to be dealt with by the proper officer in a particular way. Then it has ceased to be beneficially the property of the company; and being so it has ceased to be liable to be seized by the execution creditors of the company. In this particular case there is no such difficulty. There were assets fixed by the Act of Parliament with a trust for equal distribution amongst the creditors. One creditor has by means of execution abroad, been able to obtain possession of part of those assets. The Vice-Chancellor was of opinion that this was the same as that of one cestui que trust getting possession of the trust property after the property had been affected with notice of the trust. If so, that cestui que trust must bring it in for distribution among the other cestui que trust. So I too am of opinion that these creditors

cannot get any priority over their fellow creditors by reason of their having got possession of the assets in this way. The assets must be distributed in England upon the footing of equality.

20. No doubt the decision related to foreign assets of a company but the principle was equally applied in the case of foreign assets? of an insolvent: vide *Minna Craig Steamship Co. and James Laing v. Chartered Mercantile Bank* (1897) 1 Q.B. 55. Though the decisions in these cases related to foreign assets and judgments were obtained against a company or insolvent without the official liquidator or trustee in bankruptcy being a party, still the principle underlying those cases is one of general application, namely, that if one cestui qua-trust gets possession of the trust property after the property had been affected with notice of the trust, that cestui que trust must bring it in for distribution among the other cestui que trust. In England, the power of a Court of bankruptcy to recall dividends paid to creditors whose debts are barred by limitation or paid to them on an erroneous principle of law was never doubted : see *Ex parte Burn*; *In the matter of Moulson* (1814) 2 Rose 55; *Ex parte Dwyer* (1789-1817) 15 Ves 479; *Ex parte Lubbock* (1862-66) 46 E.R. 1019. This power to refund is based on the principle laid down in *Oriental Indland Steam Co. Ex parte Scinde Ry. Co.* (1874) 9 Ch. A 557 already adverted to. The property is vested in the Official Receiver in trust for the general body of creditors, that is, the property has to be shared by the creditors rateably in proportion to the amount of one's debt. So every creditor must be deemed to be affected with a notice of the trust. Where a cestui qua trust with notice of the said trust receives more money than he is entitled to, he must hold the said money subject to the trust impressed in favour of the other creditors. He is bound as much to discharge the said trust as the Official Receiver. When an insolvency Court makes an order calling upon him to refund, it was only to compel him to perform the trust which he was bound to perform.

21. The question therefore is, is not the same principle applicable where a property is vested in an appointee u/s 87, Provincial Insolvency Act? As already stated, the order is specific. The property was vested in the Official Receiver in the interest of the general body of creditors. The moment an order of adjudication takes place the insolvent is divested of his ownership and his property vests in the Official Receiver and the moment an annulment takes place the property which was vested in the Official Receiver is vested in the appointee u/s 37. It can, in no sense, be called the property of the insolvent though that property is available for distribution among his creditors. Viewed in this way it cannot be denied that by reason of the vesting order u/s 37 every creditor was affected with notice of the trust in regard to the property vested in the Official Receiver. The fact therefore that the Official Receiver as the appointee u/s 37 was compelled to pay the money in execution of a decree of a civil Court not being a Court exercising jurisdiction in insolvency can, in no way, affect the application of this principle. Therefore, from the date of the vesting order u/s 37, the fund was completely under the disposal of the insolvency Court to be

administered according to the provisions of the insolvency law, and it is competent to that Court to direct a refund of any sum of money taken away by a creditor who is amenable to its jurisdiction in excess of what he is justly entitled to. Respondent 1 himself submitted to the jurisdiction of the insolvency Court and in O.P. No. 121 of 1931 wanted a dividend to be given to him even in respect of the debt in question. Strictly speaking, he can be directed to refund all the sums he has received including the sum of Rs. 7415 but in respect of that sum, as already pointed out by me, there has been an order of the Insolvency Court which entitles him to retain that sum of money and it has become final as between all parties. In regard to the sum which he has received since, he has no right to retain it. I am therefore of the opinion that the decision in Chinnapareddi v. Official Receiver, Guntur AIR 1935 Mad. 835 does not debar the appellants in this case from seeking the relief which they seek in this case, that is, to request the Court to call upon respondent to refund the moneys which he has received in pursuance of the order of the District Court dated 21st September 1937 and drawn by him on the cheque issued in his favour dated 22nd September 1937. I therefore direct him to pay the said sum of money, namely Rs. 3928-5-10 into Court to the credit of E.P. No. 42 of 1929 with interest at 6 per cent, per annum from the date of receipt which sum when paid will be distributed among all the creditors. In the result, the appeal in so far as the relief sought in respect of the sum of Rs. 7415 is concerned is dismissed but in so far as the relief sought in respect of E.P. No. 42 of 1929 is concerned is allowed. I direct each party to bear his own costs both here and in the Court below. Leave to appeal refused.