

(1923) 01 MAD CK 0043
In the Madras High Court

Panja Ramachandra Rao and Another	APPELLANT
Vs	
Gurraju and Others	RESPONDENT

Date of Decision : 04-01-1923

Acts Referred:

Citation : AIR 1924 Mad 147 : 76 Ind. Cas. 977 : (1923) 18 LW 282

Hon'ble Judges : Venkatasubba Rao, J;Spencer, J

Bench : Division Bench

Judgement

Spencer, J.—One Panjab Venkataratnam was adjudicated insolvent on the 8th September 1919, upon his own application as a debtor presented on the 15th April 1919. The properties of the insolvent were vested in the Official Receiver by an order of 19th April 1921. The Official Receiver sold on 19th August 1921, the entire family property of which the insolvent was the manager, and the properties were purchased by the first respondent, P. Gurraju. There was a second sale of the insolvent's share only on the 26th of November 1921. The order of the District Judge, now appealed against, has the effect of rescinding the Official Receiver's order refusing to confirm the first sale, and it follows, therefore, that if the District Judge's order is upheld the second sale is no longer a valid and good sale. For, if the first sale was a good one there was nothing to sell at the second sale, the whole family property having been sold at the first sale.

2. The appellant in C.M.A. No. 28 of 1922 is the son of the insolvent. The appellant in C.M.A. No. 29 of 1932 is the purchaser at the second sale.

3. Three main objections have been taken to the District Judge's order. First it is contended that the sale of 19th August 1921 was bad, as the purchase-money was, not paid within the time given in the proclamation of sale, nor even within the time for which an extension was given.

4. Secondly, no notice of the application by the purchaser at the first sale to set aside the Official Receiver's order was given either to the insolvent's son, or to

the Official Receiver, or to the purchaser at the second sale. In the absence of such notice, it is contended that the District Judge's order confirming the first sale should not be allowed to stand.

5. Thirdly, it is argued that the order to sell was initially wrong, as the Official Receiver refused to adjudicate on the objection of the insolvent's son that only the insolvent's share of the property was liable to be sold.

6. On this last point, what happened was that the Official Receiver, without deciding anything as to the son's liability to pay their father's debts, simply ordered that the objection should be notified to the bidders at the time of sale. This procedure was an objectionable one, as has been pointed out in *Machi Raju Venkataratnam Vs. Sri Rajah Vadrevu Ranganayakamma Zamindarini Garu and Others*, . But the petitioner, however much aggrieved he may have been by the Official Receiver's order, took no steps u/s 68 of Act V of 1920 to appeal to the District Court against it. We cannot go into this objection in the present appeal, (C.M.A. No. 28 of 1922), and this appeal, therefore, must be dismissed.

7. I now proceed to C.M.A. No. 29 of 1925. The District Judge's order cancelling the Official Receiver's order, which set aside the first sale is a very short one and contains no reasons for so deciding. It is obvious that the persons who were concerned in opposing the confirmation of the first sale should have been heard before any order was passed. There is simply a note that the respondents Nos. 1, 2 and 5 were represented and that the fifth respondent did not oppose. These respondents are creditors. The question of fact whether the purchaser made default in paying the initial deposit and the rest of the purchase-money, within the time stipulated has not been discussed and we are thus unable to form an opinion whether the District Judge's order was based on sound reasoning. This case must, therefore, go back for deciding the objections to the confirmation of the first sale upon such materials as the purchasers at the first and second sales, the Official Receiver and the creditors, may place before the Court.

8. In 1920; there was a suit brought by the appellant in C.M.A. No. 28 against his father and his five brothers for partition in the Ellore Sub-Court. The Official Receiver was made a party to the suit and did not contest it. A preliminary decree was passed on the 19th April 1920 and a final decree on the 12th October 1920, and the property was divided by an amin, and one share was delivered to the appellant on the 9th August 1921. The Official Receiver, as an officer of Court, had a duty to perform in respect of the insolvent's estate and he should have brought the circumstance of this litigation, which was well-known to him, to the knowledge of the District Judge, and he should have appeared and represented the insolvent's estate, at the time when the matter was before the District Judge, upon the first purchaser's petition.

9. His neglect to adjudicate on the son's application and his procedure in notifying the objections to the sale to the bidders without deciding whether they were valid objections, further indicate a neglect of his official duty, of which we

must express our disapproval.

10. Costs in C.M.A. No. 29 will abide and follow the result.

11. C.M.A. No. 28 of 1922 is dismissed with costs as the question of the son's liability to pay his father's debts cannot be adjudicated in these proceedings.

Venkatasubba Rao, J.

12. I entirely agree, I would like to add that a great deal of the difficulty that has arisen is due to the conduct of the Official Receiver. The order of adjudication was made on the 8th September 1919. Subsequent to this, there was a partition suit, the insolvent's son Ramachandra Rao, being the plaintiff in that suit. The Official Receiver of Kistna was made a defendant. We are not here concerned with the question, whether at that time he was competent to represent the estate of the insolvent. However the fact remains that the Receiver was aware of the suit and of the proceedings in it. On the 12th October 1920 a final decree was passed adjudging one sixth share to the insolvent. On the 9th April 1921 the District Court made an order vesting the property in the Official Receiver. On the 25th April the insolvent's son, Ramachandra Rao, applied to the Official Receiver that only the share of the insolvent should be sold and that his own share should be exempted from any sale to be held. Instead of adjudicating upon the question raised by Ramchandra Rao, the Official Receiver, who was a party to the partition suit, issued a sale proclamation which purported to deal with the entire property possessed by the family of the insolvent. This is the order made by the Official Receiver

Petition (of Ramachandra Rao) is filed late. This will be made known at the time of the sale.

13. Presumably he intended that the petition of Ramachandra Rao should be notified at the sale and that the buyers should take the risk of their purchase being subject to the objections of the insolvent's son--a course almost certain to lead to litigation that could be avoided by an immediate disposal of the question raised. As has been pointed out by my learned brother, this course was extremely irregular. Then on the 19th August the entire property was sold and Gurraju became the purchaser. What he purchased is described as "the Immovable property belonging to the family subject to all disputes by the insolvent's son." One of the conditions of the sale was that one-fourth of the purchase money should be deposited on the date of the sale. Gurraju was unable to comply with this term. The Official Receiver at his request gave him time till the 23rd August 1921. It is now alleged that in spite of this extension Gurraju failed to pay the amount and, therefore, that on the 30th August 1921, the Official Receiver rescinded the sale. It must be noticed that the Official Receiver before rescinding the sale did not give notice to the creditors of the insolvent, though they are the persons vitally affected by the order and the obligation to give notice was all the more incumbent, especially in view of the fact that Gurraju had tendered the entire amount within the 15 days of the date of sale.

14. On the 6th September Gurraju appealed to the Court from the order of the Official Receiver dated 30th August 1921. This appeal was from his order and he certainly should have been aware of the fact that an appeal was pending before the District Judge. Notwithstanding that, he proceeded to sell one-sixth share of the insolvent on the 26th November 1921, and Linga Murthi became the purchaser of this one-sixth share. The Official Receiver who knew that an appeal from his order was pending, proceeded to sell the property and by his sale introduced a complication. As events turned out, the order of the Official Receiver was set aside by the District Judge on the 1st December 1921. The Official Receiver was thus responsible, for there being two purchasers, one of the entire property and the other of a sixth share, putting forward their rival contentions before the Court. I must add that Gurraju made several allegations which tended to show that he did not make default and the Official Receiver does not appear to have taken any steps to bring to the notice of the District Judge what the Official Receiver's view of the matter was and whether the facts stated in the affidavit were correct or not. Finally the District Judge himself made his order cancelling the order of the Official Receiver, without giving notice to the second purchaser whom his order affects.

15. One more observation I would like to make, and it is this. So far as Ramachandra Rao, the insolvent's son, is concerned, an order was made by the Official Receiver on the 26th April 1921, which practically amounted to negating his contention that only the insolvent's share could be sold by the Official Receiver. From this order the insolvent's son. did not prefer an appeal to the District Court. It was not, therefore, open to him to have raised this question at the subsequent stage in the insolvency proceedings. Of course his right to assert in a regular proceeding, that his interest in the property did not pass to the purchaser was not affected but so far as the proceedings before us are concerned, he put himself out of Court. The question before us must be, therefore, decided after notice to the creditors, to the second purchaser and to the Official Receiver and a decision must be arrived at by the District Judge on materials to be placed before the Court by these respective parties and I, therefore, entirely concur in the order passed by my learned brother.