

(1927) 12 MAD CK 0017
In the Madras High Court

R. Subramania Ayyar

APPELLANT

Vs

Dharapuram Janopakara Nidhi Ltd. and Others

RESPONDENT

Date of Decision : 02-12-1927

Acts Referred:

Provincial Insolvency Act, 1920 — Section 56

Citation : AIR 1928 Mad 454

Hon'ble Judges : Phillips, J

Bench : Division Bench

Judgement

Phillips, J.—The only question that has been argued is whether the interim Receiver appointed u/s 20, Provincial Insolvency Act, can apply

under Order 21, Rule 90, Civil P.C., for setting aside a sale. Under Rule 90 the persons who can apply are

any person entitled to share in a rateable distribution of assets or whose interests are effected by the sale.

2. Under the preceding Rule 89 the persons that can apply are such as either own such property or hold an interest therein by virtue of a title

acquired before such sale. The difference in the language clearly shows that the persons in Rule 90 are not identical with those referred to in Rule

89. The wording of Rule 90 is really very much wider than it is in the preceding rule. It is also significant that the wording of Rule 90 is substituted

for the old Section 311 of the Code of 1882 which only makes provision for ""any person whose immovable property has been sold."" The

legislature has by this alteration very much enlarged the class of persons who can apply under Rule 90 and, as held by the Calcutta High Court in

Dhirendra Nath Roy Vs. Kamini Kumar Pal, , it is clear that the word ""interests"" need not be interpreted as interest in the property it-self. The

word used is "" interests "" in the plural and must include any kind of interest, whether proprietary, pecuniary or otherwise, that a person may have, and if such an interest is affected by the sale he is entitled to apply.

3. Here the interim Receiver was appointed u/s 20, Provincial Insolvency Act and no specific orders were passed conferring on him the powers

under Order 40, Rule 1, Civil P.C., but from a perusal of the order which sets out the application I think it must be taken as meaning that the

interim Receiver was appointed to take possession of the property of the debtor and to see that it was preserved on behalf both of the debtor and

the creditors, until adjudication had been made, or until the insolvency petition had been dismissed, but it cannot be said that the property vests in

the Interim Receiver, for the vesting is the result of the subsequent adjudication order if any. There is apparently no provision under which the

Court can make a vesting order before adjudication but the interim Receiver has very much the same rights and liabilities as a Receiver, for Section

56, Insolvency Act applies its provisions so far as may be to "" interim Receiver."" One of these provisions is that a Receiver may be called upon to

submit accounts and if, during his stewardship, he occasions loss to the property by his wilful default or gross negligence he is liable to have his

property attached and sold. If, therefore, property passes away from the judgment-debtor to another person there is distinct loss to the estate

entrusted to the Receiver.

4. The Receiver has the duty of maintaining the property as it was when it came into his hands and it cannot be said that his interests are unaffected

when such duties cannot properly be fulfilled. There need not necessarily be pecuniary interest and here the position of trust in which he has been

placed creates in him an interest which would be affected by any act which affects the trust property, and in that view it seems to me that he is a

person whose interests are affected by the sale. In the present case the debtor was later adjudged insolvent, and his property became vested in the

Official Receiver as from the date of his petition and therefore the custody of the interim Receiver must be deemed to have been on behalf of the

Official Receiver and the property did as a matter of law vest in him when the application was made. This, I think, renders his position stronger

than if the insolvency petition had been dismissed, and is an additional reason

for holding that he can come in under Rule 90. In this view the petition fails and is dismissed with costs. The other civil revision petition No. 72 of 1926 is also dismissed.