

(1927) 04 MAD CK 0026
In the Madras High Court

Ramanatha Mudaliar and Another

APPELLANT

Vs

T. K. Vijayaraghavalu Naidu

RESPONDENT

Date of Decision : 05-04-1927

Acts Referred:

Citation : AIR 1927 Mad 983

Hon'ble Judges : Wallace, J

Bench : Division Bench

Judgement

Wallace, J.—Petitioner 2 seeks to have revised an order of the District Judge, Negapatam, setting aside a Court execution sale at which petitioner 2 was the Court auction-purchaser. The date of sale was 16th April 1926. On 7th April 1926 the judgment-debtor had presented an insolvency petition to the District Munsif of Negapatam. The District Munsif passed an order on that petition which has occasioned a good deal of confusion. He appointed the official receiver an interim receiver and directed that the property vest in him and then went on to say:

summary administration has been ordered.

2. Now, when summary administration has been ordered, the property of the debtor u/s 74 (ii) vests in the Court as a receiver on the date of admission of the insolvency petition. Hence the appointment of an interim receiver was not only superfluous, but also misleading. The property had already vested in the Court, "as a receiver" and the Court, therefore, was the receiver. It is contended by petitioner that, as only an interim receiver had been appointed, the vesting of the property in him could not avail to defeat the execution sale, and that Section 74 (ii) means no more than that the Court holds the property as an interim receiver. I am not able to endorse this view. The language of Section 74 (ii) is almost the same as that of Section 28 (2) and that the words "vesting" and "receiver" must be interpreted in the same way in both sections: no one has contended that when the vesting in the receiver, within Section 28 (2) has come into force, the property is so vested that it can, without the permission of the Court, be the subject of an execution sale. Similarly under ,Section 74 (ii), I take

it that, when the property is vested in the Court as receiver, it holds it, not as interim receiver, but as a full receiver in the sense in which the term is used in Section 28 (2). It follows then that on the admission of the insolvency petition the Court held the judgment-debtor's property as a receiver and was so holding it when the execution sale took place.

3. So far I do not disagree with the learned District Judge. But he has omitted to consider the provisions of Section 51, of the Act, especially Sub-section (3). As I read that section, if the petitioner was a Court auction-purchaser in good faith, he is entitled to retain the property and the creditors of the insolvent are entitled only to the sale proceeds of that as assets for distribution among them, i. e., the sale would not be set aside, but would prevail against the receiver, and the property could not be returned to the receiver, as the lower Court has ordered. The lower Court has therefore, omitted to apply the proper law to the case and it will, therefore, have to go into this question and decide whether Section 51 (3) applies to the case.

4. I set aside its order and direct that it rehear the appeal, both parties being allowed to adduce evidence. Costs in this Court and below will abide the event.