

(1936) 01 MAD CK 0011
In the Madras High Court

S. Hari Rao

APPELLANT

Vs

The Official Assignee, High Court, Madras and Others

RESPONDENT

Date of Decision : 18-01-1936

Acts Referred:

Citation : 94 Ind. Cas. 642 : (1926) 50 MLJ 358

Hon'ble Judges : Murray Coutts Trotter, C.J;Murray Court Trotter, C.J;Krishnan, J;Beasley, J

Bench : Full Bench

Judgement

Murray Court Trotter, C.J.—The Chief Justice: The question raised here is whether the insolvent has a right of appeal against an order

confirming a sale of part of the estate which was originally his and subsequently vested in the Official Assignee, an order which he sought to

oppose. The matter was referred to a Full Bench in view of what were represented to be the directly conflicting decision of this Court in

Sivasubramania Pillai v. Theethiappa Pillai (1778) 2 Cowper 833 and of the Allahabad High Court in Sakhawat Ali v. Radha Mohan (1857) 119

ER 1256 . We observe that the English decisions on the subject were not cited so far as appears from the report to the Madras Court. We have

examined those decisions and come to the conclusion that they ought to be followed.

2. The only ground on which the Insolvent's right to appeal can be based is that he is a person aggrieved because, his estate having vested in the

Official Assignee, he is nevertheless entitled to say that, if all the claims of the creditors who had proved were set aside or discharged by payment,

he would have an interest in the surplus which might be left over. The leading English cases, Ex parte Sheffield (3) and In re Leadbeater (4) have

disposed of this contention on grounds which, we think, are unanswerable. The insolvent has no legal interest but has merely a hope or expectation

and, as James, L.J., pointed out, the mischief of allowing a bankrupt on the contingent chance of his ultimately acquiring title to some surplus which

might never be realised to interfere with and embarrass the administration of the estate would be immeasurable. We are therefore of opinion that

the insolvent has no right of appeal which will therefore stand dismissed. The question referred to us was perhaps not rightly framed, and I say so

with the more freedom because I drafted it myself. I have had the advantage of perusing the judgment about to be delivered by Krishnan, J., and I

agree that we can follow the ruling in *Sakhawat AH v. Radha Mohan* (1857) 119 ER 1256 without the necessity of saying that *Sivasubramania*

Pillai v. Theethiappa Pillai (1778) 2 Cov 833 was wrongly decided. The right claimed by the insolvent in the latter case was to object to a

creditor's proof and that is not directly before us.

Beasley, J.

I concur.

Krishnan, J.

3. I agree with the learned Chief Justice that we should follow the view expressed in *Sakhawat Ali v. Radha Mohan* ILR (1918) All 243, which is

in accordance with the view taken in the English cases cited to us *Ex parte Sheffield* (3) and *In re Lead-beater* (4)."" As pointed out in those rulings

the insolvent has after adjudication no legal interest in his estate which has vested in the Official Assignee; and he has therefore no legal right to

interfere in the realisation of that estate and he cannot be treated as aggrieved by any order passed in the course of such realisation. It is true that if

any surplus remains after the creditors are paid in full such amount will be paid over to the insolvent and it is also true that if a certain proportion of

his debt is paid from his assets he will be entitled to a discharge. But these are merely expectations as pointed out in the English cases which may

or may not be realised. They do not give any legal right to the insolvent to interfere in the realisation of his property which is entirely left to the

Official Assignee. The reasoning to the contrary in the judgment of Oldfield, J., in *Sivasubramania Pillai Vs. Theethiappa Pillai* (dead) and Others,

cannot be supported. That case itself was however one of an appeal by the

insolvent against an order admitting proof of a creditor to which he had objected. The question whether the insolvent is a person aggrieved in such cumstances does not arise in the present case and I express no opinion on the point.

4. I would answer the reference by saying that the ruling in Sakhawal Ali v. Radha Mohan ILR (1918) All 243 should be followed and that no appeal lies in the present case, and I agree in dismissing the appeal.