

(1923) 10 MAD CK 0018
In the Madras High Court

Savanna Venka Ana Runa Vellayappa Chettiar

APPELLANT

Vs

M.L.M. Ramanathan Chettiar

RESPONDENT

Date of Decision : 15-10-1923

Acts Referred:

Provincial Insolvency Act, 1920 — Section 80

Citation : (1924) 19 LW 251 : (1924) 46 MLJ 80

Judgement

1. This appeal is from an insolvency proceeding before the District Judge of Madura. The Official Receiver seems to have made an attempt to sell certain properties, on which the appellant before us put forward a claim that such properties belonged to him and not to the insolvent and should not be sold. These properties were included in a mortgage decree obtained by the respondent against the insolvent. Strangely enough, the Official Receiver thought that he had power to dispose of a petition like this and thinking that a prima facie title had been made out by the claimant, he passed "an order releasing the properties from sale, holding that the properties belonged to the claimant. On this the mortgage decree-holder conceiving that he was somehow or other aggrieved by the order put in an appeal to the District Judge. The District Judge thereupon came to the conclusion and rightly, in our opinion, that the secured creditor, the mortgage decree-holder, was not in any way bound by any proceedings taken by the Official Receiver in this matter. But he thought at the same time that the effect of the order, if allowed to stand, would be to deprive the secured creditor of his right of sale which conclusion we are unable to follow. The secured creditor undoubtedly was not at all affected by the order of the Official Receiver. On that the District Judge proceeded to allow the appeal petition before him and set aside the order of the Official

Receiver without deciding whether the property actually belonged to the claimant or to the insolvent. The form of the order which was drawn up

proceeded further and it declared that the claim petition put in by the claimant do stand dismissed. The effect of that order if left standing must

necessarily be that the property should be treated as the insolvent's and not as the claimant's, a position which the District judge did not arrive at in

his judgment.

2. We think that the whole of the proceedings is misconceived. In the first place, the Official Receiver had no power to make any order in a claim

petition. It is not a power which has been delegated to him u/s 80 of the Provincial Insolvency Act, V of 1920. If the claimant wanted to prevent

the sale of the properties as belonging to the insolvent, he should have applied to the District Judge direct to take action u/s 4 of the Act. He did

not do so. That being so, we must set aside all the proceedings in the lower Court and leave the parties in statu quo ante. The claimant if he finds

that the Official Receiver either at his own instance or at the instance of any creditor proposes to sell the properties which he claims to be his, may,

if so advised, apply to the District Judge u/s 4 of the Act for a proper order to be passed.

3. We therefore allow the appeal and set aside all the proceedings in the lower Court and direct each party to bear his own costs.