

(1932) 08 MAD CK 0017
In the Madras High Court

Shankaranaraina

APPELLANT

Vs

Official Receiver of South Kanara

RESPONDENT

Date of Decision : 02-08-1932

Acts Referred:

Citation : AIR 1933 Mad 73 : (1932) 36 LW 581

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—This civil miscellaneous second appeal arises out of a petition filed by five minor sons of an insolvent to direct the

Official Receiver of South Kanara to deliver possession of the immovable property mentioned in the schedule attached to the petition together with

mesne profits from 26th April 1928 until re-delivery of possession to the petitioners. In this second appeal the question as to the delivery of

possession of the property does not arise inasmuch as subsequent to the commencement of the proceedings it is admitted that the Official Receiver

sold the property to pay off the insolvent's debts and that the Official Receiver was legally justified in so selling the property. The property in

question was the share of the family property belonging to the minors. It is the minor's father that became insolvent. The law is well settled that

when the father of a joint Hindu family becomes an insolvent the Official Receiver can discharge the father's debt to the creditors, if necessary by

selling the son's share in the joint family property provided the debts are not illegal or immoral. In this case, as I have already said, the right to sell

the sons' share in the family property is not disputed; but what is now argued is that the Official Receiver has no right to remain in possession of the

sons" shares, and since he remained in possession from 28th April 1928, till the date of sale, 28th August 1930, the minors are entitled to recover

from him the mesne profits for that period. Whether they are so entitled or not is the question that arises now in this second appeal.

2. The facts are all admitted. Subraya, the father of the minor petitioners, was adjudged insolvent in I.P. No. 73 of 1927, and his property, both

moveable and immovable was vested in the Official Receiver under the provisions of the Insolvency Act. The Official Receiver, before he sold the

minor"s shares in the family property to pay off the debts, granted leases of their shares in the property to tenants and later on sold them. It is

argued that since the property in question does not vest in the Official Receiver he has no right to lease them and exercise acts of management over

them. It is well-settled law that on the insolvency of the father of a joint Hindu family the shares of the sons of the family do not vest in the Official

Receiver. But so long as the father"s debts are neither immoral nor illegal he has got the right to sell them. In fact he is entitled to be in joint

possession with the sons of all the family properties. This position was established by the decision in Official Assignee of Madras v. Ramachandra

Ayyar AIR 1923 Mad 55. The following propositions of law are stated in that judgment:

It can be taken as established law that the Official Assignee on the insolvency of the managing member of a joint Hindu family succeeds to two

things: (1) the undivided interest of the insolvent in the joint family property, and (2) his rights as managing member so far as they can be exercised

for his own benefit. It is also established that he is not entitled to have vested in him the shares of the other members although he can deal with them

if the insolvent could lawfully have done so if there had been no insolvency.

3. Though the shares of the minor sons do not vest in the Official Receiver his right to deal with these shares lawfully in the same way as the

insolvent could have done is established by this judgment. If the Official Receiver has the right to sell the minor"s shares in the joint family

properties, I take it that he has also the right to collect the rent due from them in order to pay off the insolvent"s creditors. The decision in Official

Assignee of Madras v. Ramachandra Ayyar AIR 1923 Mad 55 has been accepted as laying down correct law in the subsequent decisions such as

T.S. Balavenkataseetharama Chettiar and Another Vs. The Official Receiver and Others, , In the matter of Official Assignee Vs. Ramachandra

Aiyar and Others, and Venkatram v. Chokkier AIR 1928 Mad 531. No doubt there has been no direct decision on the question under

consideration in our High Court, but I think the trend of the decisions which I have referred to is in support of the contention urged by the

respondents. It must be understood that by giving leases of the property belonging to the minors the Official Receiver is not dispossessing them. He

may have no right to dispossess them as was decided in Sita Ram and Another Vs. B. Jado Rai and Others , but he is entitled to be in joint

possession of all the properties. And in exercise of the rights of the manager which accrued to him on account of the insolvency of the father I think

the Official Receiver has a right to collect the rents from the shares belonging to the minor sons for the purpose of paying off their father's

creditors. In my view the decisions of the lower Courts are right and this second appeal is dismissed with costs.