
(1938) 11 MAD CK 0026
In the Madras High Court

Somavarapu Balarami Reddi

APPELLANT

Vs

The Official Receiver

RESPONDENT

Date of Decision : 01-11-1938

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 73
Provincial Insolvency Act, 1920 — Section 51(1)

Citation : AIR 1939 Mad 291 : (1939) ILR (Mad) 343 : (1939) 49 LW 427 :
(1939) 1 MLJ 205

Hon'ble Judges : Abdur Rahman, J

Bench : Division Bench

Judgement

Abdur Rahman, J.—This appeal raises a question of some importance. It relates, to the interpretation of the word "benefit" occurring in

Section 51(1) of the Provincial Insolvency Act. The facts which have led to this appeal are that one Konjeti Seshiah filed a suit (O.S. No. 65 of

1931) for the recovery of money against Duvvur Rami Reddy and Subarni Reddi. This was decreed on 7th October, 1932; but before the

decree-holder could bring his judgment-debtor's property to sale in execution, an application for their adjudication was presented. This was

admitted shortly after. The decree-holder nevertheless proceeded with his application for execution and brought the judgment-debtors' property to

sale. Before the property was sold and money deposited in Court some other creditors who had also secured decrees against these judgment-

debtors applied for execution and rateable distribution u/s 73, Civil Procedure Code. In spite of the pendency of the Insolvency Petition, the

property was sold and the attaching creditors and the other decree-holders succeeding in drawing their proportionate shares out of the sale

proceeds of their judgment-debtors' property from the executing Court. After an order of adjudication was passed against these judgment-

debtors, the Official Receiver applied for refund of the money drawn by the attaching creditors and the other decree-holder. This petition was

allowed by the learned District Judge who, following a Madras case, permitted the attaching creditor to retain the costs out of the money realised

by him. The same treatment was not accorded to the other decree-holders and they were ordered to refund the whole of the money drawn by

them. One of these decree-holders has appealed and it has been contended on his behalf that it was wrong for the lower Court to draw a

distinction between the attaching decree-holder at whose instance the property was sold in execution and the other decree-holders who were held

entitled to rateable distribution. An attempt was made to support this contention by certain observations made in *Official Receiver of Tanjore v.*

Venkatarama Iyer (1921) 42 M.L.J. 361. The facts have not been fully given in the report of that case but a distinction appears to have been

attempted to be drawn on behalf of the appellant between the assets realised by the attaching creditor and those which were distributed among the

other decree-holders rateably. It was claimed on behalf of the Official Receiver that the attaching creditor alone was entitled to retain the money

realised by him u/s 51 of the Provincial Insolvency Act and the other decree-holders who shared the balance of the sale proceeds rateably were

not entitled to do the same. This contention was repelled by the learned Officiating Chief justice in the following words:

It is contended that where rateable distribution has been ordered u/s 73 of the CPC the exception to Section 51(1) of the Provincial Insolvency

Act only applies to the amount credited in favour of the attaching decree-holder and not to the amounts rateably distributed to the other decree-

holder under the section. No authority is quoted and we can find nothing in the wording of Section 51 to support such a view; nor is any reason

suggested for such a differentiation.

2. This would show that the point which the learned Judges were called upon to decide in that case was entirely different from what has to be

decided now. The observation that there was nothing in the words of Section 51 of the Provincial Insolvency Act which would entitle a Court to

differentiate between an attaching creditor and other decree-holders is relevant, but it must be admitted that it was made in that case with a different object.

3. The main ground of attack on behalf of the appellant relates to the interpretation of the words "the benefit of the execution" used in Section

51(1) of the Provincial Insolvency Act. The section reads as follows:

Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the

receiver except in respect of assets realised in the course of the execution by sale or otherwise before the date of the admission of the petition.

4. It has been contended that the words "the benefit of the execution" should be so construed as ""to cover the net realisation in execution after

paying the costs."" It is not denied in this case that the assets were realised in the course of the execution by sale not before but after the date of the

admission of the petition for insolvency. It would therefore follow that in these circumstances no person, whether he is an attaching creditor or

other decree-holder, can be held entitled to derive the benefit of the execution against the receiver. Would it be legitimate to contend then that a

decree-holder should be entitled to retain the costs out of the money realised by him in the course of the execution by sale held after the date of the

admission of the petition? The words of the section are, in my opinion, quite unambiguous and the only answer to this question must therefore be in

the negative. It cannot be denied that if permitted to do so, the creditor would be receiving the benefit of the execution to the extent of the costs

incurred by and awarded to him. The learned Counsel for the appellant has placed his reliance on T.L. Swaminatha Aiyar Vs. The Official

Receiver, , where a learned Judge of this Court when construing Section 51 of the Act observed as follows:

I agree that Section 51 does vest the property which has been sold under such circumstances in the Official Receiver but it appears to me a

reasonable interpretation of the word "benefit" to hold that it is the net realisation in execution after paying the costs.

5. No reasons were given by the learned Judge for arriving at this conclusion and the whole scheme of the Act appears to be opposed to this

interpretation. Would not a decree-holder by realising his costs out of the

proceeds of the sale, which have legally vested in the Receiver, derive a benefit for himself at the expense of other creditors? The interpretation may have been considered to be justifiable in view of the provision contained in Section 73 of the CPC according to which the proceeds of sale have to be applied first in defraying the expenses of the sale before they are distributed amongst various decree-holders. But in view of distinct provision in the Provincial Insolvency Act which is self-contained, a consideration of the provisions contained in any other statute would be wholly irrelevant and out of place. Although the case in T.L. Swaminatha Aiyar Vs. The Official Receiver, , was decided in connection with a claim by an attaching creditor against the Official Receiver, no distinction can be made between an attaching creditor and other decree-holders, so far as Section 51 of the Provincial Insolvency Act is concerned. The observations of the learned Officiating Chief Justice in Official Receiver of Tanjore v. Venkatarama Iyer (1921) 42 M.L.J. 361 although made in another connection are apposite to this case. I would, in the absence of any reasons given by the learned Judge for his opinion in T.L. Swaminatha Aiyar Vs. The Official Receiver, with great deference decline to follow the interpretation placed by him on the word "benefit" in Section 51 of the Act.

6. For the above reasons I would hold that the appellant cannot claim to retain any benefit for himself out of the money which he had realised in his execution. This appeal therefore fails and is dismissed with costs.