

(1920) 12 MAD CK 0005
In the Madras High Court

Subba Aiyar

APPELLANT

Vs

T.S. Ramaswami Aiyangar, Official Receiver and Another

RESPONDENT

Date of Decision : 01-12-1920

Acts Referred:

Provincial Insolvency Act, 1920 — Section 18

Citation : AIR 1921 Mad 216 : (1921) ILR (Mad) 547 : (1921) 13 LW 227 :
(1921) 40 MLJ 209

Judgement

1. The appellant in this case bases his claim on an assignment from the Official Receiver of Tinnevely dated "" the 2nd October, 1913. That

assignment was made by the Official Receiver purporting to act in his capacity as Official Receiver in whom the estate of one Ramachandra Iyer,

an insolvent, vested. Ramachandra Aiyar filed his petition in 1911 and it came up before the District Judge on 3rd January 1912 when he passed

the following order: ""The petition is transferred to the Official Receiver for adjudication and for the administration of the estate. Parties and

pleaders directed to appear before him on 10th January, 1912."" In due course on the 23rd January 1912 the Official Receiver passed an order of

adjudication, but no separate order was passed by the District Judge vesting the property in the Official Receiver in accordance with the terms of

Section 18 of the Provincial Insolvency Act. It is therefore contended and has been successfully contended, in the two courts below that as the

property never vested in the Official Receiver he was unable to effect a valid transfer to the appellant. It has been suggested to us in argument that

the order of the 3rd January of the District Judge may be construed as an order u/s 18 of the Act vesting the property in the receiver because it is

said that though he did not then adjudicate, he made an order which would have

effect, in the event of the adjudication subsequently by the Official Receiver, of vesting the property in him. We are not prepared to say that "that argument is unsound. But we think that the case can be decided on a much simpler and clear ground.

2. By Section 20(a) of the Act the receiver is given power to sell all or any part of the property of the insolvent and by Section 20(e) ""to employ a

pleader or other agent to take any proceedings or do any business which may be sanctioned by the Court."" By Section 23 ""where no receiver is

appointed, the Court shall have all the rights of, and may exercise all the powers conferred on, a receiver under this Act."" Now assuming that the

order of the 3rd January 1912 did not amount to a valid order appointing the receiver and vesting the property in him the result was that the

powers of the receiver remained in the hands of the Court u/s 23. One of those powers was to appoint an agent u/s 20(e) to do any business

which is sanctioned by the Court, which under Sub-section (a) comprises the sale of the property of the insolvent. Therefore it seems to us that the

order of the 3rd January at any rate amounted to this, namely, the appointment of the receiver (who is certainly not less fit than any other person

whom the Court might appoint) to do the acts which the Court was empowered to do in the absence of a formal appointment of an Official

Receiver qua Receiver under the Act. We therefore think that the action of the Official Receiver in selling this portion of the estate of the bankrupt

to the appellant was a perfectly valid act under the order of the Court.

3. This Court has had an occasion before in the case of Muthusami Samiar (died) and Pakkiri Pillai, L.R. of the deceased Vs. Somoo Kandiar

and Others, to regret the deficiency of the Act which does not provide that immediately upon adjudication, the estate shall vest in the Official

Receiver and we note with regret that that omission has not been rectified in the Amendment Act which has been passed. In that case, the omission

led to a serious mis-marriage of justice and we are glad that in this case owing to the existence of the order of the 3rd January, 1912 such a

consequence does not necessarily follow.

4. The case will be remanded to the lower Court for disposal after dealing with the remaining issues in the case. Costs will abide the result. The

Court fee will be refunded.