

(1917) 11 MAD CK 0058
In the Madras High Court

Subbaraya Chettiar (dead) and Another	APPELLANT
Vs	
Papathi Ammal alias Lakshmi Ammal and Others	RESPONDENT

Date of Decision : 02-11-1917

Acts Referred:

Provincial Insolvency Act, 1907 — Section 16

Citation : AIR 1918 Mad 294 : 45 Ind. Cas. 239 : (1918) 7 LW 516

Hon'ble Judges : William Ayling, J;Phillips, J

Bench : Division Bench

Judgement

1. In this case an objection has been taken that appellant has no right-to appeal. Two grounds are put forward, (I) that plaintiff, being an insolvent, had no right to bring the suit and consequently has no right of appeal, and 22 Ind. Cas. 687 that even if he had a right to sue, the right of appeal was taken away by the intervention of the Official Receiver after plaintiff obtained a decree in the Original Court.

2. At the date of suit the plaintiff was an undischarged insolvent, and u/s 16 of the Provincial Insolvency Act all his property vested in the Official Receiver, who would then have the right to sue in respect of that property. It is, however, contended for the appellant that he had the permission of the Official Receiver to bring this suit, and, therefore, could do so inasmuch as there remained vested in him an interest in the property, as would appear from the fact that any residue of his estate after administration in insolvency would be returned to him. This contention must, however be rejected, for when the property becomes vested in the Official Receiver, the insolvent must ipso facto be divested of the same, and can have no vested interest in the property until after it is restored to him after administration. Sadodin v. Spiers 4 Ind. Jur. 248 : 2 Ind. Dec. 291 is authority for the proposition that the Official Assignee alone is competent to sue for enforcing the rights to property possessed by an insolvent at the date of adjudication vide also Ramasamy Iyengar v. Ramalinga Mudaliar 22 Ind. Cas. 687 and Ramasami Aiyangar v. Pavadai Chetty 23 Ind. Cas. 813 J and there is no

authority to the contrary. Reliance is then placed on *Sriramulu Naidu v. Andalammal* 17 M.L.J. 14 where it was held that an undischarged insolvent could sue in respect of property acquired after his adjudication and before the intervention of the Official Receiver. That case, however, is based on the rule in *Cohen v. Mitchell* (1890) 25 Q.B.D. 262 : 7 Morrell 207 that until the trustee intervenes, all transactions by a bankrupt after his bankruptcy with any person dealing with him bona fide and for value in respect of his self-acquired property, whether with or without knowledge of bankruptcy, are valid against the trustee." That rule now appears to be embodied in a modified form in Section 47 of the Bankruptcy Act of 1914, and appears to be for the protection of a third party who deals bona fide with an undischarged bankrupt. Whether the rule can be applied all as to give a right to sue in respect of Much property need not be considered now, for, as pointed out in *Sundarappaiyar v. Arunachella Chettiar* 18 M.L.J. 487, the ruling in *Sriramulu Naidu v. Andalammal* 17 M.L.J. 14 does not refer to property in the possession of the insolvent at the date of adjudication. We must, therefore, hold that plaintiff had no right to institute this suit and consequently the second objection taken need not be considered. This second appeal is dismissed with costs.

3. The Court-fee due must be paid to Government by appellant.