

(1908) 07 MAD CK 0001
In the Madras High Court

Sundarappaiyar and Others

APPELLANT

Vs

Rama Hari Hari Rama Arunachella Chettiar

RESPONDENT

Date of Decision : 28-07-1908

Acts Referred:

Provincial Insolvency Act, 1920 — Section 7

Citation : (1908) ILR (Mad) 493 : (1908) 18 MLJ 487

Judgement

1. A simple money decree was obtained against the ist defendant, and in execution thereof the ist defendant's undivided one-fourth share in certain

Immovable property was sold and purchased by one Velayappa Chetty who conveyed his right to the plaintiff. The plaintiff now sues for partition

and possession of the share. Prior to the execution sale the ist defendant had become an insolvent and all his property, including the share now in

question, had vested in the Official Assignee u/s 7 of the Indian Insolvent Debtors Act, 11 and 12 Victoria, Chap. 21. The question for decision in

this appeal is whether the plaintiff has any interest which entitles him to maintain the suit. In Ram Soondur Dey v. Shoshimohun Pal Chowdry

(1882) 11 C.L.R. 389 it was held that where an order has been made u/s 7 of the Indian Insolvent Debtors Act vesting the property of a

judgment-debtor in the Official Assignee the judgment-debtor has no saleable interest in such property. In Sadodin and Anr. v. W. Spiers ILR

(1879) B. 437 it was laid down that as soon as an order u/s 7 is made v any rights of property which an insolvent may have possessed at the date

of his petition in insolvency vest in the Official Assignee who alone can maintain a suit to enforce such rights. These decisions give effect to what we

think is the plain meaning of Section 7, and they are exactly applicable to the present case. If they are followed, the plaintiff cannot maintain this

suit, as nothing passed by the execution sale. It has no doubt been held - vide Sriramulu Naidu v. Andalammal ILR (1906) M. 145 - that in the case of property acquired after his insolvency an insolvent may, in certain circumstances, maintain a suit. But Sriramulu Naidu v. Andalammal ILR (1906) M. 145 and the decisions which it follows are no authority with regard to the property possessed by the insolvent at the time of his insolvency as in the present case. We hold, therefore, that the plaintiff cannot maintain this suit. The decree of the District Judge is set aside and that of the District Munsif restored with costs in this and in the lower appellate Court.