
(1930) 07 MAD CK 0003
In the Madras High Court

Thaticherla Pichamma

APPELLANT

Vs

The Official Receiver of Cuddapah and Others

RESPONDENT

Date of Decision : 30-07-1930

Acts Referred:

Provincial Insolvency Act, 1920 — Section 53

Citation : AIR 1930 Mad 834 : (1931) ILR (Mad) 13 : (1930) 32 LW 454 :
(1930) 59 MLJ 686

Hon'ble Judges : Sundaram Chetty, J

Bench : Division Bench

Judgement

Sundaram Chetty, J.—The question referred to us for decision runs as follows:

Whether a transfer of property of the description given in Section 53 of the Provincial Insolvency Act (V of 1920) made by an insolvent more than

two years before the date of the actual order of adjudication but within two years of the date of the presentation of the petition for adjudication

could be annulled by the Court u/s 53 of the Act at the instance of the Official Receiver.

2. The decision of this Question depends upon the correct interpretation of the wording in Section 53 of the Act. The portion of the section

relevant for our purpose is where it says that the adjudication of the insolvent should have been made within two years after the date of the transfer.

As to the meaning to be attached to the point at which limitation has to be computed, there has been a conflict of judicial opinion. This High Court

as also the Calcutta High Court has been of one opinion, namely, that a petition to annul an alienation can be filed if it is within two years before

the, presentation of the insolvency petition. The decisions of these High Courts proceeded on the view that the adjudication relates back to the

presentation of the petition and following the view taken in the English decisions it has been so held. But a different view has been taken by the

High Courts of Bombay, Rangoon and Lahore. The question of interpreting the section is not quite free from difficulty; but in view of the recent

amendment of this section by Act X of 1930, which received the assent of the Governor-General on the 20th March, 1930, any doubt on this

matter must be taken to have been set at rest.

3. The only point now to be considered is whether the amendment made by Section 6 of this Act has a retrospective effect, that is, will apply to a

pending proceeding such as the one in question. If by means of this amendment, a new or altered period of limitation is prescribed, then it may be

for consideration whether such an alteration in the law will have retrospective effect or not; but what would appear from the Statement of, Objects

and Reasons in connection with this amending Act is that, in view of different interpretations having been put by several High Courts which led to a

conflict of view, the Legislature wanted to set that doubt at rest by declaring clearly what the real meaning of the expression in the section was. By

the insertion of the words "'on a petition presented'" after the words "'is adjudged insolvent'" the meaning is made clear and that meaning is in

accordance with the view taken by this High Court and the Calcutta High Court. If the amendment in ques-tion has not introduced a new period of

limitation but has only clarified the meaning of the old section, there is no doubt that it"' must be taken to apply to the present case. The recent Full

Bench decision of this Court in *Veerappa.Chettiar v. Subra-maniam Aiyar* 10. ILR . (1928) M. 123 : 55 M.L.J. 794 supports the view which we

are taking. The case was in respect of an amendment made to a certain section in the Transfer of Property Act as to the meaning of the word

attestation"' and it was held that that amendment had retrospective effect. It is difficult to distinguish in principle the present case from the one dealt

with by the Full Bench. That being so, we think it unnecessary to canvass the decisions of the several High Courts which were given u/s 53 of the

Act before the amendment. We, therefore, answer this question in the affirmative.