(1935) 05 MAD CK 0011

In the Madras High Court

The Official Receiver APPELLANT

Vs

Krishna Pillai by guardian A.P. Nellaiappa Pillai and Others RESPONDENT

Date of Decision : 02-05-1935

Acts Referred:

Provincial Insolvency Act, 1920 — Section 28

Citation : AIR 1935 Mad 1058 : 159 Ind. Cas. 88 : (1935) 42 LW 707 : (1935) 69 MLJ 818

Hon'ble Judges : Horace Owen Compton Beasley, J

Bench : Division Bench

Judgement

Horace Owen Compton Beasley, Kt., C.J.—The matter which arises in this Civil Revision Petition is not an easy one by reason of the fact

that there are no cases upon this point which is quite a novel one so far as I am able to see; and giving the very best consideration I can in the

absence of any argument on behalf of the respondents who are not represented here, I have come to the conclusion that the petition must succeed.

Putting the position as shortly as possible, it is as follows: The first respondent was a creditor of one Krishna Pillai who was a co-parcener in the

same degree as all the other respondents who are insolvents. He died sometime in 1925 and after his death there was a family arrangement which

is set out in a settlement deed Ex. A and a Bank share of Krishna Pillai was allotted to Defendants 4 to 7. The learned District Munsif says:

There can be no doubt therefore that the share which is now attached belonged to the estate of the deceased Krishna Pillai. By no stretch of

imagination can it be contended that it is the property of Defendants 4 to 7.

2. I do not understand what the learned District Munsif means there because, by reason of the family arrangement evidenced by the settlement

deed Ex. A, that share of the deceased Krishna Pillai became the property of Defendants 4 to 7; and that it was so is clear from the fact at any rate

the first respondent subsequently filed a suit to recover a certain sum of money due from Defendants 1, 2, 3, 4 and 8 and from the estate of

deceased Krishna Pillai and he gave up the personal remedy against the defendants and obtained a decree for the amount claimed out of the

properties belonging to the estate of deceased Krishna Pillai in the hands of Defendants 4 to 11 with interest and costs. That clearly recognises that

the deceased Krishna Pillai''s share had come into the hands of the defendants and was their property. A creditor''s petition in insolvency was

presented against the insolvent respondents and they were adjudicated insolvents on 25th February, 1932. In between the date of the presentation

of the insolvency petition and the adjudication, the. first respondent, the creditor of Krishna Pillai, obtained the decree to which reference has

already been made and attached the share in question. The Official Receiver, on the adjudication of the respondents (2 to 5) as insolvents, claimed

that the first respondent was not entitled to attach that share because, by reason of their insolvency, all the property belonging to the insolvents

vested in him under the provisions of Section 28 of the Provincial Insolvency Act and that, as the decree had been obtained by the first respondent

after the date of the petition to adjudicate had been presented, the first respondent''s proceedings by way of attachment and by way of previously

obtaining the decree were not binding upon him. That position of course is quite correct by reason of the relation-back u/s 28 of the Act. The point

to be considered here is whether u/s 34 the first respondent''s debt was one which was provable in insolvency under the Act. Sub-section (1) of

that section can be put on one side and Sub-section (2) reads as follows:

Save as provided by Sub-section (1) all debts and liabilities, present or future, certain or contingent, to which the debtor is subject when he is

adjudged an insolvent, or to which he may become subject before his discharge by reason of any obligation incurred before the date of such

adjudication, shall be deemed to be debts provable under this Act.

3. Certainly the property of the insolvents is subject to the debt incurred by Krishna Pillai but the learned District Munsif holds that, by reason of

the decision in Nagasubramania Mudali Vs. N. Krishnamachariar, which decides that until there is a personal decree u/s 52, Civil Procedure

Code, a decree against a person as the legal representative of another (such as in that case a decree against a son for the debt of deceased father

to the extent of his, assets in his hands) does not make him liable to adjudication under the Provincial Insolvency Act, the first respondent cannot,

prove his debts in the insolvency proceedings because there is no personal decree against Defendants 4 to 7. I quite agree that Respondents 2 to 5

certainly could not have been adjudicated insolvents by reason of the debt of Krishna Pillai; but that does not seem to me to be the test to be

applied here. They were adjudicated insolvents and upon their adjudication the whole of the property which belonged to them has vested in the

Official Receiver and is liable to be distributed amongst all the creditors in the insolvency. It is perfectly clear that this property after the family

arrangement became the property of respondents 2 to 5 and was therefore divisible in the insolvency amongst the creditors and I am at present

unable to see why the first respondent cannot therefore be regarded as a creditor in the insolvency and why he cannot be permitted to come in and

prove his debt as, although it is true it is Krishna Pillai''s debt, nevertheless the estate which is now become the property of the insolvents is liable

for that debt. It seems to me that the insolvents are within the words of Section 34(2) liable by reason also of the decree to discharge that debt out

of the property which has come to them. They cannot discharge that debt out of that property because they have become insolvents and the

property has vested in the Official Receiver. I certainly think, although this case is not free from difficulty, that the District Munsif has not taken the

correct view of the matter and I think that Section 34(2) is sufficiently widely worded as to permit the first respondent to prove this debt in

insolvency. If that is so, his attachment of the property being after the date of the presentation of the petition to adjudicate the respondents (2 to 5)

insolvents cannot prevail against the Official Receiver''s claim. The Civil Revision Petition must, therefore, be allowed, the order of the lower Court

set aside and the lower Court directed to proceed in the light of these observations. The Civil Revision Petition is allowed with costs throughout.

