

(1928) 04 MAD CK 0016
In the Madras High Court

The Official Receiver	Vs	APPELLANT
Ramachandrappa by next friend Bala Nagamma and Others		RESPONDENT

Date of Decision : 03-04-1928

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 98

Citation : AIR 1929 Mad 166 : (1929) ILR (Mad) 246 : 114 Ind. Cas. 345 :
(1928) 28 LW 603 : (1928) 55 MLJ 721

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—This is a reference u/s 98 of the CPC owing to a difference of opinion between brothers Odgers and Curgenvén. The point

referred is, "In a Hindu joint trading family where there are one or more minor members and the manager is not the father and the adult members

including the manager have been adjudicated insolvents, does the power of the manager to dispose of the joint family property for debts incurred

for trading purposes pass to and become exercisable by the Official Receiver so as to bind the minors' shares?" Both the learned Judges referred

to almost all the cases on the point and it is unnecessary for me to discuss them in detail. It is well settled that under the Presidency Towns

Insolvency Act the power of the father to dispose of his son's share for a debt which is neither illegal nor immoral on his becoming an insolvent

vests in the Official Assignee. It was held by the Full Bench in T.S. Balavenkataseetharama Chettiar and Another Vs. The Official Receiver and

Others, that under the Provincial Insolvency Act (V of 1920), on the insolvency of a Hindu governed by the Mitakshara Law, his power to sell his

son's shares also for paying his just and proper debts vests in the Official

Receiver; the sons' shares themselves do not vest in the Receiver.

2. The question is whether the same principle would apply to the case where the manager of a joint Hindu family is not the father. The power of the

father to sell the sons' shares for his debts has been held not to rest solely on the pious obligation of the son to pay his father's debts. If that is so,

it is difficult to see how the manager of a joint Hindu family stands on a different footing when the debts contracted by him are such as would bind

the members of the joint family. In *Rangayya Chetti v. Thanikachalla Mudali* ILR (1895) 19 M. 74 the Official Assignee conveyed a house forming

part of the family property of the insolvent to the plaintiff who sued for possession. The younger brother of the insolvent contested the suit. It was

held that the Official Assignee could convey the shares of those persons upon whom the debts of the insolvent were binding. *Subrahmanya Aiyar*,

J., after referring to the cases in *Jagabhai Latubhai v. Vijbhukandas Jagjivandas* ILR (1886) B. 37 and *Fakirchand Motichand v. Motichand*

Hurruckchand? observed at page 77, "Nor as to the second defendant am I able to see any sound distinction in principle between his case and that

of the other defendants just referred to. For, if the son's share is property which the father has power to dispose of for his own benefit in the

restricted sense explained by West, J., in the passage quoted above, how can the share of any other undivided co-parcener, which the managing

member can convey for debts incurred by him for legal necessity, be treated differently? No doubt there is difference in the proof to be adduced

as to the character of the debt in the two instances. But the essential element that the shares other than that of the transferee are liable to be

proceeded against for the transferor's debt is common to both the cases. I must therefore hold that the Official Assignee has in law power to

transfer not only the share of the insolvent, but also those of his co-parceners, whether they be his sons or brothers or other collaterals, provided of

course the debts for which the property is disposed of, are shown to have been incurred for purposes binding upon them." This case was followed

in *Nunna Brahmayya Setti v. Chidaraboyina Sanka Danayya* ILR (1902) M. 214. That was a decision of a Bench consisting of *Bhashyam*

Aiyangar and *Moore*, JJ. *Bhashyam Aiyangar*, J., who delivered the judgment of the Court relying upon the decisions u/s 266 of the CPC and after

referring to Fakir chand Motichand v. Motichand Hurruckchand ILR (1883) B. 438 and Jagabhai Lalubhai v. Vijbhukndas Jagjivandasw and the

judgment of Subrahmanya Aiyar, J., in Rangayya Chetti v. Thanikachalla, Mndali (1895) held that the power referred to in Section 266 of the

CPC was the same as the power referred to in Section 30 of the Insolvency Act. In A.A.O. No. 31 of 1925 Waller and Madhavan Nair, J J.,

held following Rangayya Chetty v. Thanikachalla Mudali ILR (1895) M. 74 that

the power of the manager to deal"" with the joint family property vests in the Official Receiver and that he is entitled to sell the joint family property

to satisfy the debts of the family.

3. If the question was res Integra I should be inclined to hold that under the Provincial Insolvency Act the power of a Hindu father to dispose of his

son's shares in the family property for his debts does not vest in the Official Receiver. Section 28 of the Provincial Insolvency Act vests in the

Court the whole property of the insolvent on the making of an order of adjudication. This expression ""whole of the property of the insolvent"" has

been construed in T.S. Balavenkataseetharama Chettiar and Another Vs. The Official Receiver and Others, as to include the power of the father to

dispose of the son's share for his debt. In The Official Assignee of Madras Vs. Allu N. Ramachandra Aiyar and Others by mother and guardian

Swornambal, it was held that where, the managing member of a Hindu family consisting of himself and his sons is adjudicated insolvent, the

interests of the :sons do not vest in the Official Assignee by reason of the adjudication although it would be competent to the latter to deal with their

shares, if the debts of the insolvent were of such a nature as to be binding on their interest. In Subramania Aiyar Vs. T. V. Krishna Aiyar and

Another, Phillips and Madhavan Nair, JJ., held that the power of a Hindu father over the family property including the son's interests therein must

be deemed to be property within Section 28 and as such vests in the Court of the Receiver. Phillips, J., after referring to Section 52 of the

Presidency Towns Insolvency Act, observed:

If therefore the English Bankruptcy Act and the Presidency Towns Insolvency Act considered this property as the property of the insolvent, there

must be very strong reason for holding that the same word "property" in the Provincial Insolvency Act has a different meaning and excludes such

powers. On this ground I think it must be held that the power of the Hindu father over the family property must be deemed to be "property" within

the meaning of the Act and as such vests in the Court of the Receiver.

4. The definition of the word "property" in section 2(d) is "property includes any property over which or the profits of which any person has a

disposing power which he may exercise for his own benefit." In Section 28, the expression is "the property of the insolvent." According to the

definition of the term "property," unless there be anything repugnant in the subject or context, the word "property" should be understood as denoted

in section 2(d). With very great respect to the learned Judges who decided *T.S. Balavenkataseetharama Chettiar and Another Vs. The Official*

Receiver and Others, I am unable to see why the word "property" should not be interpreted as denoted in the definition section. Their Lordships

of the Privy Council in *Sat Narain v. Behari Lal* (1924) L.R. 52 IndAp 22 : 1924 47 M.L.J. 857 clearly laid down that in interpreting the

Presidency Towns Insolvency Act, the Act and the Act alone must be taken into consideration. If the word "property" as used in section 28 is

understood as defined in section 2(d), there would not be much difficulty in disposing of this case; for the term "property" includes any property

over which or over the profits of which any person has a disposing power which he may exercise for his own benefit. The expression "own benefit

is derived from the English Bankruptcy Act of 1883. This expression was not found in the Indian Insolvency Act which was in force till the

Presidency Towns Insolvency Act was enacted in 1909.

5. In Section 30 of the Indian Insolvency Act the expression was "which he might lawfully execute for his benefit." In enacting the Provincial

Insolvency Act of 1907 and the present Insolvency Act of 1920, the legislature advisedly used the expression "for his own benefit." There must be

some object in the legislature advisedly using the expression "own benefit" when it was not found in the Indian Insolvency Act. That expression

"own benefit" has been the subject of interpretation in the English Courts. In the case of *Jane Turner*¹ it was held that the expression "own

benefit" meant his sole benefit. *Butt, J.*, observed at p. 19:

The section of the Bankruptcy Act of 1883 to which I have been referred seems to me to be limited to rights which a bankrupt may exercise for his

own benefit, and for his own benefit alone.

6. In that case the trustee in bankruptcy claimed the right to administer the estate of the insolvent's deceased wife to the administration of which he

was entitled. The Court held that the trustee was not entitled to the administration of the estate of the insolvent's deceased wife even though he was

entitled to some beneficial interest in the estate. In *re S.S.B.* (1906) 1 Ch. 712 and *In re Salt* (1896) 1 Ch. 117 it was held that u/s 120 of the

Lunacy Act, 1890, the committee in. lunacy did not get any power vested in the lunatic for his own benefit. Applying the principle of these cases to

the expression "'own benefit'" as used in section 2 (d) we have to see whether the manager of a joint Hindu family can for his own benefit sell the

family property. He can sell the family property for his debts which are binding upon the family; he cannot sell the family property for his own debts

if they are not binding on the family. When debts are binding on the family, the whole family is bound to pay off the debts; and when the manager

sells the property of the family for debts binding on the family, he sells the family property not for his sole benefit but for the benefit of or on behalf

of all the members of the family on whom the debt is binding; and therefore when the managing member of a joint Hindu family becomes insolvent,

the power to sell the shares of the other members cannot vest in the Official Receiver as it is not a power which is exercisable for the insolvent's

own or sole benefit. In *Nunna Brahmayya Setti v. Chidaraboyina Vmkitasami Sanka Damyyae Bhashyarn Aiyangar, J.*, observed:

If the question were *res Integra* and not covered by the course of judicial decisions bearing upon the corresponding expression occurring in Section

266 of the Civil Procedure Code, I should entertain considerable doubt as to whether the power which under the Hindu Law, a managing member

of a joint Hindu family has over the interests and shares of the junior members in the family property, is within the meaning of Section 30 of the

Insolvency Act, a power vested in the insolvent, which he can lawfully execute for his benefit.

7. In some of the later cases, it has been held that the Provincial Insolvency Act of 1907 must be understood in the light of the Indian Insolvency

Act and the Provincial Insolvency Act of 1920 should be understood in the light of the Presidency Towns Insolvency Act of 1907. The Provincial

Insolvency Act of 1907 made considerable departure from the old Indian Insolvency Act, Statute 11 and 12 Vic, c. 21. The Provincial Insolvency

Act of 1920 has departed in several respects from the Presidency Towns Insolvency Act. Though in many respects the Provincial Insolvency Act

of 1920 is brought into line with the Presidency Towns Insolvency Act of 1909 yet the legislature advisedly omitted to introduce into the former

Section 52 of the latter Act and it is not right for the Courts, I venture to say, to import into it what the legislature advisedly refrained from putting

into it. The power of the father "to dispose of the joint family property is not absolute but conditional on his having debts which are liable to be

satisfied out of that property" Sat Narain v. Behari Lajl ILR (1924) Lah. 1 : L.R. 52 IndAp 22 : 1924 47 M.L.J. 857. If the property is the

insolvent's within the meaning of Section 2(d), it vests in the Official Receiver, and, if it is not, it does not vest. In the absence of some section like

section 52, there is hardly any warrant for holding that the shares of the sons do not vest in the Official Receiver but the power of the father to

dispose of them vests in him. Section 28, Clauses (3), (4) and (5), which indicate what and what not is the property of the insolvent makes no

reference to his capacity or power in or over property which he could exercise for his own benefit.

8. The question whether Section 28 vests in the Official Receiver the power of the father to dispose of the son's share for his debt will have to be

examined by a fuller Bench when the question arises. I have indicated my view on this point in order to help discussion when the question is again

brought up.

9. Following the decision of Subrahmanya Aiyar, J., in Rangagiah Chetty v. Thdnikachalla Mudali ILR (1895) M. 74 and the decision of the bench

of Waller and Madhavan Nair, JJ., in A.A.O. No. 31 of 1925, I answer the question referred to me in the affirmative.