

(1921) 11 MAD CK 0027
In the Madras High Court

The Official Receiver of Tanjore

APPELLANT

Vs

M.R. Venkatarama Iyer

RESPONDENT

Date of Decision : 03-11-1921

Acts Referred:

Citation : 68 Ind. Cas. 512

Hon'ble Judges : William Ayling, O.C.J.; Odgers, J

Bench : Division Bench

Judgement

1. Only two points have been raised in appeal. It is contended that where rateable distribution has been ordered u/s 73 of the Code of Civil Procedure, the exception to Section 51 (1) of the Provincial Insolvency Act only applies to the amount credited in favour of the attaching decree holder and not to the amounts rate ably distributed to the other decree holders under the section. No authority is quoted and we tan find nothing in the wording of Section 51 to support such a view; nor is any reason suggested for such a differentiation. The learned Counsel for the appellant wished to refer to various English rulings dealing with Section 45 of the English Bankruptcy Act of 1883 : bat the difference between this section and Section 51 of the Indian Act are so great i bat we feel unsafe in taking them as a guide. The other contention is that the amounts lying in Court should be treated as still the money of the insolvent, which the Official Receiver tan claim for the benefit of the general body of the creditors, This contention also we feel bound to negative. The last of the orders for rateable distribution was passed more than six years before the insolvency; and respondent was only prevented from drawing out the sums of which he was entitled thereunder by reason of litigation instituted by other creditors of Nataraja Iyer which was carried up to this Court and ultimately proved infructuous. It seems to mo that from the time of the order of rateable distribution the mousy must be treated as belonging, not to the judgment-debtor, Nataraja Iyer, bat to the decrees-holder in whose favour the order was passed. Mr. Devadoss for appellant contended that the effect of a rateable distribution order is merely to allocate the money to the different suits without affecting its ownership. The latter, he says, still rests in

the judgment-debtor by the sale of whose property it was allocated. I do not think this is so. The section does not speak of distribution to the credit of the different decrees, but of distribution among the decree-holders. The latter are entitled to draw it out at will; and the judgment-debtor most certainly is not. I think the money in this case must be treated as the property of the decree-holder, the present respondent, and that the Official Receiver could no more recover it from Court than he could recover from the respondent if it had actually been paid out to him by Court. Mr. Devadoss eventually admitted that he could not recover the money in the circumstances of the present case if it had passed into respondent's possession, I would dismiss the appeal with costs.

Odgers J.

2. The first point raised is on Section 51 of the Provincial Insolvency Act as to whether the proceeds of execution held by various Courts as detailed in the District Judge's judgment are "assets" realised or not. In the absence of authority the executing decree holder cannot be held to be solely entitled.

3. It was said there is a difference between Section 73, CPC and Section 27 C.Z 351 Provincial Insolvency Act on this point. Mr. Davadoss points to Section 40 of the Bankruptcy Act of 1883, to show that completion of execution in England means a different thing to what it does here, The Indian section is by no means identical with the Statute; in fact, it differs from it in many material respects and it, seems to be not only unnecessary but dangerous to hold that there may be distinction between the meaning of execution in these two sections. The point fails.

4. The second and more important point is this. It is said that the moneys held in Court as payable to the judgment-creditors are still the property of the judgment-debtor so as to vest in the Official Receiver on the insolvency of the former, and the fact that these sums have not yet been distributed may give the Official Receiver the right to go behind the decrees in satisfaction of which they have been paid and to see whether or not the transactions are founded on good consideration, etc, This may be so, unless the order for rateable distribution (which was admittedly made six years before the adjudication in 1919) removes the money, the subject of the order, from the operation of the Insolvency Act altogether.

5. Cases have been cited to the effect that if a judgment creditor wants to prove in insolvency his claim may be subject to scrutiny by the Court or the Official Receiver or Trustee in Bankruptcy; but if the matter is wholly outside the insolvency law it is clear that the Insolvency Court under its officers has no such power. In my opinion such is the case here. Section 51 provides that where execution has issued, assets realised in the course of the execution by sale or otherwise before the date of the admission of the petition shall be protected from the operation of the Insolvency Act and the case in *Howatson v. Durrant* 27 C.S 351 shows that an order for rateable distribution stands on the same footing. It

would, therefore, appear that the transaction sought to be impeached by the Official Receiver stands outside the operation of the Insolvency Act and he can neither scrutinizes its legality nor have it set aside for the benefit of the general body of creditors. The judgment creditor entitled to the rateable distribution is in this respect in the same position, as if he had actually been paid out of money which was realized in execution and that being so, the Official Receiver has no right to it, the appeal must be dismissed with costs.