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**(1933) 03 MAD CK 0009**  
**In the Madras High Court**

T.L. Swaminatha Aiyar

APPELLANT

Vs

The Official Receiver

RESPONDENT

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**Date of Decision :** 08-03-1933

**Acts Referred:**

**Citation :** AIR 1933 Mad 703 : (1934) ILR (Mad) 330 : 145 Ind. Cas. 999 :  
(1933) 38 LW 389 : (1933) 65 MLJ 402

**Hon'ble Judges :** Pakenham Walsh, J;Pakenaham Walsh, J

**Bench :** Division Bench

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## Judgement

Pakenaham Walsh, J.—These appeals raise a matter of some difficulty. One Swaminatha got a decree against one Gopalakrishna and in

execution attached on 12th March, 1926, some debts due to the debtor. An insolvency petition was filed against Gopalakrishna in April, 1926 and

the Official Receiver was appointed interim Receiver. He petitioned the executing Court to have the execution of Swaminatha's decree stopped

and have the attached properties delivered to him. Ultimately the debts attached were sold on 25th June, 1926, by the Court in execution of

Swaminatha's decree. In August, 1926, Swaminatha applied to the Court for payment to him of the sale proceeds. The Subordinate Judge

dismissed the petition as there were insolvency petitions pending against Gopalakrishna, the judgment-debtor. Gopalakrishna was adjudged

insolvent in August, 1927. Both Swaminatha and the Official Receiver then applied for payment of the sale proceeds. The Subordinate Judge

ordered the payment of the whole amount to the Official Receiver. In appeal it was held that Swaminatha was not entitled to the sale proceeds, nor

was he entitled to a first charge with regard to the costs incurred by him in bringing the property to sale. In second appeal it is not contended that

he is entitled to the sale proceeds; but it is contended that he is entitled to a first charge for the costs incurred by him in bringing the debts to sale.

The learned District Judge held that Section 52 applied only to the property of a debtor attached in execution but which has not been sold, and that

as this was the only section under which the appellant could recover the charges for bringing the property to sale he could not be allowed those

charges. He admits that it is illogical that while a creditor who has taken out execution but has not brought the property to sale is entitled to a

charge for the costs of his suit and of the execution, a creditor who has taken out execution and has brought the property to sale should not be

entitled to anything. He says:

But the wording of Section 52 is too clear to allow of an interpretation which would remove this illogicality.

2. With regard to the case which he quotes, *Lyon, Lord & Co. v. Virbhandas Rattanchand* (1923) 76 I.C. 380 decided by the Assistant Judicial

Commissioner of Sind, that would not be an authority in this Court and as a matter of fact the view taken in that case that Section 52 applies only

to moveable property has been dissented from in *Haranchandra Chakravarti v. Joy Chand* I.L.R.(1929) 57 Cal. 122 and *Sivaswami Odayar v.*

*C.R. Subramania Iyer* 1931 M.W.N. 1251. This however does not really touch one of the main points in question, viz., whether Section 52

applies to property which has already been sold. It may be observed that the application to the Sub-Court by the Official Receiver was made

before the sale but was refused on the strength of the rulings in *Furin Lyon Lord & Co. v. Furin Virbhandas* AIR 1924 Sind 69 *Ralla Ram v. Ram*

*Labhaya* AIR 1925 L.H. 159 and *Official Receiver, Tanjore v. Sankara Aiyar* (1925) 50 M.L.J. 239. But in *Sivaswami Odayar v. C.R.*

*Subramania Iyer* 1931 M.W.N. 1251 quoted above the opposite view was held that Section 52 would apply to an interim Receiver. This is the

latest authority but it cannot be said perhaps that the point is decidedly settled. Anyhow I do not see any escape from the conclusion that Section

52, which deals entirely with property which has not been brought to sale, is inapplicable to a case where the property has been brought to sale.

But it is contended that Section 51 will cover the case. Section 51 says:

Where execution of a decree has issued against the property of a debtor no

person shall be entitled to the benefit of the execution against the

Receiver except in respect of assets realised in the course of the execution by sale or otherwise before the date of the admission of the petition.

3. It is argued for the appellant that the word ""benefit"" here means net realisations after meeting the charges. This argument was put in another form

before the learned District Judge, namely, that if Section 52 is excluded there is no other section under which the Court has power to direct the

proceeds belonging to the debtor to be delivered to the Receiver. With regard to this the learned Judge held that the effect of the provisions of the

Act in general, and of Section 51 in particular, was to vest such money in the Official Receiver on behalf of the general body of creditors. I agree

that Section 51 does vest the property which has been sold under such circumstances in the Official Receiver but it appears to me a reasonable

interpretation of the word ""benefit"" to hold that it is the net realisation in execution after paying the costs. If that is so, the balance will not belong to

the Official Receiver and, in the absence of any clear provision to the contrary, it would be justifiable to award it to the decree-holder who has

incurred the expenses of bringing the property to sale. If Section 51 can be read so as to do justice to the parties I think it is preferable to read it in

such a manner, seeing that Section 52 does not apply, rather than to put a construction upon it which is obviously unjust.

4. I would therefore hold that u/s 51 the appellant is entitled to a charge on the property sold for the expenses incurred by him in bringing it to sale.

The appeal is therefore allowed with costs throughout (one set) out of the estate. Appellant will recover costs of the suit and of execution.