

(1928) 07 MAD CK 0014
In the Madras High Court

V.R. Ramasubba Raju

APPELLANT

Vs

Seshamma and Others

RESPONDENT

Date of Decision : 27-07-1928

Acts Referred:

Citation : AIR 1929 Mad 242

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—This is an administration suit in which a preliminary decree has already been passed. The question that I am now

called on to decide is, whether claimant 4, who is a creditor of the estate has a lien in respect of unpaid purchase money.

2. The suit relates to the estate of Mr. P.V. Ramachandra Raju, deceased, who was a vakil of this Court. The claimant No, 4 Thayamanaswami

sold to Mr. Raju on the 24th December 1921, certain immovable property at Madras. The deed of sale mentions that the price settled was Rs.

30,000 of which Rs. 18,000 is stated to be the amount received by the vendor in cash. In regard to the balance of the purchase money there is the

following recital in the sale-deed:

Deducting the said sum of Rs. 18,000, I have agreed and undertaken to deliver the title deeds relating to these properties and after delivering the

same to you receive from you the balance of Rs. 12,000 for purchasing other properties as stated above.

3. One of the questions to be tried is : Has the vendor a statutory charge upon the property u/s 55, T.P. Act?

4. Mr. Raju, on 6th March 1924, mortgaged a portion of this property to

Ammayal Ammal, claimant 13. Two contentions were raised by the latter as well as by the plaintiff in the suit (the son of Mr. Raju), namely that under the sale-deed, there is no charge for the unpaid purchase money and if originally there was such a charge it was subsequently abandoned. Their learned advocates, however, found that it was futile to advance those contentions and gave them up. But Mr. Venkataraghavachariar, who appears for an unsecured creditor, claimant 6, seriously pressed these contentions. It cannot be argued that the charge is excluded by reason of the fact that payment of a portion of the purchase money is deferred. It is contended that the sale was not in consideration of a sum of money, but of a covenant to pay. There is no warrant for this suggestion and Webb v. Macpherson [1903] 31 Cal. 57, where this distinction seems to be recognized, is itself an authority for the position that on the terms of the present deed, the sale was not in consideration merely of a covenant to pay. I do not propose to discuss this question at any (further length as I have already considered this point in a recent judgment of mine in Alwar Chetty v. Jagannatha Ayyar [1927] 54 M.L.J. 109.

5. There remains only the question of Interest. The Official Referee has allowed Thayamanaswami on the basis of an oral agreement, interest at 12 per cent, per annum from 20th February 1923. No reason has been shown why I should revise this finding as regards the point of time from which interest runs; and as a secured creditor, he is entitled to interest at the same rate from the sale proceeds to the date of realization of his debt. I have now dealt with all the questions that have been raised in regard to the claim of claimant 4.

6. I am now asked to give a ruling for guidance in the administration of this estate, on the point, viz., till when is interest is payable, first, to the unsecured secondly to the secured, creditors? The provision of law which applies to administration suits is Order 20, Rule 23. Civil P.C. It says that where the Court is administering the estate of a deceased person which is insolvent, the same rules shall be observed, as to the respective rights of secured and unsecured creditors as to debts and liabilities provable and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force with respect to the estate of persons adjudged or declared insolvent. This rule substantially corresponds with

Section 10, Judicature Act, 1875. The question came up as to until what date an unsecured creditor was entitled to interest under this English

section. In *Re: Summers, Boswell v. Gurney* [1879] 13 Ch.D. 136, Jessel M.R. expressed approval of the following rule as stated in Seton or

Decrees.

A creditor of an insolvent's estate whose debt bears interest is not entitled to interest up to the day of payment, but only to the date of the

judgment for administration, which, by virtue of the Judicature Act, 1875, Section 10, is equivalent to an adjudication in bankruptcy.

7. The words in this rule, "the judgment for administration" correspond to the words "preliminary decree" in Order 20, R. 10, Civil P.C. It follows,

therefore, that unsecured creditors are entitled to interest to the date of the preliminary decree and not to the date of payment or any other date.

The law that is now in force in England is that contained in Section 34, Administration of Estate Act, 1925, and is not different from the law that

obtained previously: see *Annual Practice*, 1928, p. 1125, and *Halsbury's Laws of England* p, 345.

8. Next, as regards secured creditors the question presents no difficulty at all. On the analogy of the rule that obtains in insolvency, they are

entitled to interest, from the proceeds of the sale of secured property, upto the date of payment: see *Jugal Kishore v. Bankin Chandra* [1919] 41

All. 481. I give my ruling accordingly. The amounts due to the secured and unsecured creditor shall be calculated on this basis. The receivers shall

place before me a scheme for the disposal of the moneys available for distribution. As regards costs, I make the following order. From the funds of

the estate, the plaintiff shall be paid Rs. 750. I understand that he has already been paid Rs. 500 and this sum shall be deducted. Defendants 2 and

3 shall each be paid Rs. 100, claimant 6 Rs. 125 and claimant 4 Rs. 150. The receivers shall take into account these various sums in preparing the

scheme to which I have referred.