

**K.V. Koshy and anr. Vs. P.C. Chinan**

**K.V. Koshy and anr. Vs. P.C. Chinan**

**SooperKanoon Citation :** [sooperkanoon.com/718707](http://sooperkanoon.com/718707)

**Court :** Kerala

**Decided On :** Sep-26-1961

**Reported in :** AIR1963Ker176

**Judge :** S. Velu Pillai, J.

**Acts :** [Provincial Insolvency Act, 1920](#) - Sections 53; Limitation Act, 1908 - Schedule - Articles 136 and 144

**Appeal No. :** Second Appeal No. 435 of 1958

**Appellant :** K.V. Koshy and anr.;p.C. Chinan

**Respondent :** P.C. Chinan;k.V. Koshy and anr.

**Advocate for Def. :** C.M. Kuruvilla and; C. George, Adv.

**Advocate for Pet/Ap. :** M.U. Isaac, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**S. Velu Pillai, J.**

1. This Second Appeal by defendants 1 and 2 arises out of a suit for a declaration of the plaintiff's title to the suit property and for the recovery of the same with mesne profits. The property belonged originally to one Chacko. He and his brother

Eapen purported to convey it on sale with other properties, to their brother Koshy, by deed, Ext. V, of the year 1105. Chacko was adjudicated insolvent on a petition Ext. A dated Dhanu 3, 1107, by order Ext. A-I dated Mithunam 30, 1108. In insolvency proceedings, the official Receiver impugned Ext. V, which was set aside by Ext. B-1 order dated Chingom, II, 1115. At the auction held by the Official Receiver for the realisation of the insolvent's assets the plaintiff became the purchaser of the suit property and others, and took a formal sale deed from the Official Receiver on Makaram 16, 1120. Koshy who took Ext. V sold the suit property and others by deed, Ext. VII dated Karkadakom 16, III, to one Chacko, who in his turn sold the suit property to one Pothan by deed, Ext. 1, on the same day. Afterwards on Kumbhom 5, 1112, Pothan sold the suit property to the deceased father of defendants 1 and 2 who now claim to be entitled to it. The present suit was instituted on Thulam 8, 1121.

2. It has now been found concurrently, that though Ext. B-1 does not bind the defendants, being no parties to it, Ext. V was a nominal or fictitious transaction, and that despite the same the insolvent continued to be in possession. It was contended on behalf of defendants 1 and 2, that under the insolvency law the Official Receiver alone could impeach a transfer by the insolvent and that the plaintiff who is but an assignee from him, is not competent to do so. This contention has no substance, AS the plaintiff can allege grounds and seek a declaration that defendants 1 and 2 have obtained no title, because Koshy their predecessor-in-interest himself had derived none under Ext. V and could not convey any by Ext. VII. This is the effect of the concurrent findings that Ext. V was sham and inoperative. The contention has only to be repelled.

3. The next contention was that the suit is barred by limitation under Article 113 of the Travancore Limitation Act which corresponds exactly to Article 136 of the Indian Limitation Act. Article 136 is as follows:

By apurchaser at a private sale for possession of immovable property sold when the vendor was out ofpossession at the date of the sale.

Twelveyears.

When the vendor is first entitled to possession.

The argument was, that on the findings, the Official Receiver who was the vendor of the plain-tiff was out of possession on the date of Ext. V but was entitled to possession from the date of the order, if not of the petition for adjudication, and that the suit having been instituted more than 12 years after the aforesaid dates, is barred by limitation. If as contended for defendants 1 and 2, Ext. V had taken effect, the Official Receiver became entitled to possession only on the date of Ext. B-1 which was well within the period of 12 years. Granting that Ext. B-1 is of no effect as against the defendants, the applicability of Article 136 would depend on whether the Official Receiver was out of possession, or in other words, whether after the order of adjudication the insolvent could be deemed to have been in possession. It was argued for the plaintiff, that during the period the insolvent had only custody of the property but not possession. This depends on what is the effect of an adjudication order. This is stated thus in Williams on Bankruptcy, 16th Edition at page 253:

'Broadly speaking, the bankrupt's estate consists of every beneficial interest which the bankrupt has; his entire universitas juris is by his adjudication taken from him and given to the trustee, who steps into his shoes and takes a title no better and no worse than the bankrupt's, and who, further, becomes the owner of everything which the bankrupt acquires between the adjudication and the moment when his discharge becomes effective' and by L. S. Sastri in his commentaries on the Provincial Insolvency Act, Second Edition, page 142 thus:

'The sum total or bundle of the insolvent's rights and liabilities, properties and debts, his universitas juris passes to or devolves on the Receiver. The insolvent ceases to be a juristic person .....

In regard to his said rights and liabilities he is a person civilly dead, and on such death, the rights and liabilities devolve on the Receiver.'

On the making of an order of adjudication the whole of the property of the insolvent in India vests in the Court or a Receiver who may be appointed by the Court. Even property which is acquired by the insolvent or devolves on him after

the date of the adjudication and before his discharge, vests in the Court or the Receiver. After such vesting, the insolvent ceases to be the owner of the property in law and dealings by him with respect to it are void.

'If after adjudication a person buys property from the insolvent, he acquires no title to it, and he will have to deliver back the property to the Official Assignee or Receiver without any claim to a return of the price paid by him'. (Mulla on Insolvency, 2nd Edition, page 269).

Under the [Provincial Insolvency Act, 1920](#), when the Court appoints a Receiver, it may remove any person in whose possession or custody any property of the insolvent is, from possession or custody thereof, if the insolvent himself has a present right to do so. It is the duty of the Official Receiver as soon as possible after the adjudication, to take possession of all his property and for that purpose, he is

'an the same position as if he were a Receiver of the property appointed by the High Court and the Court may, on his application, enforce such acquisition or retention. ... Any person acting under

a Warrant of the Court may seize any part of the property of a bankrupt, or of a debtor against whom a receiving order has been made, in the custody or possession of the bankrupt or the debtor, or of any other person .....'. (Halsbury's Laws of

England, Third Edition, Volume II, pages 453 and 54, paragraphs 897 and 901).

As observed in Williams on Bankruptcy, 16th Edition, page 299, it is now well-settled that:

'the personal earnings of a bankrupt pass like any other property to the trustee, except such part of them as is necessary for the maintenance of the bankrupt and his family'.

It has been held, that the profits of trade or business carried on by the insolvent after adjudication pass absolutely to the Receiver, in *Re Rogers; Ex parte, Collins*,

(1894) I QB 425 at p. 439. Where there is a vesting of immovable property, but the insolvent for some reason or other continues to take the yield from it, it must be deemed that he does so on behalf of the Receiver. In these circumstances, it is difficult to hold, that the insolvent was in possession; he had only custody. On the above principle, it must follow that the Official Receiver was not out of possession on the date of the sale to the plaintiff, but was in possession of property through the insolvent. Article 113 of the Travancore Limitation Act has therefore no application to the case, which is governed by Article 121 of that Act, which corresponds to Article 144 of the Indian Act. The suit is not barred by limitation. The Second Appeal fails and is dismissed with costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**