

**Vythilinga Padayachi and Three ors. Vs. Ponnuswami Padayachi**

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**Court :** Chennai

**Decided On :** Oct-12-1920

**Reported in :** AIR1921Mad642; (1921)41MLJ78

**Appellant :** Vythilinga Padayachi and Three ors.

**Respondent :** Ponnuswami Padayachi

**Judgement :**

**Abdur Rahim, J.**

1. The first plaintiff and the grandfather of the 4th plaintiff in this suit obtained the properties in dispute in exchange from one Srinivasa Aiyar on the 3rd August 1900 but no resgistered deed was executed as is required by law and therefore there was no effective transfer of title to the plaintiffs. The plaintiffs however remained in possession of the properties since that date. On the 29th April 1910, they were attached at the instance of one Chidambaram Chetti, who had obtained a decree against Srinivasa Aiyar. The plaintiffs put in a claim on the 1st October 1910 and it was allowed by an order dated the 1st December 1910. Then Chidambaram Chettiar, the attaching creditor, instituted a suit under the provisions of the Code of Civil Procedure to establish that the properties belonged to his judgment-debtor and that he was entitled to attach them and bring them to sale in discharge of his decree. This was on the 21st December 1910. A decree was passed in that suit in his favour on the 3rd November 1911. That was ultimately confirmed by the High

Court in Second Appeal on the 24th September 1913. During the pendency of this suit, that is, on the 3rd November 1911 Srinivasa Atyar was adjudicated an insolvent on his own petition. Then the Official Receiver of the Tanjore District sold the properties to the 1st defendant in the suit on the 18th November 1915; and on the 15th January 1916 the latter obtained delivery of possession of the properties.

2. Soon after the defendant obtained possession the plaintiffs instituted this suit asking for a declaration of their title and for confirmation of their possession of the plaintiff mentioned properties or in the alternative for recovery of possession of the properties if they were found not to be in their possession. They succeeded in the court of trial but on appeal the Subordinate Judge dismissed the suit holding that they had not made out their title and were not therefore entitled to a decree.

3. There were several questions argued before us in support of the plaintiff's title and it seems to us that they are entitled to succeed at least on one of those grounds. They were undoubtedly in actual possession of the properties as found by the lower appellate court at least till the 16th January 1916, if they are not in possession now. Conceding for the sake of argument and only for the sake of argument, because it is not necessary to decide the point that their possession from the date of attachment till the decree of the High Court in the suit instituted by the attaching creditor i.e, till the 24th September 1913 is ineffective for the purpose of completion of title by adverse possession they were indisputably in possession till 1916 and the defendant was put in possession by an order of court only on the 16th January 1916, and if the latter has no title, the plaintiffs are entitled to recover possession from him on the strength of their possessory title.

4. We need only refer to *Narayana Row v. Dhannachar* I.L.R(1902) . Mad. 514 and *Ayyaparazu v. Secretary of State* I.L.R(1912) . Mad. 298 in support of his proposition following the doctrine laid down in the well known English case of *Asher v. Whillock* L.R.I.Q.B.D. 1 .

The next question for determination is the defendant's title. That depends on the question whether the sate in his favour by the Official Receiver, Tanjore, conveyed a good title to him or not. That again depends on whether the Official Receiver was duly appointed by the court as required by law. No order was passed

appointing the Official Receiver, the Receiver of the estate in question although the local Government had appointed Mr. Narasimhamurthi Sastri under Section 19 of the Provincial Insolvency Act, III of 1907, Official Receiver of the District.

5. It has been ruled by two decisions of this Court in *The Official Receiver of Trichinopoly v. Somasundara Chettiar* : (1916)30MLJ415 and afterwards in *Muthusami Samiar v. Somoo Kandiar* : (1920)39MLJ438 where the question was even more fully considered that the property of a person adjudicated an insolvent under the provisions of the Act does not ipso facto vest in the Official Receiver who may have been appointed for the local area in which the insolvent is residing but it is necessary that an order should have been passed appointing a Receiver before the property would vest in the local Official Receiver. That is how the phrase 'he shall be the Receiver for the purpose of every order appointing a Receiver issued by any such court' has been construed by two Benches of this Court, and having heard the question fully argued before us I see no reason whatever for holding that this view of the law is wrong.

6. As pointed out in this view of the law the present practice obtaining in this connection in many Insolvency Courts in the Presidency must be treated as not being in accordance with the law. All the same it is difficult to see how the words of Ss 18 and 19 can be construed otherwise than they have been by the learned Judges in the cases referred to.

7. It was suggested that the Act does not require a written order but that we ought to presume from the facts of the case that the Official Receiver must have been appointed a Receiver of this estate, although no written order was passed to that effect. Orders of court are invariably reduced to writing and in fact there is no ground for supposing that any verbal order appointing the Official Receiver of this estate was passed. The omission is merely the outcome of an imperfect understanding of the requirements of the Statute. Then it was further suggested that, as in the absence of a Receiver, the property of an adjudicated insolvent vests in the court and the court in this case directed the delivery of the possession of the property in dispute to the defendant, the defendant acquired a good title from the Court. But there was no conveyance by the Court or by any Officer

empowered in that direction by the court which would have conveyed a valid title to the defendant.

8. We must therefore hold that the defendant has no title to the property and the plaintiffs-who were in possession are entitled to recover possession of the property from the defendants. The result is that the decree of the Subordinate judge must be set aside and that of the District Munsif restored with costs here and in the courts below.

**Odgers, J.**

9. I am also of opinion that the Subordinate Judge is wrong.

10. My learned brother has dealt with the facts and dates essential to this case. The first argument before us on behalf of the appellants was that the attachment in 1910 does not interfere with the adverse possession of the plaintiffs from the 3rd August 1900 and that as the first plaintiff remained in possession from the 3rd August 1900 till he was dispossessed in the year 1915, he had prescribed in a title as against the defendant. With regard to the question of the interference with the adverse possession by proceedings in the claim and in the suit we were referred by Mr. B. Sitarama Rao for the appellants to several authorities. Some of them it is not necessary to consider as in this case the suit itself was instituted within 12 years from 1900 before the adverse possession of the plaintiff had become perfected. The suit was in fact instituted on the 21st December 1910. Were it necessary, discussion might arise as to the effect of the cases Cited before us viz.: A. Raghunathachariar and Anr. v. Thiruvengada Ramanujachariar (1911) 1 M.W.N. . 99 Pandiyan Pillai v. Vellayappa Rowther : AIR1918 Mad572 Phul Kumari v. Ghanshyam Misra 1 L.R(1907) . Cal. 202 a decision of the Privy Council and the interpretation of that decision by the Full Bench of this Court in Ramaswami Chettiar v. Mallappa Reddiar (1920) 35 M.L.J.R. 350 Apart from this there is the question as to whether the possession of the plaintiff is not good as against all the world excepting the true owner as laid down in Narayana Rao v. Dharmuchar I.L.R.(1902) Mad. 514 and the other authorities cited in the judgment delivered by my learned brother.

11. However the only question necessary to decide is as to the defendant's title which if any he admittedly acquired by purchase from the Official Receiver in the insolvency of Srinivasa Aiyar. The question is 'Was the Official Receiver in a position to convey any title to him'. The learned Subordinate Judge has found as a fact that the Official Receiver was not appointed as Receiver under Section 19 of the Provincial Insolvency Act. Section 18(1) of that Act runs as follows. 'The Court may at the time of the order of adjudication or at any time afterwards appoint a Receiver for the property of the insolvent, and such property shall thereupon vest in such receiver.' Section 19 provides for the appointment by the Local Government of such persons as it thinks fit to be receivers under the Act and Section 19(2) runs as follows: ' Where any Official Receiver has been so appointed for the local limits of the jurisdiction of any court having jurisdiction under this Act, he shall be the Receiver for the purpose of every order appointing a Receiver issued by any such court unless the court for special reasons otherwise directs'. The important words in this sub-section are 'for the purpose of every order appointing a receiver issued by any such court'. It is argued that where it is intended to appoint a Receiver under Section 16(2), the Receiver must be appointed by the court and unless such an appointment is actually made the person acting as receiver, if any, acts illegally. Mr. T. Narasimha Aiyangar in his argument for the, defendant urged that the Receiver has been in possession of this property for some years and it must be taken if not as a fact in any case as an inference that his acts have been ratified by the court, and that it is probable that under Section 22 appeals have from time to time been made against his acts to the courts and that the court itself has had cognizance of the fact that he was in all these matters in insolvency acting as a Receiver. Unfortunately the hardship of the case arising as it may from a technicality cannot be allowed to affect the direct provision of law which I have pointed out and which has been construed by the decisions in *The Official Receiver of Trichinopoly v. Somasundaram Chettiar* : (1916)30MLJ415 and *Muthuswamiar v. Somoo Kandiar* : (1920)39MLJ438 quoted in the judgment of my learned brother. In my opinion the provisions of the act have not in this case been carried out. As pointed out by my learned brother, refuge cannot be taken in the argument that the court has put the defendants in possession. There is no document of any kind purporting to be executed by the

court on this behalf to the defendants and conveying this property to them. The learned Subordinate judge gets over this difficulty by saying that the opinion of Mr. Justice Moore in *The Official Receiver of Trichiuopoly v. Somasundaram Chettiar* : (1920)39MLJ438 is only an obiter dictum and apparently the opinion of the Subordinate Judge is influenced by the fact that it has been the practice in the mufusal courts for the Official Receiver to take charge of properties without special appointment. However there is a more recent case, *Muthuswamiar v. Somoo Kandiar* : (1920)39MLJ438 which supports the earlier case, *The Official Receiver of Trichinopoly v. Somasundaram Chettiar* : (1916)30MLJ415 . I am therefore unable to see how the express provisions of the act can be avoided.

12. In this view of the case it is unnecessary to decide whether the attachment proceedings and the subsequent suit interfered with running of the adverse possession of the plaintiffs or not. I desire to express no opinion on this point.

13. I agree with my learned brother in that present appeal must be allowed and that the judgment of the District Munsif should prevail.

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