

The Official Receiver of Ramnad Vs. P.L.P. Devarayan Chettiar and ors.

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Court : Chennai

Decided On : Aug-04-1948

Reported in : (1948)2MLJ415

Appellant : The Official Receiver of Ramnad

Respondent : P.L.P. Devarayan Chettiar and ors.

Judgement :

Satyanarayana Rao, J.

1. The Official Receiver of Ramnad is the appellant. The matter arises in execution of the decree in O.S. No. 52 of 1934. The first respondent obtained a decree in O.S. No. 52 of 1934 against the second respondent and his two sons. The decree is dated the 16th October, 1934. The second respondent was adjudicated an insolvent on the 14th September, 1935, in I. P. No. 77 of 1934. In 1936 the Official Receiver took possession of two villages belonging to the joint family. In 1942 the sons instituted a suit for partition, O.S. No. 74 of 1942, Sub-Court, Devakottai, to which they impleaded as parties their father, the Official Receiver and some of the creditors. The creditors, however, were dismissed from the suit very early before the trial of the suit and there was a preliminary decree in the suit on the 30th September, 1943. The Official Receiver has in his hands an amount which represents the collection of rents from the two villages for the years from 1936 to 1945. He had already declared a dividend in which the first respondent also got his

share on the nth November, 1941.

2. The first respondent now attached two-third share of the amount lying in the hands of the Official Receiver which he claims, represents the sons' shares of the income of the properties of the two villages from 1936 to 1945. The Official Receiver resisted the claim on various grounds but on the basis of the Full Bench decision in Rama Sastrulu v. Balakrishna Rao (1942) 3 M.L.J. 457 : I.L.R. (1943) Mad. 83 which laid down that the father's disposing power over the son's share never vested in the Official Receiver after the adjudication of the father as that power was not property within the meaning of Sections 2(d) and 28(2) of the Provincial Insolvency Act, the Court directed the attachment of the two-third share.

3. In this appeal by the Official Receiver it is contended on his behalf that in view of the recent amendment of the Provincial Insolvency Act by Act No, XXV of 1948, the basis of the decision of the Court below cannot be sustained. In my judgment the contention of the learned advocate for the appellant must be upheld in view of the clear language of the new Section 28-A which was introduced by Act No. XXV of 1948 in the Provincial Insolvency Act, 1920. That section reads as follows:

The property of the insolvent shall comprise and shall always be deemed to have comprised also the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the insolvent for his own benefit at the commencement of his insolvency or before his discharge.

There are two provisions which are not relevant for the purpose of decision of this case. The section is clearly retrospective as it says.shall comprise and shall always be deemed to have comprised also the capacity....

The basis, therefore, of the decision of the Court below falls to the ground in view of the Amending Act No. XXV of 1948. The position, therefore, in 1936 when the Official Receiver took possession of the property was that in the right of the father and manager of the joint family the Official Receiver was entitled to take possession of the entire property and also collect rents and profits for applying them for the discharge of the debts of the father which were not tainted by illegality

or immorality. This was the principle laid down by Madhavan Nair, J., in *Shankaranaraina v. The Official Receiver, South Kanara* (1932) 36 L.W. 581 following the earlier Bench decision in *Official Assignee, Madras v. Ramachandra Aiyar* : (1922)43MLJ569 . The position, however, was different after the institution of the partition suit. Under the law as it stood before the Full Bench decision in *Rama Sastrulu v. Balakrishna Rao* : AIR1942 Mad682 it was clearly understood that the father could not exercise the power of disposition over the sons' shares after a suit for partition had been instituted as it would bring about disruption of the status of the family and terminate the power of the father to alienate the shares of the sons for the discharge of his own debts on the basis of the pious obligation theory. The receiver who collected the rents from the shares of the sons in the properties after 1941 till 1945 cannot, therefore, be said to have collected them in exercise of the power of the father and for the purpose of applying them for the discharge of the debts of the father as that power had come to an end with the institution of the partition suit. The creditor, therefore, would be entitled to attach the two-third share of the income which represents the collections in respect of the two villages after the institution of the partition suit and up to 1945. The attachment effected, therefore, by the lower Court will be confined only to such amounts.

4. The appeal is, therefore, partly allowed and the order of the lower Court is modified accordingly. The parties will bear their own costs in this Court. The Official Receiver will, of course, be entitled to deduct the legitimate expenses that he had incurred for making the collections and it is only the net collections that would be attachable.