

APPELLATE CIVIL.

Before Mr. Justice Parker and Mr. Justice Subramanya Ayyar.

MAHADEVA, PLAINTIFF,

v.

KUPPUSAMI, DEFENDANT.*

1892.
January 11.

Civil Procedure Code, s. 356—Insolvency proceedings—Receiver, commission of, how computed.

*A receiver appointed in insolvency proceedings under the Civil Procedure Code is entitled to a lien for the amount of his commission on the net assets remaining after payment of the charges specified in Civil Procedure Code, s. 356 (b), (c) and (d).

CASE stated under section 617 of Act XIV of 1882 by C. Venobachariar, Subordinate Judge of Tanjore.

The case as stated disclosed the following facts:—

A receiver was appointed in the matter of insolvency petition No. 2 of 1888 on the file of the Subordinate Court, Tanjore, to realise and distribute the assets of the insolvent under Civil Procedure Code, s. 356, and he was to receive 5 per cent. commission. He was unable to collect any debts due to the estate, but he realised Rs. 3,675 by the sale of certain immovable property of the insolvent, and he now applied for payment of his commission out of the sale-proceeds. This application was opposed by persons to whom the immovable property had been mortgaged.

The amount of the scheduled debts was Rs. 5,670 and it was found that the payment of the secured debts would almost exhaust the estate.

The question referred was as follows:—

Is the receiver entitled under the Court's order appointing him receiver to a commission of 5 per cent. on the sum realised, which may remain after defraying charges of the kind specified in clauses (b) and (c) of section 356, Civil Procedure Code, or on the balance remaining after discharging the secured debts specified in clause (d), and whether the phrase "balance so distributed" means the balance, which remains after the payment of charges

* Referred Case No. 27 of 1891.

MAHADEVA mentioned in clauses (b) and (c) only or of clauses (b), (c) and (d)
 v. together?
 KUPPUSAMI.

Pattabhiramayyar for plaintiff.

B. Subramanya Ayyar for defendant.

JUDGMENT.—We are of opinion that the receiver is entitled to remuneration at the rate fixed by the late Subordinate Judge, but for the amount of that fee, he is only entitled to a lien to the extent of 5 per cent. upon the sum remaining as net assets after the charges specified in clauses (b), (c) and (d) of section 356 have been paid. The question whether the opposing creditor's claim is a debt secured by mortgage is not before us. See *ex parte Browne in re Malthy*(1).

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
 Mr. Justice Wilkinson.*

1891. SUBBARAZU AND OTHERS (DEFENDANTS NOS. 2 TO 6), APPELLANTS,
 November 27.
 December 15.

v.

VENKATARATNAM AND ANOTHER (PLAINTIFF AND DEFENDANT NO. 1),
 RESPONDENTS. *

*Hindu Law—Partition—Mortgagor and mortgagee—Redemption—Successive mortgages
 on family property—Assignment of equity of redemption.*

Two brothers constituted an undivided Hindu family. The eldest mortgaged half of certain family lands to P and the other half to the father (since deceased) of the contending defendants, and placed the mortgagees respectively in possession. Neither mortgage was binding on the younger brother who mortgaged his share of the same land to the plaintiff. The plaintiff obtained a decree on his mortgage and attached and brought to sale in execution and himself purchased the half share of his mortgagor, and having afterwards purchased the share of the elder brother and come to a settlement with P, now brought a suit for a moiety of the land in the possession of the contending defendants as forming part of the half share of his mortgagor:

Held, (1) that the contest being between strangers to the family, and the plaintiff having purchased the entire rights of the family in the land in question, the plaint was not defective for want of a prayer for the partition of the whole property of the family.

(2) that the plaintiff being the assignee of the elder brother could not

(1) L.R., 16 Ch. D., 497.

* Second Appeal No. 272 of 1891.