

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Blashyam Ayyangar.

KOTHANDARAM RAVUTH (THIRD DEFENDANT), APPELLANT,

1903.
March 18, 19.

v.

MURUGESA MUDALIAR AND ANOTHER (PLAINTIFF AND
FIRST DEFENDANT), RESPONDENTS.*

Indian Insolvency Act—11 § 12 Vict., cap. 21—s. 7—Dismissal of petition after vesting order made—Composition deed made prior to dismissal—Validity.

Two persons applied at Madras to be declared insolvents and an order was made whereby all their properties vested in the Official Assignee. They then entered into a deed of composition for the benefit of their creditors, four persons being appointed trustees under the deed. The insolvents' petition was subsequently dismissed on its being represented to the Court that the creditors had agreed to the deed of composition and one of the creditors then attached the insolvents' property. In support of this creditor's right to do this it was contended (in a suit brought by one of the trustees under the deed against the creditor) that inasmuch as the deed of composition had been executed after the vesting order and prior to the dismissal of the insolvents' petition, it was inoperative to transfer the property comprised in the deed to the trustees, and that it could not, in consequence, prevail against the attachment:

Held, that the provision in section 7 of the Insolvency Act that in case, after the making of any vesting order, the petition should be dismissed, the vesting order shall become null and void, has the effect of re-vesting the property in the insolvent retrospectively from the date of the vesting order. Independently, therefore, of section 43 of the Transfer of Property Act the composition deed operated to vest the property in the trustees, and the creditor had no right to attach it.

Ramasami Kottadiar v. Murugesu Mudaliar, (I.L.R., 20 Mad., 452), approved.

SUIT for a declaration that certain properties were trust properties under a composition deed and that first defendant was not entitled to attach them and bring them to sale in execution of his decree. Defendant had obtained a decree against Venkatesa Tawker and Tuljaram Tawker. The Tawkers failed, and on 11th January 1888 applied to the High Court at Madras to be declared insolvents. An order was thereupon passed (according to the

* Second Appeal No. 1138 of 1900 presented against the decree of G. W. Elphinstone, District Judge of Trichinopoly, in Appeal Suit No. 3 of 1900, presented against the decree of T. A. Krishnaswami Ayyar, District Munsif of Trichinopoly, in Original Suit No. 251 of 1896.

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plaint) whereby all the properties of the insolvents were vested in the Official Assignee. On 17th December 1888, a deed of composition was entered into for the benefit of the creditors, under which all the properties of the insolvents were transferred to four trustees, of whom plaintiff was one. First defendant was a party to the deed of composition and his judgment-debt was included in it. Upon its being represented to the Insolvency Court that this deed had been completed the vesting order was cancelled. The trustees had been managing the estate for the benefit of the creditors, but the first defendant, disregarding the terms of the deed, attached the properties of the insolvents, under his decree. Plaintiff had presented a claim petition but it had been disallowed, so the present suit was brought. Defendants Nos. 2 and 3 were added as the latter had purchased the properties at a sale held in execution of first defendant's decree. The District Munsif made the declaration prayed for, and the District Judge confirmed it on appeal.

Third defendant preferred this second appeal.

V. Krishnasami Ayyar and *A. S. Balasubrahmania Ayyar* for appellant.

T. V. Seshagiri Ayyar for first respondent.

V. Ramesam for second respondent.

JUDGMENT.—The question which has been principally argued in support of this Second Appeal is that the composition deed, to which among others the appellant was a party and which was executed after the order of the Insolvency Commissioner in the High Court was passed and before the dismissal of the Insolvents' petition and the re-vesting order, is inoperative to transfer the property comprised in the composition deed to the plaintiff and other persons appointed as trustees and that it cannot therefore prevail against the attachment made by the appellant, though such attachment was made subsequent to the composition deed.

Having regard to section 7 of the Indian Insolvency Act, 1848, we think that this argument is untenable. That section provides that in case, after the making of any vesting order, the insolvents' petition should be dismissed, the vesting order shall from and after such dismissal become null and void, subject however to the condition that all acts done by the Official Assignee prior to the dismissal of the petition shall be good and valid, a saving which would be unnecessary if the re-vesting had not retrospective effect. We may observe that the section does not provide that the estate, shall

re-vest in the insolvent without any conveyance or assignment by the Official Assignee though a provision is made in the earlier part of the section for the vesting of the property in the Official Assignee without any conveyance or assignment by the insolvent. In our opinion the use of the phrase 'null and void' has the effect of re-vesting the property in the insolvent retrospectively from the date of the vesting order, and provision is therefore made for validating all acts done by the Official Assignee in the interval between the date of the vesting order and the dismissal of the insolvent's petition.

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The view which we take of section 7 is in accordance with that taken by a division bench of this Court in *Ramasami Kottadiar v. Murugesu Mudali*(1).

Independently, therefore, of section 43 of the Transfer of Property Act the composition deed will be operative to vest the property in the trustees.

The attachment therefore was rightly raised on a claim made by the plaintiff as trustee under the composition deed. The plaintiff is the only trustee now alive except one who had renounced the trusteeship without the intervention of the Court in accordance with a power contained in the trust deed. It is clear that section 244 of the Civil Procedure Code is no bar to this suit.

The second appeal therefore fails and is dismissed with costs of the first respondent.

(1) I.L.R., 20 Mad., 452.
