

APPELLATE CIVIL.

*Before Sir Charles Arnold White, Kt., Chief Justice and
Mr. Justice Oldfield.*

1913.
August 8.

U. A. SRINIVASA AIYANGAR, APPELLANT,

v.

THE OFFICIAL ASSIGNEE OF MADRAS AND ANOTHER,
RESPONDENTS.*

Presidency Towns Insolvency Act (III of 1909), sec. 90—Civil Procedure Code (Act V of 1908), sec. 24—Transfer of petition for insolvency to mufassal District Court for disposal—No jurisdiction.

As the jurisdictions conferred by the Presidency Towns Insolvency Act on the High Court, and by the Provincial Insolvency Act on the mufassal Courts are distinct, and the provisions of the two Acts differ in such important respects, it is not competent for the High Court to transfer under section 90 of the Presidency Towns Insolvency Act and under section 24, Civil Procedure Code, an insolvency petition pending before it, under the Presidency Towns Insolvency Act for disposal by a mufassal District Court, under the Provincial Insolvency Act.

APPEAL from the order of BAKEWELL, J., in the insolvency jurisdiction in the High Court in Insolvency Petition No. 291 of 1912—in the matter of *U. A. Srinivasa Ayyangar* (insolvent).

The facts of this case appear from the judgment of WHITE, C.J.

D. Chamier for the appellant.

The Official Assignee appeared in person

WHITE, C.J.

WHITE, C.J.—This is an appeal from an order made by BAKEWELL, J., transferring an insolvency petition pending before him to the District Court of Tanjore. The learned Judge, as appears from the terms of the order, purported to make it under the powers conferred by section 90 of the Presidency Towns Insolvency Act and section 24 of the Civil Procedure Code. The question as to whether the learned Judge had jurisdiction to make the order does not appear to have been raised before him. But Mr. Chamier, who appears for the appellant (the insolvent), has taken the point here that the Judge had no jurisdiction to make the order.

Section 90 of the Presidency Towns Insolvency Act states, "In proceedings under this Act the Court shall have the like

* Original Side Appeal No. 105 of 1912.

powers and follow the like procedure as it has and follows in the exercise of its ordinary original civil jurisdiction." In section 2 of the Act "the Court" is defined as meaning "the Court exercising jurisdiction under this Act," and by the section 3, the Court having jurisdiction under the Act for the purposes of this case is the "High Court of Judicature at Madras." This order was therefore made by the High Court of Judicature at Madras exercising jurisdiction in insolvency. Under the Provincial Insolvency Act, 1907, "the Court" is defined as meaning "the Court exercising jurisdiction under this Act." The jurisdictions conferred by the two Acts are distinct, and the provisions of the two Acts differ in several important respects.

Section 24 of Civil Procedure Code states "on the application of any of the parties . . . the High Court . . . may at any stage transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same." It is not necessary for me to express any opinion as to whether this Court in the exercise of its ordinary original civil jurisdiction can make an order under section 24 of the Code. For the purposes of this appeal we assume that it can. The question then remains, "Is the Court to which this petition has been transferred competent to try or dispose of the same." It seems to me to be clear that it is not, for the reason which has already been stated, viz., that the two jurisdictions are distinct.

It has been suggested that there are sometimes "collusive" arrests within the jurisdiction of the High Court exercising jurisdiction in insolvency under the Presidency Towns Insolvency Act in cases where it would be convenient for the estate to be administered where the estate is situate under the Provincial Act. That may be so. If it is, it is a matter for the legislature to deal with.

I may add that this point came before WALLIS, J., and in dealing with it he said that he was not prepared to make an order of the kind asked for.

We must therefore set aside the order and allow the appeal.

OLDFIELD, J.—I agree.

Solicitors for the appellant—Messrs. *Grant and Creators*.

SRINIVASA
AITANGAR
v.
THE OFFICIAL
ASSIGNEE OF
MADRAS.

WHITE, C.J.

OLDFIELD