APPELLATE CIVIL.

Before Mr. Abdur Rahim, Officiating Chief Justice and Mr. Justice Seshagiri Ayyar.

1916, July, 25 and 26 and August 7.

ABDUL KHADER SAHIB *etal* (APPELLANTS),

v.

THE OFFICIAL ASSIGNEE OF MADRAS *etal* (RESPONDENTS).*

Presidency Towns Insolvency Act (III of 1909), ss. 7, 36 and 90—11 & 12 vict., cap. 21, sec. 26—Immoveable property situate outside local limits of ordinary original civil jurisdiction of High Court—Dispute as to title—Jurisdiction of High Court in insolvency to decide—Summary procedure, when—Letters Patent, cll. 12 and 18—Bankruptcy Act 46 & 47 vict., cap. 52 of 1883, sec. 102.

Under section 7 of the Presidency Towns Insolvency Act (III of 1909), the High Court of Madras in the exercise of its Insolvency Jurisdiction, has jurisdiction to adjudicate on claims relating to immoveable property situate outside the limits of its Ordinary Original Civil jurisdiction; the jurisdiction which existed under section 26 of 11 & 12 vict., cap. 21, has not been cut down by the Presidency Towns Insolvency Act.

The jurisdiction conferred by section 7 of the Act is of a discretionary character, and it is seldom that the Insolvency Court will deem it expedient to try difficult questions of title; the Judge in such cases would ordinarily ask the Official Assignee in Insolvency to establish his title in an ordinary Civil Court.

Section 36 of the Act does not control the language of section 7 but provides a special and summary procedure in certain cases; nor does section 90 curtail the jurisdiction otherwise exercisable by the Insolvency Court.

Decisions on the Bankruptcy Act (46 & 47 vict., cap. 52) of 1883, section 102, corresponding to section 7 of the Indian Act III of 1909, are relevant and should be followed.

Clause 12 of the Letters Patent does not control the provisions of clause 18 thereof so as to limit the Insolvency Jurisdiction of the Court.

Ex parte Dickin; *In re Pollard* (1878) L.R., 8 Ch. D., 377 at p. 386; *Ex parte Brown*; *In re Yates* (1879) L.R., 11 Ch. D., 148, followed.

Maule v. *Davis*; *In re Motion* (1873) L.R., 9 Ch. App., 192 at p. 210: *In re Lucas* (1915) I.L.R., 42 Calc., 109: *Ganeshdas Panalal*; *In re R. D. Sethna* v. *R. S. D. Chopra* (1908) I.L.R., 32 Bom., 198 *and Khan Sahib Bangi Abdul Kadhar Sahib* v. *The Official Assignee* (1913) 14 M.L.T., 51, referred to.

APPEALS from the judgments and orders of BAKEWELL, J., in Insolvency Petition No. 65 of 1914 in In the matter of Loganatha Mudali an insolvent and Insolvency Petition

* Original Side Appeals Nos. 87 and 95 of 1915.

No. 62 of 1915—In the matter of A. Chockalinga Mudaliar an insolvent.

The Official Assignee of Madras took out a garnishee summons from the High Court of Madras in the exercise of its Insolvency jurisdiction in an Insolvency Petition, in which he prayed in effect that certain immoveable property situate in the Chingleput District outside the limits of the Ordinary Original Civil jurisdiction of the High Court and standing in the name of the insolvent's wife, might be declared to be the property of the insolvent and as such vested in the Official Assignee by virtue of the order of adjudication and that she might be ordered to deliver the title-deeds to him. The insolvent's wife alleged that the property was purchased by her out of her own funds and had been in her possession and enjoyment since the purchase; the Official Assignee admitted that he had not obtained possession thereof. The insolvent's wife was a resident within the local limits of the Ordinary Original Civil jurisdiction of the High Court. A preliminary objection was raised on her behalf that the High Court had no jurisdiction, under the Presidency Towns Insolvency Act, to deal with this matter on an application in the Insolvency Court but that the proper procedure was a regular suit in a Civil Court having jurisdiction over the subject-matter. The case came on for disposal before BAKEWELL, J., who held that the Insolvency Court had no jurisdiction to decide disputed question of title to immoveable property situate outside the local limits of the Ordinary Original Civil jurisdiction of the High Court and dismissed the application of the Official Assignee. The latter preferred an appeal to the High Court. The same question of law was raised in the connected Appeal No. 95 and the appeals were heard together.

Original Side Appeal No. 87 *of* 1915.

R. N. Aingar for the appellant.

M. A. Thirunarayanachariyar for the respondent.

Original Side Appeal No. 95 *of* 1915.

M. D. Devadoss and *K. Luke* for the appellant.

C. Sidney Smith for respondents Nos. 2 and 3.

ABDUR RAHIM, OFFG. C.J.—Mr. Justice BAKEWELL, sitting in the Insolvency Court, has held that, under the new Insolvency Act III of 1909, he has no jurisdiction to try the question

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whether certain property situate outside the local limits of the Original Civil jurisdiction of this Court belongs to the insolvent, it being alleged by the Official Assignee that the purchase in the name of the insolvent's wife effected 3 or 4 years before the petition in insolvency was filed was merely *benami* for the insolvent himself. He was of opinion that though admittedly the old Act 11 & 12 Vict., cap. 21, gave a discretion to the Judge sitting in the Insolvency Court to exercise jurisdiction in such cases over third parties, the present Insolvency Act has made a change in the law and all questions arising between the Official Assignee and third parties must be dealt with by the ordinary Civil Court which has jurisdiction over the matter. With all respect to the learned Judge, it seems to me that section 7 of the Act gives him the power to decide questions of title to land situate outside the limits of the Original Civil jurisdiction of the High Court. It says:

"Subject to the provisions of this Act, the Court shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact; which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case."

I do not think that because questions of priority are mentioned first, the very comprehensive words that follow must be narrowed down in their application. The section expressly enables the Court to decide all questions whatsoever which it may deem expedient to decide for the purpose of doing justice or making a complete distribution of the insolvent's property. I find nothing in these words which for a moment suggest that the jurisdiction which the Court had hitherto has been in any way cut down. Reliance is however placed upon section 36, clause (5), which says that if on the examination of a person, summoned on the application of Official Assignee or of any creditor and who has been in possession of the property belonging to the insolvent, the Court is satisfied that the allegation is true, it will order the person in possession to deliver the property to the Official Assignee. The argument is that this shows that the power of the Court to deal with property in possession of a person other than the insolvent is confined to cases where that person admits that the property belongs to the insolvent. But section 36 only provides a

summary procedure in cases where there is no dispute raised, but that does not necessarily exclude the jurisdiction of the Court to deal with cases of disputed title. Only in cases of the latter class the ordinary procedure has to be followed. Section 90 provides:

"In proceedings under this Act the Court shall have the like powers and follow the like procedure as it has and follows in the exercise of its ordinary original civil jurisdiction."

An appeal lies from an order made in the exercise of the insolvency jurisdiction in the same way as from a judgment in civil suits. It has been argued that where questions of title to property are concerned, the general policy of the legislature is that they should be tried in the ordinary forum and difficult and complicated questions of title should not be decided in insolvency proceedings which are more or less of a summary nature. The answer to that is that the jurisdiction conferred by section 7 is of a discretionary character, and it is seldom that the Insolvency Court will deem it expedient to try difficult questions of title. The Judge in such cases would ordinarily ask the Official Assignee to establish his title by an ordinary civil suit and it is only cases which do not involve any prolonged enquiry that the Insolvency Court itself would undertake to decide. Reliance was placed on behalf of the respondent on a decision of Mr. Justice CHITTY of the Calcutta High Court in *In re Lucas*(1). That decision does not however in any way help the respondent. It lays down, that

"Section 36, clauses (4) and (5) of the Presidency Towns Insolvency Act, 1909, provides summary procedure in cases where there is no dispute; it is not intended for contentious matters or for following property the subject of fraudulent preference or dishonest concealment."

But these observations have no force in cases where the ordinary procedure provided in the Civil Procedure Code is followed for the purpose of deciding whether the property in possession of a third person really belongs to the insolvent. It may be pointed out that rule 13 of this Court and rule 5 of the Calcutta High Court clearly recognizes the distinction between cases in which the procedure under section 36 or the ordinary procedure is to be followed. The English decisions on the subject which

(1) (1915) I.L.R., 42 Calc., 109.

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were also discussed at the bar are, I think, perfectly relevant in this connection, inasmuch as section 102 of the Bankruptcy Act of 1883 corresponding to section 72 of the Bankruptcy Act of 1869 is identically in the same terms as section 7 of the Indian Act. In *Ex parte Dickin*; *In re Pollard*(1) and in *Ex parte Brown*; *In re Yates*(2) the jurisdiction of the Court of Bankruptcy in deciding upon the rights of third parties is fully recognized and though in *Ellis* v. *Silber*(3) there are some general remarks of Lord SELBORNE which militate against that view, it cannot be said that the authority of *Ex parte Dickin, In re Pollard* (1) and *Ex parte Brown*; *In re Yates*(2) has been shaken. The English law on the subject is correctly stated in Williams on Bankruptcy, new edition, pages 375—377 and in Robson's Law of Bankruptcy, page 37, where they state the result of the English decisions as affirming the Insolvency Court's jurisdiction in adjudicating upon the rights of third parties.

Nor can it be rightly said that section 12 of the Letters Patent decides the question: for under section 18, the Judge is to exercise

"Such powers and authorities with respect to the original and appellate jurisdiction and otherwise as are constituted by the laws relating to insolvent debtors in India."

As for the argument based on section 90 of Act III of 1909 the proviso to it makes it clear that it was not intended to curtail the jurisdiction of the Court.

The order of Mr. Justice BAKEWELL dismissing the application for garnishee summons taken out by the Official Assignee, is set aside and the case will be remitted to the Insolvency Court for disposal according to law. The same order will govern Appeal No. 95: costs will abide the result.

SESHAGIRI AYYAR, J.

SESHAGIRI AYYAR, J.—I agree. The point for decision is whether the Insolvency Court in Madras has jurisdiction to adjudicate on claims relating to immoveable property situated outside the limits of its ordinary original civil jurisdiction. It was conceded that the practice until very recently was to deal with claims to such properties in the Court of Insolvency. It was also not disputed that under section 26 of 11 & 12 vict., cap. 21, the Presidency Insolvency Courts had and exercised

(1) (1873) L.R., 8 Ch. D., 377 at p. 386. (2) (1879) L.R., 11 Ch. D., 148.
(3) (1872) L.R., 8 Ch. App., 83 at p. 85.

this jurisdiction : see *Ganeshdas Panalal : In re R.D. Sethna* v. *R. S. D. Chopra*(1). The question is whether section 7 of Act III of 1909 which replaces the old section enacts a departure from the rule which was well understood and accepted by all the Courts. The section says :

"The Court shall have full power to decide all questions of priorities, and all questions whatsoever . . . for the purpose of doing complete justice or making a complete distribution of property."

I fail to see in this section anything to cut down the jurisdiction till then exercised. The decision whether a particular property belongs to the claimant or insolvent is necessary for doing justice as well as for the distribution of the property. If anything, the section is more comprehensive than section 26 of the repealed statute. It is true that in terms that section deals with the claims of third parties; but the language employed by the legislature in the new Act is intended to comprise more questions (e.g., the one relating to priority) than came within the purview of the old section. The expression "all other questions whatsoever" expands rather than curtails the jurisdiction already possessed. Reference was made by Mr. Tirunarayanachariar to section 36 of the new Act as pointing to a limit on the powers of the Court. That section empowers the Insolvency Court to summon any person known or suspected to have in his possession any property belonging to the insolvent; and in clauses (2) and (3) prescribes the procedure to be followed on his failure to appear or on his appearance. Then follows clause (5) which seems to put a restraint upon the summary powers of the Court :

"If, on the examination of any such person, the Court is satisfied that he has in his possession any property belonging to the insolvent."

The Court may direct the delivery of the properties. This clause does not say that the Court should base its decision once for all on the evidence adduced by the garnishee, and that it has no power otherwise to adjudicate upon the rights of the garnishee. The enquiry at this stage to my mind is analogous to what takes place when a claim to property is advanced in execution proceedings. The enquiry in such proceedings is not generally exhaustive; because a further right of litigation by

(1) (1908) I.L.R., 32 Bom., 198.

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suit is reserved to the unsuccessful party. Similarly, the Insolvency Court is restricted to the materials furnished by the examination of the garnishee in summarily dealing with his claim. That is how I interpret the section. As pointed out in *In re Lucas*(1) and in *Khan Sahib Bangi Abdul Kadhar Sahib* v. *The Official Assignee*(2) the contentious matters arising on the claim should not be disposed of only on the examination of the claimant, but should be allowed to be dealt with in the ordinary way. That is to say, the Insolvency Court will have to raise the necessary issues, hear evidence and come to a final conclusion as fully as if a suit were instituted for the purpose. I am, therefore, clearly of opinion that section 36 does not control the language of section 7, but provides a special and summary remedy in certain cases.

A brief examination of the provisions of the English Bankruptcy Act bears out fully this position. Section 36 corresponds to section 27 (1) of the Bankruptcy Act of 1883. It is not necessary to refer to the later English Act in dealing with this subject. This section is more restrictive in its operation than the Indian Act. The English Act speaks of the admission of the party summoned as being the basis of the summary decision. Section 7 of the Indian Act corresponds to section 102 of the Bankruptcy Act of 1883. The proviso and the subsequent clauses of the latter section have no bearing in this country. The decisions under section 102 hold that the Bankruptcy Court has jurisdiction to deal with the rights of third parties: *Ex parte Anderson, In re Anderson*(3), *Halliday* v. *Harris*(4) and *Morley* v. *White; In re White*(5). As against these decisions the observations of Lord SELBORNE in *Ellis* v. *Silber*(6) relating to section 72 of the repealed Bankruptcy Act were strongly relied on. These observations must be understood as negativing the suggestion that the ordinary Courts should under no circumstances entertain a claim where the Bankruptcy Court has seisin of the matter. The more guarded expression of opinion in *Maule* v. *Davis In re Motion*(7) (Lord SELBORNE took part in this case also) bears out this view: see also *Ex parte Tait, In re Tait & Co.*(8). In my opinion, the distinction between the two classes of cases is this.

(1) (1915) I.L.R., 42 Calc., 109.
(2) (1913) 14 M.L.T., 51.
(3) (1870) L.R., 5 Ch. App., 473.
(4) (1874) 9 C.P., 668.
(5) (1872) L.R., 8 Ch. App., 214.
(6) (1872) L.R., 8 Ch. App., 83.
(7) (1873) L.R., 9 Ch. App., 192 at p. 210.
(8) (1872) L.R., 13 Eq., 311.

Whereas what the Lord Chancellor dealt with in *Ellis* v. *Silber*(1) referred to the contention that the Bankruptcy Court alone was competent to adjudicate upon the claims of third parties, *Maule* v. *Davis*; *In re Motion*(2) and the other cases relate to the discretion to be exercised by the Bankruptcy Court in directing the trustee to institute or defend in the ordinary Courts suits concerning the rights of third parties. Of course, in England, no question of the local jurisdiction of the High Court can arise. Applying the principle of these decisions to India, it can safely be said that whereas section 7 gives jurisdiction over the property of the insolvent wherever situate, section 36 indicates that this jurisdiction should be exercised summarily only in certain cases and that in other cases all the formalities of a regular trial should be observed, although the forum will be the same in both cases.

The only other point that need be mentioned is the suggestion that clause 12 of the Letters Patent controls clause 18. I see no force in this contention. The two jurisdictions are separately dealt with in the Letters Patent, and there is no reason for importing into clause 18, the restrictive provisions of clause 12. Moreover the Letters Patent by clause 18 directs the Judge to exercise

"such powers and authorities with respect to original and appellate jurisdiction, and otherwise, as are constituted by the laws relating to insolvent debtors in India."

These powers are contained in Act III of 1909 and not in clause 12 of the Letters Patent. Mr. Sidney Smith who appeared in the connected appeal referred to section 90 as placing a restriction on the powers of the Insolvency Court; but the proviso to that section makes it clear that it was not intended to limit the powers otherwise exerciseable by the Insolvency Court. I am, therefore, of opinion that the decision under appeal should be reversed and that the petitions should be remitted back for disposal on the merits. Costs will abide.

Original Side Appeal No. 87 *of* 1915.

Solicitor for the appellant—*M. K. Ramaswami Aayyar.*

Solicitor for the respondent—*P. Kandaswami.*

Original Side Appeal No. 95 *of* 1915.

Solicitor for the appellant—*P. Ramanathan.*

Solicitors for respondents Nos. 2 and 3—*Messrs. Short, Bewes & Co.*

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(1) (1872) L.R., 8 Ch. App., 83 at p. 85. (2) (1873) L.R., 9 Ch. App., 192 at p. 210.