

APPELLATE CIVIL.

*Before Sir John Wallis, Kt., Chief Justice, Mr. Justice Bakewell
and Mr. Justice Kumaraswami Sastriyar.*

SRINIVASA RUNGA ROW PANTULU (DEAD) (REPRESENTED BY
THE OFFICIAL ASSIGNEE, HIGH COURT, MADRAS) AND ANOTHER
(PETITIONER), APPELLANTS,

1917,
September,
10 and 19.

v.

RAJAH OF KARVETNAGAR, BY HIS GUARDIAN,
VARADACHARIAR (COUNTER-PETITIONER),
RESPONDENT.*

Madras Court of Wards Act (II of 1902), ss. 41 and 37—Non-notification of pecuniary claims as required by section 37, effect of—Cessation of interest whether final—Postponement of payment of unnotified claims to notified claims, whether continued after cessation of Court of Wards' management.

The direction contained in section 41 of the Madras Court of Wards Act (II of 1902) to postpone payment of pecuniary claims against a ward of the Court which are not notified, to claims notified to the Collector as required by section 37 of the Act applies only, to the Court of Wards and not to others authorized to execute decrees under the Civil Procedure Code; and that too in respect of unsecured claims; and the direction is not operative after the ward's estate ceases to be under the Court of Wards. Hence a mortgage decree against a person which the decree-holder failed to notify to the Collector while the person was under the Court of Wards is executable in Civil Courts, without any liability to postponement to notified claims, after the Court of Wards' management ceases. But non-notification of the existence of the claim as required by section 37 entails a final cessation of interest from six months after the notification prescribed in section 37 of the Act except in the event specified in section 55(4).

Depuru Kalappu Reddy v. Umada Rajah (1911) 1 M.W.N., 75, considered.

APPEAL under clause 15 of the Letters Patent against the Judgment of OLDFIELD, J. (who differed from KRISHNAN, J.), in *Srinivasa Runga Row v. Minor Rajah of Karvetnagar*(1).

One V. Krishnaswami Row became an insolvent and his estate vested in the Official Assignee of Madras. He was a member of a joint Hindu family of four persons. One of the

* Letters Patent Appeal No. 266 of 1916.

(1) Civil Miscellaneous Appeal No. 107 of 1912 preferred against the order of L. G. MOORE, the District Judge of North Arcot, in Civil Miscellaneous Petition No. 113 of 1911, dated 4th December 1911, in Execution Petition No. 132 of 1905, in Original Suit No. 7 of 1894.

RUNGA ROW
v.
RAJAH OF
KARVET-
NAGAR.

assets of the family was a mortgage decree for a lakh of rupees against the Zamindar of Karvetnagar in Original Suit No. 7 of 1894. The Official Assignee brought a suit (Original Suit No. 116 of 1897) for partition and was appointed receiver to execute the mortgage decree. But before this was done a twenty-fourth share in the decree had passed to a person not a party to the partition suit or the order in it; this share finally passed to one Srinivasa Raghavachari. The Court of Wards had taken charge of the Karvetnagar Estate in 1899, the then zamindar having been declared a ward. The management continued up to 1905 when the estate was released as the zamindar died. The Official Assignee filed Execution Petition No. 132 of 1905 for executing the mortgage decree. The minor zamindar who had succeeded to the estate was also declared a ward of the Court of Wards who assumed management again in August 1907 before the execution was carried out. The management continued till January 1910 when the estate was released under the discretionary power given under the first part of section 54. The usual notification was published by the Collector under section 37 (1) in February 1908 calling upon all creditors to notify their debts and a special notice was apparently sent to the Official Assignee. For some reason not apparent the Official Assignee failed to notify his mortgage decree debt. In December 1914, the District Court held in Civil Miscellaneous Petition No. 148 of 1911 (in the above Execution Petition No. 132 of 1905) that under section 41 of the Act, the claim of the Official Assignee to execute his decree should be postponed until after discharge or satisfaction of the claims of creditors notified or admitted under section 38 and that interest should cease from August 1908, i.e., at the expiry of six months from the date of notification under section 37 (1). Against this order the present appeal was filed in the High Court by the Official Assignee and two others.

In the meanwhile Srinivasa Raghavachari, abovementioned assignee of a twenty-fourth share in the decree, applied for execution of the decree in Original Suit No. 7 of 1894. His application was allowed as he had properly notified his claim under section 38. In execution the mortgaged property was sold in April 1916 and purchased by one Muthia Chetty, a stranger, and the sale-proceeds were deposited in Court.

The decree in Original Suit No. 7 of 1894 having been fully executed, the prayer in the Execution Petition No. 132 of 1905 under appeal, to sell the mortgaged properties became useless; and the decree-holder therefore prayed in the High Court that the balance of the sale-proceeds deposited in Court be paid to him in execution of his decree.

RUNGA ROW
v.
RAJAH OF
KARVET-
NAGAR.

The appeal was heard by OLDFIELD and KRISHNAN, JJ. OLDFIELD, J., agreed with the lower Court and held that as the appellant had not notified his claim to the Collector as required by section 37 (1) of the Madras Court of Wards Act (II of 1902) he had lost his right to subsequent interest and was not entitled to be paid until the creditors who had notified their claims were paid; while KRISHNAN, J., reversed the lower Court's order and remanded the petition holding that on non-notification of the claim interest ceased *for ever*, but that the penalty of postponement was operative only so long as the management of the Court of Wards lasted, and that therefore the decree-holder was entitled to be paid out of the sale-proceeds. In the result the application was dismissed with costs.

The decree-holder then preferred this appeal under clause 15 of the Letters Patent.

T. Narasimha Ayyangar for the appellant.—I contend for the view taken by KRISHNAN, J. The penalty of postponement contained in the second part of section 41 of the Court of Wards Act is only operative during the period of the Court of Wards' management and not after it ceases. *Depuru Kalappa Reddy v. Umada Rajah*(1) is wrong.

L. A. Venkata Raghava Ayyar for *L. A. Govinda Raghava Ayyar* for the respondent.—section 41 (second part) is imperative and the penalty is absolute and extends after the termination of the Court of Wards' management. I adopt the view of OLDFIELD, J. Section 55 gives a clue to the interpretation to be put on section 41. Interest ceases for ever as has been held in *Depuru Kalappa Reddy v. Umada Rajah*(1). The same finality must result in the case of non-notification of security. There are no words in the section stating that the penalty is to be only during the Court of Wards' management.

WALLIS, C.J.—In construing the provisions of section 41 of the Madras Court of Wards Act I of 1902, regard must be

(1), (1911) 1 M.W.N., 75.

RUNGA ROW
 v.
 RAJAH OF
 KARVET-
 NAGAR.
 ———
 WALLIS, C.J.

had to the scope and object of the amendments introduced into the Madras Court of Wards Regulation V of 1874 by Madras Act IV of 1899 and reproduced without substantial alteration in the Act of 1902. The object was to save the estates of embarrassed proprietors or at least a portion of them for their owners and it was hoped that with the aid of the additional powers conferred on it the Court of Wards would be able to provide for the full discharge of the proprietors' debts and liabilities. If not, the creditors were left to their ordinary remedies which were only interfered with as expressly provided. Among the powers conferred on the Court of Wards and its agent the Collector specified in the order under section 19 of the Act, was that of requiring all persons having pecuniary claims on the ward, whether decrees or not, to notify those claims within a specified period, failure to do so being visited with the penalties prescribed by sections 41 and 42. With the information thus acquired and with aid of further powers of ousting usufructuary mortgagees from possession and converting them for the time into simple mortgages and of revising improvident leases it was hoped that the Court of Wards might find itself in a position to raise sufficient money to discharge all the liabilities. Section 41 imposes two penalties with regard to claims which have not been duly notified. The first of them is that

“it shall, notwithstanding any law, contract, decree, or award to the contrary, cease to carry interest from the expiration of the period prescribed by section 37”

for notifying claims. This threatened loss of interest was a strong inducement to notify claims and having regard to the express provision that interest shall cease even when payable under a decree and to the absence of any provision as to its again becoming payable except in the event specified in section 55 (4), I agree with both the learned Judges that, under the sections, the cessation of interest is final and that the claimant is left to prosecute his legal remedies for the amount already accrued due to him.

As regards the second penalty that the unnotified claim

“shall not be paid until after the discharge or satisfaction of the claims notified or admitted under section 38”,

it may be observed in the first place that the provision cannot be construed as depriving secured creditors of their security or as

authorizing the application of money raised on their securities otherwise than in satisfaction of their claims. If not paid the secured creditor is entitled to retain his security till he is paid. In these circumstances to hold that the Court of Wards is prohibited by this section from raising money on the security and discharging the secured creditor and applying the surplus in the discharge of the general indebtedness would merely be to prevent the Court from raising money for the beneficial purposes specified in section 323 (3), Code of Civil Procedure and would unnecessarily embarrass it in the discharge of the difficult function entrusted to it without advantage to any body. This cannot, I think, have been the intention of the Legislature and I think that therefore we are justified in putting a restrictive construction on this highly general section and holding that in the case of secured creditors who have not notified it only prohibits payments to them by the Court of Wards out of the unincumbered funds at its disposal and does not prohibit the realization of the security and the satisfaction out of the proceeds of the secured creditor's claim.

If the prohibition of payment in section 41 is directed to the Court of Wards it follows of course that it must cease as held by KRISHNAN, J., when the Court of Wards withdraws from superintendence. I am disposed to think that it must be confined to the Court of Wards and that it does not extend to the authorities executing decrees even during the continuance of the superintendence of the Court of Wards. Creditors whether they have notified or not are not prevented from obtaining decrees and proceeding to execute them. If the execution is left to the Civil Courts, each Court must execute the decree before it with due regard to the rights of secured creditors and to the rights of unsecured decree-holders to rateable distribution. It can hardly have been intended that on each occasion of executing a decree the executing Court should have to embark on an inquiry as to whether all the notified debts have been paid and I think that sufficient effect may be given to section 41 without construing it as affecting the duties of executing Courts and that if it had been intended to affect them, there would have been express provisions to that effect. Again when the Local Government exercises its power under section 45 of transferring decrees against the ward to Collector for execution,

RUNGA ROW

v.

RAJAH OF
KARVET-
NAGAR.

WALLIS, C.J.

BUNGA ROW
v.
RAJAH OF
KARVET-
NAGAR.

WALLIS, C.J.

I think the same considerations apply and that the provisions of section 41 as to order of payment do not affect the decree collector, as he is called, in the discharge of his duties under sections 321—325 (C) of the old Code of Civil Procedure which are made applicable by section 47 subject to the rules prescribed by the Local Government under section 45 (2) which rules however apply only to procedure and do not affect the substantive rights of the parties. In the case of decrees such as the present obtained by secured creditors ordering the sale of immoveable property in pursuance of a contract specifically affecting the same the decree collector has the powers conferred upon him by section 321 and is required by section 324 (A), to apply the moneys realized by him, subject to the claims of maintenance holders, in execution of the decree for which the Court ordered the sale of the immoveable property and in the case of other decrees to apply such moneys by way of rateable distribution under section 323 (3); the decree collector is also empowered to discharge the claim of any incumbrancer whether it has matured or not

“for the purposes of improving the saleable value of the property available or any part thereof or rendering it more suitable for letting or managing or for preserving the property from sale in satisfaction of an incumbrance.”

I do not think that the second part of section 41 was intended to affect the decree collector as regards these powers and duties.

This is an attempt to execute a mortgage decree passed in 1895. It is stated by the District Judge of North Arcot in his order on the connected Execution Petition No. 79 of 1912, dated 21st November 1912, that the Court of Wards assumed management on 26th July 1899 and gave up management of the estate on 27th September 1905 and that decrees were transferred to the Collector for execution and retransferred to the Civil Courts on 27th February 1906. It is also stated that the Court of Wards again assumed superintendence on 17th August 1907, and relinquished it on 15th January 1910, but it is not stated that decrees were again transferred to the Collector for execution during that period and the execution still remains with the Civil Courts. As it is now more than eighteen years since the Court of Wards first took over management and the other secured and unsecured claims have not yet been satisfied it seems exceedingly

unlikely that they ever will be satisfied and if they are not, the money which has been realized on account of the defendant's security and which is in Court must according to the District Judge's order remain there for ever, a result which the Legislature can certainly not have contemplated. In passing the order the learned District Judge relied on a ruling contained in a judgment to which I was a party with KRISHNASWAMI AYYAR, J., in *Dexuru Kalappa Reddi v. Umada Rajah*(1) that the provisions of section 41 are absolute except in so far as they are cut down by section 55 (3) and OLDFIELD, J., has also relied on this ruling. That was an appeal against an order in which the District Judge had held that the zamindari was not liable to be proceeded against for many debts incurred by the previous holder and the order was reversed on the ground that his view was wrong. Apparently the District Judge's ruling in that case that section 41 was not applicable when the decree was being executed in the Civil Court was also questioned before us; and, as to this, I now think we expressed ourselves too broadly, because while I am still of opinion that the provisions of section 41 as to the cessation of interest continue to apply, I have come to the conclusion on a fuller consideration of the subject that the further provisions of the section are inapplicable for the reasons already given to the present case. In the result we agree with the order proposed by KRISHNAN, J. Costs of the appeal to abide the result.

BAKEWELL, J.—I agree.

KUMARASWAMI SASTRIYAR, J.—I agree.

RUNGA ROW
v.
RAJAH OF
KARVET-
NAGAR.

WALLIS, C.J.

BAKEWELL, J.

KUMARA-
SWAMI

SASTRIYAR J.

N.R.

(1) (1911) 1 M.W.N., 75.