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 VIRANNA,
 RAMESAM, J.

Court for the raising of loans by mortgage whereas the present case and *Sikher Chand v. Dulputty Singh* (1), relate to sales. To give effect to the policy of the legislature in section 31 of the Guardians and Wards Act, I think it is enough to hold as in *Sikher Chand v. Dulputty Singh* (1), that the burden of proof is shifted to the plaintiff, and that it is not necessary to say that fraud has to be made out on the part of the purchaser to impeach the transaction.

I agree that the Appeal should be dismissed with costs.

K. R.

APPELLATE CIVIL.

Before Mr. Justice Ayling and Mr. Justice Venkatasubba Rao.

1921,
 December
 7.

S. R. M. S. T. R. M. RAMASWAMI CHETTIAR THROUGH
 HIS AUTHORIZED AGENT KUPPANNA IYENGAR
 (RESPONDENT) APPELLANT,

v.

T. S. RAMASWAMI IYENGAR AND ANOTHER (OFFICIAL
 RECEIVER AND PETITIONER), RESPONDENTS.*

Provincial Insolvency Act (V of 1920), ss. 4, 5 and 56—Sale by Official Receiver of insolvent's property and obstruction to delivery—Power of Insolvency Court to inquire into title and to deliver.

Under sections 4, 5 and 56 of the Provincial Insolvency Act (V of 1920) a Court of Insolvency can inquire into disputed title and order delivery of an insolvent's property to a purchaser thereof from the Official Receiver, removing the obstruction of a third party; *Narasimhaya v. Veeraraghavulu*, (1918) I.L.R., 41 Mad., 440, *Maddipoti Peramma v. Gandrapu Krishnayya*, (1918) 8 L.W., 136 and *Official Receiver, Tinnevely v. Sankaralinga Mudaliar*, (1921) I.L.R., 44 Mad., 524, distinguished.

(1) (1880) I.L.R., 5 Calc., 363.

* Appeal against Order No. 295 of 1920.

APPEAL against the order of P. C. LOBO, Acting District Judge of Madura, in Miscellaneous Petition No. 178 of 1920, in Insolvency Petition No. 3 of 1917.

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After an order vesting an insolvent's properties in the Official Receiver, the Receiver sold one of the properties to the appellant and ordered delivery of the same. When the appellant wanted to take possession, the insolvent's son resisted on the ground that his interest in the property did not vest in the Official Receiver and that the purchase was benami for him. He applied to the Official Receiver to review his order of delivery. The Official Receiver while refusing to reconsider his order placed the matter before the District Judge. The District Judge being of opinion that after the sale the Official Receiver had no power to put the purchaser in possession and that a Court of Insolvency had no jurisdiction to deliver possession of properties except to a person having a decree of Court for possession or an order of a Court declaring him to be a purchaser in a Court auction, cancelled the Official Receiver's order for delivery and directed the insolvent's son to file regular suit to establish his right to possession. Against that order the purchaser filed this appeal.

T. M. Krishnaswami Ayyar for *A. Krishnaswami Ayyar* with *M. Subbaraya Ayyar*, for appellant.—The Insolvency Court has jurisdiction to order delivery: see sections 4, 5, 22, 56 and 66. Section 4 is new and has been enacted for such purposes. Section 7 of the Presidency Towns Insolvency Act is similar to section 4 and it has been construed to give such power: *Nilmony Choudhury v. Durga Charan Chowdhury*(1) and '*Abdul Khader v. The Official Assignee of Madras*(2). The procedure prescribed in the

(1) (1918) 22 C.W.N., 704.

(2) (1917) I.L.R., 40 Mad., 810.

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Civil Procedure Code applies. A Court of Insolvency can decide questions of title; see *Naginal Chavilal v. The Official Assignee*(1). Section 69 of the English Bankruptcy Act of 1869 corresponding to section 4 has been construed to give such power to an Insolvency Court: *Ex parte Anderson v. In re Anderson*(2), Williams on Bankruptcy, pages 375, 377. A Court can give auxiliary aids to its own Receivers appointed under the Civil Procedure Code: *Minatoonnessa Bibee v. Khatoonnessa Bibee*(3), *Bansidhar v. Khargjit*(4). Reference was made to *Ramalingam Pillai v. Official Receiver, Trichinopoly*(5) and *Narasimhaya v. Veeraraghavulu*(6) and the cases following it were distinguished as being under the old Act (III of 1907).

K. V. Krishnaswami Ayyar for respondents—Section 4 does not confer any new right on Insolvency Court. Under it the Insolvency Court can only decide questions but cannot deliver property. When a Receiver is appointed by Court he can be given possession by Court under section 14 of the Provincial Insolvency Act. But if he sells property that vested in him to a third party the Insolvency Court cannot give possession to the third party. Here the son says that the father's debt was illegal and immoral and that the sale does not pass his interest. The insolvent's right alone, i.e., the father's right alone, vests in the Official Receiver and the son's right is paramount to that right; and it cannot be delivered. Reliance was placed on *Narasimhaya v. Veeraraghavulu*(6), *Maddipoti Peramma v. Gandrapu Krishnayya*(7) and *Official Receiver, Tinnevelly v. Santharalinga Mudaliar*(8).

T. M. Krishnaswami Ayyar replied.

(1) (1911) I.L.R., 35 Bom., 473, 475. (2) (1870) 5 Ch., App. 473, 479, 480.
 (3) (1894) I.L.R., 21 Calc., 479. (4) (1915) I.L.R., 37 All., 65.
 (5) (1921) 41 M.L.J., 211. (6) (1918) I.L.R., 41 M ad., 440.
 (7) (1918) 8 L.W., 136, 138. (8) (1921) I.L.R., 44 Mad., 524.

The Court delivered the following JUDGMENT :

This Appeal in effect raises the question whether a purchaser from the Official Receiver of a property of the insolvent whom the Receiver represents, can obtain an order from the Insolvency Court for delivery of possession of the property where his application is resisted by a third party.

This Appeal has been argued before us on the footing that the rights of the parties are governed by the provisions of the Provincial Insolvency Act, Act V of 1920. It is necessary to examine carefully the terms of sections 4, 5 and 56 of this Act. By section 56 (3) it is provided that

“ Where the Court appoints a receiver, it may remove the person, in whose possession or custody any such property as aforesaid is, from the possession or custody thereof.

“ Provided that nothing in this section shall be deemed to authorize the Court to remove from the possession or custody of property any person whom the insolvent has not a present right so to remove.”

This section clearly applies to the case of a receiver applying for the removal of an obstructor from the possession of the property claimed to be the property of the insolvent. It is also clear that, for the purpose of determining the right of the receiver as against the obstructor to the possession of the property, the Court can hold an inquiry under this section.

There is no section in the old Provincial Insolvency Act, Act III of 1907, corresponding to section 4 of the present Act. There were conflicting decisions in regard to the power of the Court to deal with the claims of third parties against the insolvent and it was to set at rest the doubt that existed upon the subject that section 4 was introduced into the present Act. It will be seen that very wide powers are given to the Court under section 4: the Court may decide any question which it

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may deem it expedient or necessary to decide for the purpose of doing complete justice or making complete distribution of property. Sub-section (2) refers, in terms, to the claims between the debtor and the debtor's estate on the one hand and all claimants against him or it on the other hand. It is also to be noted that a discretion is given to the Court to decide the question in the Insolvency proceedings and that it is not binding upon the Insolvency Court to decide under this section every claim which is brought up before it.

Passing to section 5, it makes provision, *inter alia*, for effect being given to the orders and decrees passed by the Insolvency Court. Under these sections does the purchaser from the Official Receiver have the right to apply to the Court for being put in possession of the property purchased by him? The District Judge disallowed the applications on the ground that the Court cannot issue a delivery warrant on the application of a stranger to the proceedings. Clause (3) of section 56 is not limited to the case of an application by the Receiver and the terms of the clause are general. Why should we restrict the operation of this clause to applications by the Receiver himself? The learned Vakil for the respondent asks us, virtually, to introduce into the section the words "on the application of the Receiver." In our opinion there is no justification for refusing to give to the words of clause (3), of section 56, their natural meaning and for restricting the scope of the clause.

It has also been contended before us for the respondent that the Insolvency Court is not vested with powers to execute the orders except to the limited extent of being enabled to execute orders in favour of the Receivers appointed under the Act. If it is conceded that there is an executing machinery that is available to the Receiver, we fail to see on what principle this

machinery cannot be availed of by a purchaser from the Receiver. The execution of any order made by the Court under section 56 or section 4 will be regulated by the terms of section 5. For instance, if an order for a warrant of possession is made in favour of the Receiver or of a purchaser from him, the method of executing the warrant under section 5 will be the same as that prescribed for the execution of a warrant issued by the Court in the exercise of Original Civil Jurisdiction. The Legislature having invested the Insolvency Courts with extensive powers under section 4, it would be, in our opinion, anomalous to hold that the Courts are powerless to give effect to their judgments or orders. The terms of sections 4, 5 and 56 do not suggest that any such limitation is intended. We are, therefore, unable to accept the contention of the learned vakil for the respondent that the auction purchaser cannot, under the provisions of the Insolvency Act of 1920, apply to the Insolvency Court for a warrant of possession.

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Several cases were relied on by the respondent. The first case cited by him is *Narasimhaya v. Veeraraghavulu* (1). Certain property alleged to belong to an insolvent was sold by the Receiver and the purchaser while attempting to take possession was obstructed by the appellants who claimed to be in possession as owners. The District Judge purporting to act under section 47 of Act III of 1907 ordered possession to be given to the purchaser. The High Court held that the District Judge had no jurisdiction to pass such an order. ABDUR RAHIM, J., at page 441, says :

“ It would be going much too far to say that a Judge in Insolvency in the mufassal has powers by a summary proceeding to decide questions of title with respect to property claimed by third persons.”

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The Courts have now power to decide questions of title under section 4 of Act V of 1920, and the reasoning given in this judgment would not, therefore, apply to an application made under the present Act. The judgment proceeds upon the ground that section 47 of Act III of 1907 which corresponds to section 5 of the present Act did not apply because there was no decree, and a sale by the Receiver was not a sale in execution of a decree. We are of opinion that the Court has the power not only to make an order in favour of the purchaser but also to give full effect to it. We fail to see that there is anything in the terms of section 47 which fettered the power of the Court because the sale happened to be a sale made by a Receiver and not a sale made in pursuance of a decree. However, it is sufficient to say that this is a decision under the old Act and that it is distinguishable on that ground, especially in view of the enlarged powers possessed by the Court under the present Act.

We have no doubt that the Insolvency Court under Act V of 1920 has ample power to deal with questions arising between the estate of an insolvent and a third party. Section 4 is modelled on section 7 of the Presidency Towns Insolvency Act, III of 1909. Under this corresponding provision of the Presidency Towns Insolvency Act it has been held that the Court is vested with jurisdiction to deal with questions arising between the Official Assignee and third parties. This point was expressly decided in *Official Assignee of Madras v. Vedavali Ammal* (1). BAKWELL, J., sitting in the Insolvency Court held that, although, under the old Act, 11 and 12 Vict., Ch. 21, the Insolvency Court had a discretion to exercise jurisdiction over third parties, Act III of 1909 effected a change in the law and that

(1) (1916) 4 L.W., 425.

the jurisdiction was curtailed. This view was not accepted by the Appellate Court. The provisions of section 4 of the present Provincial Insolvency Act are if anything, wider than the terms of section 7 of the Presidency Towns Insolvency Act, III of 1909. We have therefore no hesitation in holding that the insolvency Court has plenary powers to deal with the claims of third parties under the provisions of the present Provincial Insolvency Act.

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The next case cited to us is *Maddipoti Peramma v. Gandrapu Krishnayya*(1). BAKEWELL, J., took the view that under section 18 (3) of Act III of 1907, the Court had power to remove a person in possession of property of the insolvent from possession, but that the power was not intended to provide for the determination of questions of title as between the insolvent and third parties. KRISHNAN, J., took the opposite view on this matter. But they agreed in holding that an order passed by the District Judge, on the application by a purchaser of the insolvent's property from the Official Receiver, directing the third party claiming title to deliver possession of the property to the purchaser, was without jurisdiction. The observations we made in regard to *Narasimhaia v. Veeraraghavulu*(2) apply to this case also and we are prepared to hold that this case being a decision under the old Act, does not stand in the way of our deciding in favour of the rights contended for on behalf of the purchaser from the Receiver.

We have been referred to *Official Receiver, Tinnevelly v. Sankaralinga Mudaliar*(3) which is also a case decided under the old Act III, of 1907. The observations of SESHAGIRI AYYAR, J., at page 532 that "section 4 of the present Act should not be regarded as if for the first

(1) (1918) 8 L. W., 136.

(2) (1919) I.L.R., 4J Mad., 440.

(3) (1921) I.L.R., 44 Mad., 524.

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time a new power had been conferred" are obiter, and it is unnecessary to discuss this point.

We may observe that in the present case an application was also made by the Official Receiver to the District Court asking for possession of the property. He applied that the auction purchaser might be put in possession of the property on his behalf. The learned District Judge was of opinion that, under section 18 (3) of the old Act the Official Receiver having ceased to be the owner could not apply. It is unnecessary to decide the question whether, after parting with his interest, the Official Receiver can apply, because, as stated above we are of opinion that the application on behalf of the auction purchaser would lie to the Insolvency Court and that the District Judge was in error in refusing to entertain the application.

We would also like to refer to *Minatoonnessa Bibee v. Khatoonnessa Bibee*(1) where it was held by SALE, J., that "a purchaser at a Receiver's sale had a right to obtain the assistance of the Court in obtaining possession." No doubt, the Receiver referred to here was a Receiver appointed in a suit. At page 482 reference is made to an order made by the Calcutta High Court in an administration suit in which the Receiver appointed in the suit was directed to sell and upon the application of the purchaser an order was made directing possession to be given to the purchaser. In the Judgment are given several instances of similar orders made by the Calcutta High Court in the exercise of its Original Civil Jurisdiction. We think that there is no distinction in principle in this respect between a purchaser from a Receiver appointed in a suit and a purchaser from a Receiver appointed in regard to an insolvent's property.

The District Judge in the present case on account of the view he took of his powers, refused to deal with the merits of the claim of the obstructor who is the son of the insolvent and who put forward certain contentions. We set aside the order of the District Judge and remand the application to be disposed of by him according to law in the light of the observations contained in this judgment.

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Costs of this Appeal will abide the result.

N.R.

APPELLATE CIVIL.

*Before Mr. Justice Ayling and Mr. Justice
Venkatasubba Rao.*

KANDASAMI REDDI AND OTHERS (DEFENDANTS 1 TO 5 AND 7
TO 11), APPELLANTS,

1921,
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v.

SUPPAMMAL AND ANOTHER (PLAINTIFFS) RESPONDENTS.*

*Limitation Act (IX of 1908), sec. 19—Acknowledgment—
Previous statement when good as an acknowledgment.*

A statement by a person that he executed a hypothecation in favour of another cannot be construed as containing an implied acknowledgment of liability unless it is clear therefrom that he admitted that the debt was still subsisting or unless there was a clear necessity at the same time to mention the fact of discharge. *Venkata v. Parthasaradhi*, (1893) I.L.R., 16 Mad., 220 followed, *Maniram Seth v. Seth Rupchand*, (1906) I.L.R., 33 Calc., 1047 (P.C.), explained.

APPEAL against the order of remand of C. R. VENKATESWARA AYYAR, Acting Subordinate Judge of Rāmnād at Madura, in Appeal Suit No. 80 of 1919 (Appeal No. 280 of 1919 on the file of the Rāmnād District Court), preferred against the decree of M. SUBRAHMANYA AYYAR,

* Appeal against Order No. 139 of 1920.