

APPELLATE CIVIL.

*Before Sir William Ayling, Kt., Officiating Chief Justice,
and Mr Justice Odgers.*

GONTU APPIREDDI (FIFTH RESPONDENT), APPELLANT,

v

1921,
September
14.

GONTU CHINNA APPIREDDI AND TEN OTHERS (PETITIONERS
1 TO 4 AND CREDITORS 3, 4, 6, 7 AND 8), RESPONDENTS.*

*Provincial Insolvency Act (V of 1920), ss. 6 (b), 7 and 58—
Creditor's petition for adjudicating debtor insolvent on account
of fraudulent alienation and to annul alienation—Order of
adjudication and annulment of alienation without Receiver's
application—Invalidity of.*

Being satisfied on inquiry as to the truth of a creditor's petition that a debtor committed an act of insolvency in that he alienated his properties with intent to defeat his creditors, a Judge not only adjudicated the debtor an insolvent but also annulled the alienation by the same order before appointing a Receiver.

Held that the order annulling the alienation was illegal, that it was for the Receiver to be appointed to apply for such an order and that until the Receiver refuses to do so no one else has the right to apply. *Hemraj Champa Lall v. Ramkishen Ram*, (1916) 2 Patna. L.J., 101 at 107, followed.

APPEAL against the order of F. A. COLERIDGE, District Judge of Guntūr, in Insolvency Petition No. 1 of 1919.

One Chandavaram Ramayya and his three undivided sons owed about Rs. 1,000 to two persons, Chinna Appi Reddi and Venkata Reddi. These creditors demanded payment by means of a registered notice on 26th September 1918, filed a suit on 15th November 1918 and on 19th November 1918 attached the debtors' properties before judgment. As the debtors sold

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some of these properties to one Gontu Appi Reddi by two sale-deeds, dated 6th November 1918 and 18th November 1918, the creditors filed on 20th December 1918 a petition under section 7 of the Provincial Insolvency Act (V of 1920) to declare the debtors insolvents and to have the sales annulled as fraudulent, alleging that the debtors committed an act of insolvency by the execution of these two sale-deeds. The debtors pleaded that no debt was due to the creditors and that the sales were bona fide and for consideration. On inquiry, the District Judge, who found against both these pleas, not only adjudicated the debtors insolvents but by the same order annulled the sales as fraudulent. By a subsequent order on the same day (i.e., on 13th March 1920) he appointed a Receiver for the debtors' properties. The purchaser preferred this Appeal.

V. Rama Doss for appellant.—The Court has no right to annul the sales merely on the petition of the creditors. Until the Receiver appointed, or to be appointed, in the proceeding refuses to act no one else has the right to apply for the annulment of the sale. The Receiver alone can apply under section 53 of the Provincial Insolvency Act; reference was made to sections 24 and 23 (2) of the Act, *Hemraj Ohampa Lall v. Ramkishan Ram*(1), *Kauleshar Ram v. Bhawan Prasad*(2), *Mariappa Pillai v. Raman Chettiar*(3), and 15 Halsbury, page 89, paragraph 184. Proceedings under section 24 are only summary, while those under section 53 should be tried as regular suits: *Chunnoo Lal v. Lachman Sonar*(4). In this case a Receiver was appointed only after the annulment of the sales.

(1) (1916) 2 Patna L.J., 107.

(3) (1919) I.L.R., 42 Mad., 322.

(2) (1917) 42 I.C., 845.

(4) (1917) I.L.R., 39 All., 391.

N. Rama Rao for the respondent.—The act of bankruptcy which entitled the creditors to present the petition was the fraudulent alienation. After an inquiry in the presence of the alienee, it is unnecessary to go through such an inquiry once again for the purpose of section 53 in the presence of the Receiver. Section 4 of the Provincial Insolvency Act is wide and must be deemed to empower the Court to annul a fraudulent alienation even in the absence of a Receiver: *Secretary of State for India v. Dadi Reddi Nagiah*(1). Until a Receiver is appointed under section 58 the property vests in the Court and any creditor can file a petition under section 53 and call for an enquiry: *Krushali Ram v. Bholar Mal*(2), *Nikka Mal v. Marwar Bank, Ltd.*(3).

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The Court delivered the following JUDGMENT :

In this case two creditors of one Chandavaram Ramayya and his three undivided sons (respondents 1 to 4) petitioned (1) that they might be declared insolvents (2) that certain alienations made by respondents 1 to 4 in favour of the fifth respondent might be declared invalid and cancelled. The alienations took place about a month before the presentation of the petition which is dated 20th December 1918. The learned District Judge heard the petition on 13th March 1920 and in the same order not only adjudicated respondents 1 to 4 insolvents but declared the sale-deeds which witnessed the alienations cancelled. The act of insolvency alleged and proved against the respondents 1 to 4 was these alienations under section 6 (b) of the Provincial Insolvency Act (V of 1920), i.e., they were

(1) (1919) 36 M.L.J., 180, 188.

(2) (1915) I.L.R. 37 All., 252.

(3) (1919) 52 I.C., 188.

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held to be transfers with intent to defraud or delay creditors. The petition was presented under section 7 and the debtors were adjudicated under section 27 (i) which runs thus :

“ If the Court does not dismiss the petition it shall make an order for adjudication.”

There is of course no doubt that the learned District Judge was justified in making the order of adjudication but the question is was he right in going further and ordering the cancellation of the sale-deeds in the same order ? He apparently held a detailed inquiry, to which the vendor was a party ; whereas one would ordinarily expect that a much more summary procedure would in the first instance meet the case. The question is governed by section 53 of the Act which provides that such transfers as are therein specified “ shall be voidable as against the Receiver and may be annulled by the Court.” The section certainly contemplates action by the Receiver. It is true that at the time the order for cancellation was made the Receiver had not been appointed, but he was appointed later on the same day. In *Hemraj Champa Lall v. Rambhishen Ram*(1), it was held that until the Receiver refuses or declines to act no one else can do so, because he is the person to set the proceedings under section 36 (now section 53) in motion.

We are inclined to respectfully adopt this decision. The other cases cited can be shortly dealt with. In *Kauleshar Ram v. Bhawan Prasad*(2) the Allahabad High Court held that a proceeding to set aside a transfer should be taken in the name of the Receiver and that no proceeding should have been commenced (by the creditors) until after the appointment of a Receiver. It may well be that when the Receiver fails to move in

(1) (1916) 2 Patna L.J., 101 at p. 107.

(2) (1917) 42 I.C., 845.

the matter a creditor may do so: *Nikka Mal v. Marwar Bank, Ltd.*(1). Even there, the Court held that in a case of fraudulent preference the Receiver should either apply or be a party to the application. The judgment in *Krushali Ram. v. Bholar Mal*(2), does not deal with this question at all but simply with the jurisdiction of an Insolvency Court. There, the Judge had referred a creditor alleging a fictitious mortgage to a suit instead of enquiring into the question himself, as the Court held he was bound to do. It does not appear whether or not a Receiver had been appointed in that case. Section 4 of the Act which was quoted for the respondents is inserted for the purpose of putting an end to the conflict of decisions as to whether proceedings in the Insolvency Court constitute *res judicata* or not.

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It appears to us that what authority there is all points one way, viz., that it is for the Receiver to take action under section 53 and not for the Court to do so on a petition for adjudication. We accordingly set aside that part of the District Judge's order which relates to the cancellation of the sale-deeds to the fifth respondent.

No costs in this Court.

N.B.

(1) (1919) 52 I.C., 186.

(2) (1915) I.L.R., 37 All., 252.