PALANIANDI CHETTI v. ADAIKALAM CHETTI.

Prasad v. *Bindeshri Prasad*(1), it has been held that such a matter, which is not of private interest between parties, cannot be settled by a reference to arbitrators. This ruling I respectfully follow. The law allows a reference to arbitrators where all the parties interested agree that the subject of difference between them shall be so referred. In a guardianship application the party most interested is the minor and he cannot agree to a reference. There is nothing on record to show that the Judge arrived at any independent conclusion as to Adaikalam Chetti's fitness for appointment. Under the circumstances, I think that his order must be set aside and that he must be directed to dispose of the application afresh. I do this with great reluctance. It is quite likely that Adaikalam Chetti is the proper person to be appointed and this litigation has been going on since March 1920. As appellant agreed to the reference, there will be no order as to costs.

WALLER, J.

KRISHNAN, J. KRISHNAN, J.—I agree.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Phillips and Mr. Justice Venkatasubba Rao.

1923, November 21.

SANKARANARAYANA PILLAI AND OTHERS (DEFENDANTS), APPELLANTS

v.

RAJAMANI *alias* GURUSAMY NADAR AND OTHERS (PLAINTIFFS AND DEFENDANTS), RESPONDENTS.*

Sections 16, 18, 20 *and* 23 *of Provincial Insolvency Act (III of* 1907)—*Order adjudicating a Hindu father and his minor son as insolvents "referring further proceedings to Official*

(1) (1908) I.L.R., 30 All., p. 137

* Appeal Nos. 216 and 272 of 1921.

Receiver"—Meaning of—Implied appointment of Official Receiver as Receiver—Sale by Receiver of son's interest also for debts binding on son—Validity of sale.

On an act of insolvency by a Hindu father, the Court adjudicated as insolvents not only the father but also his minor sons and passed an order "Referred to the Official Receiver for further proceedings."

Held that the order amounted to an appointment of the Official Receiver as Receiver to take charge of the estate and vested the estate of the insolvents in him.

But even assuming that it was not so, the estate vested in the Court as Receiver under section 23 of the Provincial Insolvency Act as soon as the adjudication was made and the sale by the Official Receiver was valid under section 20 (*e*) of the Act as one effected by the agent of the Court and afterwards ratified by it. *Subba Aiyar* v. *Ramaswami Aiyangar* (1921) I.L.R., 44 Mad., 547, followed.

Held also, assuming that the order adjudicating the minor sons also as insolvents was wrong and that their shares did not vest in the Official Receiver, yet a sale by him, purporting to be of the whole family estate of all the insolvents, passed to the vendee the sons' shares also, since the Official Receiver who stood in the shoes of the father could have sold the sons' shares also for discharging the debts which were neither illegal nor immoral. *Bijraj Nopani* v. *Pura Sundary Dasee* (1915) I.L.R., 42 Calc., 56 (P.C.), *Charib-ullah* v. *Khalak Singh* (1903) I.L.R., 25 All., 407 (P.C.), followed.

APPEALS against the decree of the Additional Subordinate Judge of Tinnevelly in Original Suit No. 9 of 1920.

The facts are given in the judgment.

T. R. Venkatarama Sastri and *T. L. Venkatarama Aiyar* for appellants.

A. Krishnaswami Aiyar for respondents.

JUDGMENT.

PHILLIPS, J.—The plaintiffs in this suit are the sons of defendants 1 and 2 and in 1912 defendants 1 and 2 and third defendant who were carrying on business PHILLIPS, J.

SANKARA-NARAYANAA PILLAI v. RAJAMANI.

PHILLIPS, J.

together were adjudicated insolvents, and at the same time the plaintiffs who were made parties to the insolvency petition were also adjudicated. The family property of defendants 1 and 2 were sold by the Official Receiver and now the plaintiffs bring this suit to recover their $\frac{4}{5}$ths share in that property on the ground that they were wrongly adjudicated insolvents and that, consequently, the sale of their property by the Official Receiver was void as against them.

Assuming that the plaintiffs who were then minors were wrongly adjudicated insolvents, the question remains whether the sales effected by the Official Receiver did or did not pass their interest in the family property.

The sale is objected to on two grounds, firstly, that the Official Receiver purported to sell the share of the plaintiffs and, not having authority to do so as their adjudication was illegal, the property did not pass; and, secondly, it is contended that the property of the insolvents did not vest in the Official Receiver. The Subordinate Judge has decided the second point against the plaintiffs but has found on the first point that the Official Receiver purported to sell the plaintiffs' share as well as the shares of their fathers, defendants 1 and 2, and that, as he had no right to sell the minors' shares, the sale is not binding upon them. On referring to the sale-deeds Exhibits XVI, XXII, XXVIII, XXX, etc., we find that the Official Receiver sold the properties belonging to defendants 1 to 3 and the plaintiffs. In several of the sale-deeds there is also a recital that these persons had all been adjudicated insolvents, and it is these documents that the Subordinate Judge has interpreted as constituting a sale of the minors' rights in the property separately from the rights of those legally adjudicated insolvents. The appellants, however,

rely on two cases decided by the Privy Council, namely, *Bijraj Nopani* v. *Pura Sundary Dasee*(1) and *Charib-ullah* v. *Khalak Singh*(2). The former was a case of a sale wherein the vendor purported to sell certain property as the beneficial owner. As a matter of fact, he was not entitled to the property as beneficial owner, but, as an executor, he had full title to the property and it was held that, inasmuch as he purported to pass the whole of the property and had power to do so as executor, the title passed, it being held that

> "the plain legal interpretation of the deed should not be allowed to be affected by speculations as to what particular rights existing in the various vendors were present to the minds of some or all of the parties to the conveyance at the date of its execution."

Applying this principle to the present case, we find that the Official Receiver had power to sell not only the share of the adult insolvents but had also vested in him the power of these insolvents as fathers to sell their sons' interest in the property for the payment of antecedent debts. The Official Receiver had, therefore, power to sell the shares of the plaintiffs as well as of the fathers. The recital in the deed is that the property belonging to all the members of the family is sold and there is no specific recital that the shares of the various persons are sold separately. It is, therefore, difficult to read into the document any intention to sell the shares separately, and, in accordance with the principle of *Bijraj Nopani* v. *Pura Sundary Dasee*(1) it must be held that the property which purported to be sold and which actually was vested in the Official Receiver would pass to the vendees, and that property includes the shares of the sons. The second case *Charib-ullah* v. *Khalak Singh*(2), is a case where the

(1) (1915) I.L.R., 42 Calc., 56 (P.C.). (2) (1903) I.L.R., 25 All., 407 (P.C.).

SANKARANARAYANA PILLAI v. RAJAMANI.

PHILLIPS, J.

manager of a family mortgaged, in conjunction with another major member of the family and a minor represented by his mother as guardian, the whole family property. Although it was held that the mother as guardian of the minor could not make a mortgage of the minors' property without the sanction of the Court which was not obtained, it was held that the managing member had power to sell the whole property for the benefit of the family, and that, therefore, the whole of the property passed. Here, again, although the minor's interest purported to be conveyed, and the minor through his guardian was a party to the document yet as the manager had the right to dispose of the minor's interest also, the minor's interest was deemed to have been mortgaged. On the authority of these two decisions, I think it is clear that the sale-deeds executed by the Official Receiver had the effect of passing the interest of the minors but it is argued for the respondents that there are other cases of the Privy Council which take a contrary view, namely *Balwant Singh* v. *R. Clancy*(1) and *Ganesha Row* v. *Tuljaram Row*(2), but both these cases are distinguishable. In the former case there was a specific statement in the sale-deeds that the vendor was the only sharer in the property and he did not in any way purport to dispose of the rights of his brother who was subsequently found to be entitled to a share. The document was explicit and referred only to the interest of the actual vendor. In the second case a father and his son entered into a compromise of a suit, the father purporting to act as guardian of the son. It was there held that, as the father had not obtained the permission of the Court to enter into the compromise, the compromise was not

(1) (1912) I.L.R., 34 All., 296 (P.C.). (2) (1913) I.L.R., 36 Mad., 295 (P.C.).

binding on the son, and the plea that the father could have entered into the compromise in his personal capacity and thereby made it binding on his minor son was not accepted, although the case in which the minor is represented by some other person as guardian was expressly left open, possibly with reference to the decision in *Charib-ullah* v. *Khalak Singh*(1). On the ground therefore that the compromise was entered into by the father not only on his own behalf but on behalf of his son, and that he had not obtained the permission of the Court, the compromise was held not to be binding under section 462, Civil Procedure Code. I am, therefore, of opinion that the sales by the Official Receiver which purported to sell the whole property belonging to the family had the effect of passing the whole property, for the right of disposing of the whole property had become vested in the Official Receiver, and he must be deemed to have sold that right. I may also refer to two decisions of this Court in support of this conclusion, *Surapa Raju* v. *Venkayya*(2) and *Rajagopalan* v. *Subbarama Iyer*(3). Another case relied on by the appellants, *Sabapathy Chetty* v. *Ponnusawmy Chetty*(4), is apparently in conflict with the Privy Council decision in *Balwant Singh* v. *R. Clancy*(5), but it is unnecessary to discuss that question here. It has been repeatedly decided that the power of a father to dispose of his sons' share does vest in the Official Receiver when the father becomes insolvent, and there was nothing in Mr. Krishnaswami Ayyar's argument of sufficient force to induce me to reopen the question. In view of this finding, the plaintiff's suit would have to be dismissed; but Mr. A. Krishnaswami Ayyar seeks to support the

(1) (1903) I.L.R., 25 All., 407 (P.C.). (2) (1915) M.W.N., 908.
(3) (1919) M.W.N., 356. (4) (1915) 28 I.C., 365.
(5) (1912) I.L.R., 34 All., 296 (P.C.).

SANKARANARAYANA PILLAI v. RAJAMANI

PHILLIPS, J.

decree on the ground that the decision of the Subordinate Judge that the property of the insolvents had become vested in the Official Receiver is wrong. The order of the District Judge on the insolvency petition was as follows—"Petitioner 1 examined. No opposition. Adjudication order passed. Referred to Official Receiver for further proceedings . . ." It is now contended that this order does not amount to the appointment of a Receiver under section 18 (1) of the Provincial Insolvency Act and that, consequently, the property did not vest in the Official Receiver. That section runs as follows :—

> "The Court may at the time of the order of adjudication, or at any time afterwards, appoint a Receiver for the property of the insolvent, and such property shall thereupon vest in such Receiver."

It has been held in several cases in this Court that an appointment order is necessary and that the property does not vest in the Official Receiver without such order, but I would hold that even if this proposition is conceded it does not help the respondents because there is an order of appointment in this case. Under section 19 (1),

> "the Local Government may appoint such persons as it thinks fit (to be called Official Receivers) to be Receivers under this Act."

In the present case such a Receiver had been appointed by the Local Government for the district of Tinnevelly and it appears to me that the Court, having passed an order of adjudication and referred the insolvency petition to the Official Receiver for further proceedings, must have intended to appoint and be deemed to have appointed the gentleman called "Official Receiver" as the Receiver in this particular insolvency. I am not prepared to hold, as contended by Mr. Krishnaswami Ayyar, that the proceedings in the

District Judge's order must be read as meaning judicial proceedings only, his argument being that the reference was merely a reference to the Official Receiver to exercise the powers which could be delegated to him under section 52 of the Act. No such limitation is found in the order itself and therefore the order "Referred for further proceedings" is only intelligible in the view that the case was referred to the person who had been appointed Receiver under the Act, with the intention that he should act as Receiver in this particular case and the order amounts to an order of appointment. It is quite clear that the Court, the Official Receiver and all the parties acted under the impression that a Receiver had been appointed and that the insolvents' property vested in him. This order was in 1912 and even when this suit was brought in 1918 it was recited in the plaint that the property vested in the Official Receiver, and it was only during the course of the trial that the question was raised by the plaintiffs apparently upon a perusal of the order of the District Judge and of a subsequent formal order passed by him in 1916 appointing the Official Receiver as Receiver for the property of the insolvents in this case. This subsequent order was not passed by the same Judge who passed the original order and cannot affect in any way the meaning of the former order. The cases relied upon, namely, *Official Receiver of Trichinopoly* v. *Somasundaram Chettiar*(1), *Muthuswami Swamiar* v. *Somoo Kandiar*(2) and *Vythilinga Padayachi* v. *Ponnuswami Padayachi*(3), are cases in which no order of appointment had been made. The petitions of the insolvents having been sent to the Official Receiver before adjudication, such an

(1) (1916) 30 M.L.J., 415. (2) (1920) I.L.R., 43 Mad., 869.
(3) (1921) 41 M.L.J., 78.

SANKARA-NARAYANA PILLAI v. RAJAMANI.

PHILLIPS, J.

order passed before adjudication could hardly be interpreted as an order passed at the time, or after adjudication, under section 18 (1). Those cases are therefore of little value in the present case in the view that I take of the District Judge's order of 1912 which was passed at the time of adjudication. There is another case reported in *Subba Aiyar* v. *Ramaswami Aiyangar*(1), in which it was held that, although there had been no order appointing a Receiver, yet the acts done by the Official Receiver in administering the estate would be deemed to be acts done as agent of the Court, such acts being subsequently ratified and, therefore, valid. It is suggested that the decision in *Subba Aiyar* v. *Ramaswami Aiyangar*(1), is not right, because at the time the order of agency was passed the property had not vested in the Court; but whether or not this is a valid objection, the same objection cannot be taken in the present case because by the order of adjudication the property became vested in the Court. Accepting this case as an authority for the proposition that the Official Receiver could act as agent, it is clear that the subsequent ratification by the Court would make the proceedings valid. I would, therefore, hold that the property of the major insolvents was vested in the Official Receiver at the date of sale and, consequently, the sales are effective either as acts of the Receiver properly appointed, or as the agent of the Court.

Several other pleas were raised by the plaintiffs, such as the immoral nature of the debts incurred by their fathers, the fraud practised by the Official Receiver in administering the estate, and collusion between him and the creditors. These points have been found against the plaintiff in the Lower Court although there are several remarks in the judgment which go to

(1) (1921) I.L.R., 44 Mad., 547.

show that the learned Subordinate Judge thought that there was a good deal of force in the contentions but it is now conceded by Mr. Krishnaswami Ayyar that he can point to nothing in the evidence to substantiate these pleas of immorality or fraud. I may add that the fraud was not specifically pleaded, nor was an issue taken thereupon, and it would hardly be fair to allow fraud to be proved without specific allegation thereof.

As the result of the above, the appeals are allowed and the plaintiffs' suit dismissed with costs throughout.

VENKATASUBBA RAO, J.—I agree.

Mr. T. R. Venkatarama Sastri, the learned Vakil for the appellant assumed, without admitting, that the adjudication of the minor plaintiffs as insolvents was illegal, and the appeal was argued on this footing. The first question that arises is under the conveyances from the Official Assignee does the entire property pass to the alienees or does the interest only of the adult co-parceners pass? The learned Subordinate Judge has found that the debts of the first and second defendants were not incurred for illegal or immoral purposes and it is now a settled rule that the Official Receiver can exercise the right of the father to dispose of the sons' interest in ancestral immoveable estate for the payment of the father's debts not tainted with illegality or immorality. The sale-deeds filed in the case show that the Official Receiver purported to convey his entire interest in the properties in question. It is no doubt true that he professed to act as the assignee of the adult as well as the minor insolvents and that he did not purport to exercise the power possessed by a Hindu father to dispose of his son's interest, for causes which are recognized as just and proper. But all the same, I think, in the circumstances, the alienees acquired the right and title of the Official Receiver which he possessed in every capacity.

SANKARA-NARAYANA PILLAI v. RAJAMANI.

VENKATA-SUBBA RAO, J

In *Bijraj Nopani* v. *Pura Sundary Dasee*(1), it was held that the title vested in an executor passed under the deed by which he purported to convey all his right and title in the property sold although he did not expressly state in it, that he was conveying the property in his capacity as executor. Their Lordships observe

"The deed states plainly that whatever right or title the vendors possess is to go to support the conveyance, and it is a settled rule that the meaning of a deed is to be decided by the language used, interpreted in its natural sense."

This principle was also recognised in *Charibal-lal* v. *Khalak Singh*(2). One of the three brothers constituting an undivided Mitakshara family was a minor, and his mother as his guardian executed the mortgage deed along with the two adult brothers. It was found that the mother was incompetent to act as the minor's guardian but their Lordships held that the mortgage must be considered to be a mortgage by the family entered into by its *karta* and could, so far as the mortgage was found to have been made for the benefit of the family and for legal necessity, be enforced against all the members.

The true principle deducible from these cases seems to be this. The first question that arises is did the executant purport to pass the whole property? The next question is, was he in a position to validly convey it? If the two questions are answered in the affirmative, the third question arises, is there anything in the deed to repel the presumption that he intended to convey the title he possessed in every capacity? Judged by this test, there can be no doubt that the alienees before us acquired the interest of the fathers as well as of the sons in the properties conveyed by the Official Receiver.

Mr. Alladi Krishnaswami Ayyar, the learned vakil for the respondent, contended that the interest of the

(1) (1915) I.L.R., 42 Calc., 56 (P.C.). (2) (1903) I.L.R., 25 All., 407 (P.C.).

sons did not pass and relied upon *Balwant Singh* v. *R. Clancy*(1). The ancestral family in that case consisted of Sheoraj Singh and Maharaj Singh. The former was the sole mortgagor and by the deed of mortgage, after declaring that he was the absolute owner and that there was no sharer in the property, he purported to mortgage it. Maharaj Singh was not a mortgagor and he was made a party to the deed in order that the fact of his having signed it might afford evidence that he had assented to the taking of the loan and the granting of the mortgage by Sheoraj Singh. Their Lordships found as a fact that Maharaj Singh was a minor on the date of the mortgage and held that as the mortgage was not made by Sheoraj Singh as the manager of the family or in any respect as representing Maharaj Singh the mortgage deed did not affect the latter, or his interest in the estate.

This decision is not opposed to the two cases already cited, for in it the essential elements I have referred to are wanting. Sheoraj Singh obtained the loan in his assumed position of the absolute owner of the estate and not as the manager of the joint Hindu family. There was an implied denial by him of his possessing any capacity which is consistent with the recognition of the minor's title and while he denied the minor's right he could not be held to have conveyed the estate on behalf of the minor. In the circumstances it was unnecessary to find whether Sheoraj Singh was in a position to validly convey the property and accordingly although the High Court gave a finding that he was not, the Judicial Committee did not consider it necessary to deal with that question.

I am of the opinion that the present case comes within the principle enunciated and acted upon in *Bijraj*

(1) (1912) I.L.R., 34 All., 296 (P.C.).

SANKARA-NARAYANA PILLAI v. RAJAMANI.

VENKATA-SUBBA RAO, J.

Nopani v. *Para Sundary Dasee*(1), and *Charib-ullah* v. *Khalak Singh*(2), and that our decision on this point must therefore be in favour of the appellant.

I now proceed to deal with the next argument of Mr. A. Krishnaswami Ayyar that the properties did not vest in the Official Receiver. Section 18 (1) of the Provincial Insolvency Act, III of 1907, runs thus—

> "The Court may, at the time of the order of adjudication, or any time afterwards, appoint a Receiver for the property of the insolvent, and such property shall thereupon vest in such Receiver."

On the 29th November 1912, the District Judge made the following order:—"Adjudication order passed. Referred to Official Receiver for further proceedings." The argument is that the Court did not appoint a Receiver for the property of the insolvent and that therefore it did not vest in the Receiver. I do not think this argument is sound. No set form of words is prescribed to make the appointment of Receiver. In this case the order directs the Official Receiver to take further proceedings. Section 20 of the Act sets out some of the proceedings he was to take. It says that the Receiver shall realize the property of the debtor and for that purpose may perform certain acts. These proceedings the Official Receiver could not take unless he was the Receiver of the estate. The order, by implication, therefore appoints the Official Receiver, the Receiver for the property of the insolvent. The parties, the Court, the Receiver himself and strangers to the estate understood the order in this sense. That the plaintiffs also understood it in the same way is apparent from their plaint. Mr. Krishnaswami Ayyar contends that the word "proceedings" means "judicial

(1) (1915) I.L.R., 42 Calc., 56 (P.C.). (2) (1903) I.L.R., 25 All., 407 (P.C.).

proceedings" and that the order is to be construed as directing the Receiver to exercise the jurisdiction delegated to him under section 52 of the Act. But I am unable to accede to this contention. The word "Proceedings" does not occur in section 52 whereas it occurs in section 20, and in the latter section the proceedings contemplated have reference to the administration of the insolvent's estate. This being my construction of the order in question, the cases relied upon by the learned vakil namely, *Official Receiver of Trichinopoly* v. *Somasundaram Chettiar*(1), *Muthuswami Swamiar* v. *Somoo Kandiar*(2), *Vythilinga Padayachi* v. *Ponnuswami Padayachi*(3), and *Kavali Sankara Rao* v. *Ramakrishnayya*(4) are distinguishable.

There is yet another ground on which the sales by the Official Receiver may be upheld. Under section 16 (2) (*a*), on the making of an order of adjudication the property of the insolvents vests in the Court and under section 23 where no Receiver is appointed the Court has the rights of Receiver. Section 20 provides that the Receiver shall realize the property of the debtor and for that purpose may sell any property of the insolvent. Clause (*e*) of the same section says that the Receiver may appoint an agent to take any proceedings. Reading the order in question in the light of the above sections, it is obvious that in any event the Official Receiver was empowered by the Court as its agent to sell the properties, and the sales effected by him are valid in this view. This was in effect what was held in *Subba Aiyer* v. *Ramaswami Aiyangar*(5), and I am prepared to follow it. On this point also, therefore, the respondent fails.

---

(1) (1916) 30 M.L.J., 415.
(2) (1920) I.L.R., 43 Mad., 869.
(3) (1921) 41 M.L.J., 78.
(4) (1923) 46 M.L.J., 184.
(5) (1921) I.L.R., 44 Mad., 547.

SANKARA-NARAYANA PILLAI v. RAJAMANI.

In the result I agree with the order proposed by my learned brother.

By the Court.—The memorandum of objections in Appeal No. 216 of 1921 is dismissed. There will be no costs.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Krishnan and Mr. Justice Waller.

1923, November 22.

YEZZU MALLAYYA (FIRST DEFENDANT), APPELLANT

v.

TULLURI PUNNAMMA, MINOR BY NEXT FRIEND, PUNNAYYA (PLAINTIFF), RESPONDENT.*

Civil Procedure Code (Act V of 1908), Sec. 11, Expl. 4, O. XXXII, r. 4 (iii)—Guardian ad litem—Consent of guardian—Consent in writing, unnecessary—Consent, whether can be inferred from circumstantial evidence—Suit on a promissory note executed by a guardian—Suit against minor represented by such guardian as guardian ad litem—Decree and sale in execution—Validity of—Res judicata.

Although under Order XXXII, rule 4 (iii), Civil Procedure Code, no person can be appointed guardian ad litem for a minor without his consent, there is nothing in the rule which requires that the consent should be expressed in writing; the consent may be inferred from circumstantial evidence.

Chhattar Singh v. *Tej Singh*, (1921) I.L.R., 43 All., 104, followed.

Where a minor was sued on a promissory note executed by his maternal uncle, who had been appointed a guardian of the person of the minor under the Guardians and Wards Act and was also appointed guardian ad litem in the suit, it cannot be

---

* Second Appeals Nos. 836 and 850 of 1922.