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YAMMA, IN BE.

present case, and he seeks to have the decree of the lower Court which directed the possession of the lands to be given to the other side, set aside. It is clear in such a case that the subject-matter of the appeal is the land and not any money; and therefore as the Court Fees Act directs a certain method of valuation to be adopted in cases where the subject-matter in dispute is land, that method should be adopted in this case. I direct that the Court-fees be paid on such a valuation. The appellant will be given time for one week after the re-opening to pay the extra Court-fees.

N.R.

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### APPELLATE CIVIL.

*Before Mr. Justice Wallace and Mr. Justice  
Madhavan Nayar.*

RAMANATHAN CHETTIAR (PLAINTIFF), APPELLANT,

*v.*

SUBRAMANIA CHETTIAR AND ANOTHER (RESPONDENTS),  
RESPONDENTS.\*

*Provincial Insolvency Act (V of 1920), sec. 51 (1)—“Assets realized in execution by sale before date of admission of petition”—meaning of.*

The words “before the date of admission of the petition” in section 51 (1) of the Provincial Insolvency Act (V of 1920) qualify the words “assets realized” and not the word “sale” occurring in that section. “Assets” are “realized” within the meaning of that section not when the initial deposit of 25 per cent is made but only when the balance, viz., 75 per cent of the auction amount is received. *Arimuthu Chetty v. Vyapuripandaram* (1912) I.L.R., 35 Mad., 588, followed. Hence though an execution sale of a judgment-debtor’s properties may have been held and 25 per cent of the sale amount be deposited in Court before the date of the admission of the

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\* Civil Miscellaneous Appeals Nos. 22 and 23 of 1923.

petition for adjudicating him an insolvent, yet if the remaining 75 per cent is deposited only after the admission of the petition for insolvency, the whole of the sale-proceeds, including the initial deposit of 25 per cent, vests only in the Official Receiver and no portion goes to the credit of the attaching decree-holder.

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APPEALS against the orders of J. J. COTTON, District Judge of Coimbatore, in I.A. Nos. 312 and 313 of 1922, in I.P. Nos. 58 and 57 of 1922, respectively.

The facts are given in the judgment.

*T. M. Krishnaswami Ayyar* for appellant.

*S. Ranganatha Ayyar* for respondent.

The JUDGMENT of the Court was delivered by

MADHAVAN NAYAR, J.—The facts of this case are not disputed. In execution of a decree against the second respondent his properties were brought to sale on the 27th of June 1922 and the auction purchaser deposited 25 per cent of the sale-proceeds in the District Munsif's Court at Tiruppur. On the 1st of July 1922 an insolvency petition was filed against the second respondent and the Official Receiver was appointed interim receiver on the 4th of July 1922. The balance of the purchase money was deposited on the 11th of July 1922 and the second respondent was adjudicated an insolvent on the 15th of September 1922. In the meanwhile, the sale-proceeds of the second respondent's properties were forwarded to the Official Receiver by the District Munsif. On the 26th of July 1922 an application was filed before the District Judge of Coimbatore by the creditor who attached the properties and brought them to sale for the re-transfer to the District Munsif's Court of Tiruppur of the sale-proceeds to be dealt with by him according to law. The petitioning creditor who applied under the insolvency law for the adjudication of the debtor as an insolvent and for the appointment of the interim

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receiver resisted this application and the District Judge rejected it. This appeal is by the creditor against the order of the District Judge refusing to re-transfer to the District Munsif's Court of Tiruppur the sale-proceeds of the second respondent's properties now in the possession of the interim receiver.

The principle of law to be applied to the decision of this appeal is embodied in section 51, clause (1) of the Provincial Insolvency Act which runs as follows:—

“Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the receiver except in respect of assets realized in the course of the execution by sale or otherwise before the date of the admission of the petition.”

It has been argued by Mr. Krishnaswami Ayyar that, according to this section, irrespective of the time of realization, assets realized in the course of execution by a sale which has been held before the date of the admission of the insolvency petition are preserved for the benefit of the execution-creditor, or, in other words, if the sale by means of which the assets are realized is held before the date of the admission of the petition, then the assets, even if they be realized after the date of the admission of the petition, enure to the advantage of the execution-creditor. Shortly stated, this argument makes the “date of the admission of the petition” qualify the “sale” and not “assets realized” in the section. The records in the case do not show the date of the admission of the petition; but for the purposes of this appeal, the date may be taken to be some time between the 1st and 4th July; in any event, it cannot have been later than the 4th of July when the interim receiver was appointed. Since the execution sale in this case was held on the 27th of June 1922, i.e., anterior to the 4th of July, it follows from the argument just stated that

the appellant-creditor is entitled to all the assets as against the interim receiver. We cannot accept this argument. It seems to us that,

“the policy and object of the statute is to secure the even distribution of a debtor's estate among his creditors, and to prevent the more active creditors from getting an undue advantage over those who may be less active.” *Bower v. Hett*(1).

This object will obviously be frustrated if we accept the construction put upon the section by the learned vakil for the appellant. We think that the words “date of the admission of the petition” occurring in this section qualify “assets realized”; so that only assets realized before the date of the admission of the petition will enure to the benefit of the execution-creditor. The question then arising for consideration is, were assets realized in the course of execution before the date of the admission of the petition in this case? The words “assets realized” in the course of execution have been interpreted in many decisions in cases which arose under section 295 of the old Civil Procedure Code corresponding to section 73 of the present Code. We think these may be usefully referred to for elucidating the meaning of the words “assets realized” occurring in this section. In *Hafez Mahomed Ali Khan v. Damodar Pramanick*(2), it was held that, when property is sold in execution of a decree, the sale-proceeds may be said to be assets realized only when the balance of the purchase money is paid and not when 25 per cent is deposited in Court. In *Ramanathan Chettiar v. Subramania Sastrial*(3) occur the following observations by Sir ARNOLD WHITE, C.J. :—

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“It seems to me that the word “assets” in section 295, Civil Procedure Code, means the proceeds of the sale of the

(1) [1895] 2 Q.B., 51.

(2) (1891) I.L.R., 18 Cal., 242.

(3) (1903) I.L.R., 26 Mad., 179.

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property which is sold in execution of the decree. As far as the present case is concerned, I am of opinion that the assets were realized when the whole of the proceeds were paid into Court."

Though there is no doubt a change in the corresponding provision of section 73 of the present Code, in that it substitutes the word "receipt" for the word "realized" in section 295, still, so far as the question before us is concerned, the decisions under section 73 are also helpful in arriving at a conclusion as to the meaning of the term "assets realized." In *Arimuthu Chetty v. Vyapuripandaram*(1), where the purchaser made the deposit on the 17th of September 1909 and the balance of the purchase money was paid into Court on the 29th of September 1909, it was stated by ABDUR RAHIM, J. :—

"It must be taken, having regard to the decision in *Ramanathan Chettiar v. Subramania Sastrial*(2), that the assets were realized only on the 29th of September 1909 within the meaning of section 295 of the old Code. There is no doubt a change in the corresponding provision of section 73 of the present Code. But so far as the question before me is concerned, the change in the language is immaterial. The purchase money becomes the asset of the judgment-debtor only when the balance is received and not when the deposit is made."

To the same effect is also the decision in *The Maharajah of Burdwan v. Apurba Krishna Roy*(3). Having regard to these decisions, we must hold that in this case the appellant is not entitled to claim either the balance of the purchase money or the initial deposit of 25 per cent as these cannot be considered to be "assets realized" in the course of the execution by sale before the date of the admission of the insolvency petition

(1) (1912) I.L.R., 35 Mad., 588.

(2) (1903) I.L.R., 26 Mad., 179.

(3) (1911) 15 C.W.N., 872.

within the meaning of section 51 of the Provincial Insolvency Act. It follows therefore that the appellant's petition for a re-transfer of the sale-proceeds to the District Munsif's Court of Tiruppur was rightly rejected by the District Judge.

We dismiss this Civil Miscellaneous Appeal with costs.

N.R.

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APPELLATE CIVIL.

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

SHANMUGA MUDALI (PLAINTIFF), APPELLANT,

1925,  
January 16

v.

KUMARASWAMI MUDALI (DEFENDANT), RESPONDENT.\*

*Chit fund for co-operation, thrift, and prudence among  
subscribers, legality of.*

A chit fund, the object of which is the promotion of co-operation, prudence and thrift among its subscribers, whose number is determined beforehand and in which every subscriber is entitled by its rules to get from the promoters of the fund the whole of the capital subscribed for by him before or at the closing of the fund at a fixed time, is a legal transaction and is not a "lottery" or a gambling venture, even though some of the subscribers become by the rules entitled to get much more than they paid and such persons are determined by the drawing of lots. *Iyyanar Kone v. Vidoomada Cone* (1858) Sud. Dec., 53, *Kamakshi Achari v. Appavu Pillai* (1863) 1 M.H.C.R., 448, *Vasudevan Nambudri v. Mammod* (1899) I.L.R., 22 Mad., 212, *Wallingford v. Mutual Society* (1880) 5 App. Cas., 685, followed. *Sykes v. Beadon* (1879) 11 Ch. D., 170, *Sankunni v. Ikkora Kirtti* (1919) M.W.N., 570, and *Nagappa Pillai v. Arunachalam Chetty* (1924) 47 M.L.J., 876, not followed.

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\* Second Appeal No. 1521 of 1922.