

in a business newly started by his father during his minority, and in which he actively participated after attaining majority, and there was no question as to the liability of joint family properties for such debts.

I would therefore dismiss the appeal with costs.

N.R.

ACHUTA-
BAMYVA
v.
RATNAJEE
BHOOTAJI.

VISWANATHA
SASTRI, J.

APPELLATE CIVIL.

Before Mr. Justice Devadoss and Mr. Justice Waller.

M. A. R. R. M. P. MUTHU VEERAPPA CHETTIAR,
PETITIONING CREDITOR (APPELLANT),

1925,
September 3.

v.

U. K. SIVAGURUNATHA PILLAI, RESPONDENT
(RESPONDENT).*

*Provincial Insolvency Act (V of 1920), secs. 9, 13, 20 and 28—
Joint Hindu family—Debt incurred by the father for the
benefit of the family—Death of father, leaving major and
minor sons—Major sons whether can be adjudicated
insolvents.*

There is nothing in the Provincial Insolvency Act which prevents the undivided members of a joint Hindu family from being adjudicated insolvents in respect of debts due by the family; each case depends on its circumstances; the relation of creditor and debtor exists between the lender and the members of a joint family in respect of debts incurred by the family.

Chokkalingam Chettiar v. Thiruvengkatasami Naidu, C M.A. No. 47 of 1916 (unreported), followed.

APPEAL against the order of R. A. JENKINS, District Judge of Coimbatore, in Insolvency Petition No. 43 of 1924.

The appellant, a creditor of the father of the respondent, filed a petition in the District Court to adjudicate the respondent an insolvent. The petitioner alleged that the father

* Appeal against Order No. 369 of 1924.

MUTHU
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NATHA
PILLAI.

incurred large debts for acquiring properties for the family, that the debts were incurred for the benefit of the family, that the respondent as the managing member of the family, after his father's death, had been enjoying the family properties, that when the appellant pressed him for payment, the latter requested the former to give him some time to collect his outstandings and pay him, that the respondent, taking advantage of the time given, fraudulently sold off the properties to a few creditors of the family with a view to give them a fraudulent preference; and he consequently applied to declare him an insolvent. The learned District Judge held that, as there was no personal liability as against the respondent for the debts of the father, and as it was not a debt of a joint *trading* family, the respondent could not be adjudicated insolvent, and dismissed the petition. The petitioning creditor preferred this appeal.

M. Patanjali Sastri for appellants.

S. Srinivasa Ayyar for respondent.

JUDGMENT.

This is an appeal against the order of the District Judge of Coimbatore dismissing the appellant's application to adjudicate the respondent an insolvent. The learned Judge dismissed the application on the ground that the respondent should not be adjudicated in respect of his father's debt, as there was no personal liability on the part of the respondent in respect of such debt. The petitioner in his petition alleged that the respondent was pressed to pay the debt due to him and he requested the petitioner to give him time to collect the outstandings and pay him. Taking advantage of the time given him he made certain alienations in favour of certain creditors, which the petitioner alleges to be fraudulent preferences. There is nothing in the Insolvency Act which prevents the undivided members of a joint Hindu family from being adjudicated insolvents in respect of debts due by the family. Each case would depend upon its circumstances. If the

petitioner makes the necessary allegations and proves them, then the Court would be justified in adjudging the members of a joint family insolvents. In the case of a joint Hindu family, if the father incurs debt and dies, the other members of the family do not stand in the relation of heirs; they only succeed to him and the debts are binding upon them. It was laid down by a Bench of this Court in *Chockalingam Chettiar v. Thiruvencatasami Naidu*, C.M.A. No. 47 of 1916 (unreported), that the relation of creditor and debtor existed between the lender and the members of a joint family in respect of debts incurred by the family. That being so, there was no reason why the lower Court should not have enquired into the matter and disposed of the petition on the merits.

We, therefore, set aside the order and direct the District Judge to restore the petition to file and dispose of it according to the provisions of section 24 of the Provincial Insolvency Act. Costs will abide the result

K.R.

APPELLATE CIVIL.

Before Mr. Justice Spencer and Mr. Justice Madhavan Nayar.

THE MUNICIPAL COUNCIL, TUTICORIN, DEFENDANT
(PETITIONER),

v.

T. SHANMUGA MOOPANAR, PLAINTIFF (RESPONDENT).*

Madras District Municipalities Act (V of 1920), sch. V (c), ss. 249 and 328—“ Grain,” meaning of—Licence for storing “ grains ” in godowns for wholesale trade—Notification, whether applicable to storing of rice and broken rice for

1925.
September
21.

* Civil Revision Petition No. 553 of 1923.