that the insolvency proceedings were pending at the time of the execution petition and that section 28 barred the application, as no permission of the Insolvency Court was obtained. I therefore refuse to interfere and I dismiss the Civil Revision Petition with costs.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Odgers and Mr. Justice Venkatasubba Rao.

NAGASUBRAHMANIA MUDALIAR (RESPONDENT), APPELLANT,

v.

N. KRISHNAMACHARIAR (PETITIONER), RESPONDENT.*

1927, April 25.

Provincial Insolvency Act (V of 1920), sec. 2 (a) (d)—Decree against son for debt of father—Liability of son to adjudication under the Act.

Until there is a personal decree under section 52, Civil Procedure Code, a decree against a person as the legal representative of another (such as in this case a decree against a son for the debt of his deceased father to the extent of the assets in his hands) does not make him liable to adjudication under the Provincial Insolvency Act. *The Official Assignee of Madras* v. *Palaniappa Chetty*, (1918) I.L.R., 41 Mad., 824, followed. *Muthuveerappa Chettyar* v. *Sivagurunatha Pillai*, (1926) I.L.R., 49 Mad., 217, considered.

APPEAL against the order of the District Court of North Arcot at Vellore in I.P. No. 22 of 1923.

The facts are given in the judgment of VENKATASUBBA RAO, J.

A. Visvanatha Ayyar for appellants.

V. C. Rajagopala Achariyar for respondent.

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* Civil Miscellaneous Appeal No. 382 of 1924.

NAGA-SUBRAHMANIA MUDALIAR v. KRISHNAMA-CHARIAR.

ODGERS, J.

JUDGMENT.

ODGERS, J.—After a long delay of two years this Civil Miscellaneous Appeal comes before us again. We partially heard the appeal in April 1925 and we then adjourned the hearing till a decision of the Lower Court had been reached as to whether the decree should be amended or not. That has now been done and a Civil Revision Petition against that decision has also been disposed of by us just now. This is an appeal against the decision of the learned District Judge of North Arcot adjudicating the petitioner insolvent. The father of the petitioner before us had incurred certain liabilities to the Commercial Bank and died and the petitioner as his son succeeded to the assets of his father. The learned District Judge held that the petitioning creditor having obtained a decree against the son as representing his father was entitled to have him adjudicated an insolvent. The matter seems to me to be very plain and can be dealt with shortly. It has been strenuously urged on us that the son is personally liable for the father's debt and therefore fulfils the definitions of a "debt" and "debtor" within the meaning of sections 2(*a*) and (*d*) of the Provincial Insolvency Act and the decision in *Muthuveerappa Chettiar* v. *Sivagurunatha Pillai* (1), is pointed to. In that case, one may say that the authorities do not seem to have been discussed and the learned Judges say that each case depends upon its own circumstance and if the petitioner makes the necessary allegation and proves them, then the Court would be justified in adjudicating the members of a joint Hindu family insolvents. That no doubt is perfectly true. But on the other hand, in *The Official Assignee of Madras* v. *Palaniappa Chetty*(2), which was a case decided by

(1) (1926) I.L.R., 49 Mad., 217. (2) (1918) I.L.R., 41 Mad., 824.

three Judges of this Court after a difference of opinion between ABDUR RAHIM, Officiating C.J., and PHILLIPS, J., the question was whether a minor partner in a Hindu trading family was liable to be adjudicated in respect of debts incurred for the purpose of the business during his minority or after he attained majority. The majority of the Court held that the members of a joint Hindu trading family on attaining majority do not necessarily become personally liable for and liable to adjudication in respect of debts contracted in the joint family business during their minority. Sir JOHN WALLIS, C.J., in his judgment says that on the law he is not prepared to extend the operation of section 248 of the Contract Act beyond the cases that directly fall within it so as to impose for the first time apparently on the members of the Hindu family a personal obligation for debts contracted in the family business during their minority, and with him SPENCER, J., agreed. See also the observation in *Sanyasi Charan Mandal* v. *Asutosh Ghose*(1). It may also be noted that the petitioner is amenable to the Court in respect of the assets of his father which have come into his hands under section 52 (3), Civil Procedure Code. It has been attempted to be contended that because the Provincial Insolvency and the Presidency Towns Insolvency Acts differ in some respects as to the proceedings in insolvency and also in the procedure to be followed by the Courts, there is a radical difference between them in this respect, for it is admitted that under the Presidency Towns Insolvency Act a petition of this sort would be instantaneously dismissed. There is no ground to my mind for holding that a distinction exists between the provisions of the two Acts of a radical character of this sort and I am therefore prepared to hold that the

(1) (1915) I.L.R., 42 Calc., 225 at 232.

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VENKATA-SUBBA RAO, J.

adjudication by the learned District Judge of North Arcot was unwarranted and must be reversed. The Civil Miscellaneous Appeal must be allowed with costs.

VENKATASUBBA RAO, J.—I entirely agree. The question that has to be decided is: when a debt is due from a person in his representative character, is he liable to be adjudicated an insolvent under the Provincial Insolvency Act? An amount became due to the respondent from the appellant's father. The latter died and the respondent filed a suit against the appellant and obtained a decree against the assets of the family. It is alleged that the appellant without satisfying the decree alienated the joint family properties. On this ground the respondent sought to adjudicate the appellant an insolvent. The decree as originally passed was general in its terms, but the appellant applied for the amendment of that decree and it has now been amended. We have just held in the connected Civil Revision Petition that it was within the power of Court to make the amendment under section 152, Civil Procedure Code. There is thus no doubt that the decree as it now stands excludes altogether the personal liability of the appellant. In these circumstances, can the appellant be adjudicated an insolvent: The proposition that any person who happens to be a debtor in his representative capacity is liable to be adjudicated an insolvent, cannot be seriously argued, for in that case any executor or administrator may be so adjudicated by reason of his occupying that limited capacity. This, of course, would be absurd; but it is said that in the case of a co-parcener of a Hindu joint family, the position is different. I am not prepared to accept this contention. I regard *The Official Assignee of Madras* v. *Palaniappa Chetty*(1) as throwing very

(1) (1918) I.L.R., 41 Mad., 824.

valuable light upon this point. In that case a Hindu father carried on a trade and his son took an active part in the business both while he was a minor and after he became a major. The question arose, was the son liable to be adjudicated an insolvent in respect of the debts incurred in the course of the trade while he was a minor? Six learned Judges took part in this case at various stages, but throughout, the test applied was, was the son personally liable? It was taken for granted, that if he was personally liable he could be adjudicated an insolvent; if he was not, it was equally clear that he could not be. Three of the Judges, BAKEWELL, PHILLIPS, and SADASIVA AYYAR, JJ., took the view that the son was personally liable for such debts and that in consequence he could be adjudicated an insolvent. The other three Judges, Sir JOHN WALLIS, C.J., ABDUR RAHIM, and SPENCER, JJ., were of the opinion that the debts were not personally enforceable against the son and therefore he could not be adjudicated an insolvent in respect of them. It will be seen that on whatever other matter there was a difference of opinion, all the Judges were agreed in this, if the debts could not be personally enforced, the debtor could not be adjudicated an insolvent.

I regard this case as correctly indicating the true rule of law and as the debt in question is not personally enforceable against the appellant, my conclusion is that he cannot be adjudicated an insolvent. It has been said for the respondent that this view of the law would create a hardship. There is no substance in this contention, for section 50 (2) and section 52 (2), Civil Procedure Code, provide necessary safeguards.

The respondent urges that *Muthuveerappa Chettiar* v. *Sivagurunatha Pillai*(1) supports his contention. I do

(1) (1926) I.L.R., 49 Mad., 217.

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not think that the learned Judges intended to lay down the general rule that a co-parcener as such is liable to be adjudicated an insolvent in respect of the debts incurred by the manager and binding on the family. The learned Judges say

"each case depends upon its own circumstances."

This decision thus enunciates no principle of law. A case may be readily put of a member of a trading joint family becoming personally liable by reason of his taking an active part in the business. In such a case he can be adjudicated an insolvent and the observations in 49 Mad., 217, would be correct if applied to a case of this kind. This is exactly what was held in *The Official Assignee of Madras* v. *Palaniappa Chetty*(1) which I have cited. I am not therefore prepared to treat 49 Mad., 217, as an authority for the general proposition which has been pressed upon us.

The respondent's learned vakil contends that under the Provincial Insolvency Act the law is different in this respect from what obtains in England and from what is enacted in the Presidency Towns Insolvency Act. There is no substance in this contention. Section 7 of the Provincial Act corresponds word for word to section 10 of the Presidency Act and it is impossible to suggest that such a radical change was intended in the absence of an express and clear provision to that effect.

I agree that the appeal succeeds and should be allowed with costs.

N.R.

(1) (1918) I.L.R., 41 Mad., 824.