

APPELLATE CIVIL.

Before Mr. Justice Devadoss and Mr. Justice
Sundaram Chetti.

1925,
September
23.

RANGIAH AND THREE OTHERS (APPELLANTS), 21ST TO 24TH
RESPONDENTS,

v.

Y. V. APPAJI RAO (RECEIVER, RESPONDENT), RESPONDENT.*

*Provincial Insolvency Act (V of 1920), ss. 28 (7) and 53—
Voluntary alienation within two years prior to presentation
of petition for insolvency—Voidability of.*

Though section 53 of the Provincial Insolvency Act (V of 1920) enacts that a voluntary transfer by an insolvent is voidable as against the Receiver if the transferor is adjudged insolvent within two years of the transfer, yet as an order of adjudication relates back to, and takes effect from, the date of presentation of the petition for insolvency, a voluntary transfer made within two years prior to the date of presentation of the petition for insolvency is voidable though it is beyond two years of the date of adjudication. Section 53 of the Act must be read along with section 28 (7) of the Act. *Sankaranarayana Aiyar v. Alagiri Aiyar*, (1918) 35 M.L.J., 296, followed. *Nagindas v. Gordhandas*, (1925) I.L.R., 49 Bom., 730, and *Ghulam Muhammad v. Panna Ram* (1923) 72 I.C., 433, dissented from.

APPEALS against the orders of the District Court of Anantapur in I.A. No. 272 of 1921 in I. P. No. 3 of 1920. The facts and arguments appear from the judgment.

K. Krishnaswami Ayyangar and *S. Ranganatha Ayyar* for appellants.

B. Somayya for the respondents.

* Appeals against Orders Nos. 307 of 1924 and 91 of 192

JUDGMENT.

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These Appeals are against the orders of the District Judge of Anantapur annulling certain transfers of property under section 53 of the Provincial Insolvency Act. It is contended for the appellants that section 53 of the Act does not apply as the transfers of property were more than two years before the date of the adjudication of the insolvent. It is urged that the expression "is adjudged insolvent" can only refer to the adjudication of the insolvent and not to the date of the presentation of the petition on which the adjudication was made. The question for determination is, does an application to set aside a voluntary transfer lie under section 53 of the Provincial Insolvency Act if the transfer is more than two years from the date of the order of adjudication but within two years from the date of the presentation of the petition on which the adjudication was made? This point is covered by authority so far as our High Court is concerned.

In *Sankaranarayana Aiyar v. Alagiri Aiyar*(1), *OLDFIELD and SADASIVA AYYAR, JJ.*, considered this point at considerable length and came to the conclusion that the adjudication referred to in section 36 of the old Act had to be treated as made on the date of the presentation of the petition on which the insolvent was adjudicated. It is contended that this decision is wrong and is opposed to the view of the Bombay and Lahore High Courts. The argument is that under section 53 the period of two years is to be calculated backwards from the date of adjudication as the clause "if the transferor is adjudged insolvent within two years after the date of the transfer" can only mean the date of the order of adjudication and not the date of the presentation of the

(1) (1918) 85 M.L.J., 296.

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petition on which the adjudication is made, that clause (7) of section 28 cannot govern the plain meaning of the words in section 53, and if the legislature intended that the two years should be calculated backwards from the date of the presentation of the petition the expression "is adjudged insolvent" would not have been used, for in section 54 it is clearly enacted that the transfer should be within three months of the petition presented for adjudication. No doubt there is a difference between the wording of section 53 and that of section 54. In section 53 the clause is :

"Any transfer . . . shall, if the transferor is adjudged insolvent within two years after the date of the transfer, be voidable "

Section 54 is :

"Every transfer of property . . . shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void . . . "

If section 53 stood alone it might be contended with some show of reason that the expression "is adjudged insolvent" can only mean the order of adjudication, but in clause (7) of section 28 it is enacted that

"an order of adjudication shall relate back to, and take effect from, the date of the presentation of the petition on which it is made."

The question is, does clause (7) of section 28 govern section 53? It is suggested that clause (7) is not an independent section as in the English Act, and therefore it cannot be held to govern the provisions of section 53. This argument is fallacious. Section 28 lays down the consequences that flow from the order of adjudication. It is a general provision relating to adjudication and the consequences of adjudication. Section 28 (7) is therefore a general clause which applies to all dealings by or with the insolvent, unless any particular dealing is expressly exempted from its operation.

Section 53 is based upon the corresponding provisions in the English Act and in interpreting section 53 we must take into consideration what the law of bankruptcy is under the English Act. Reliance is placed upon a judgment of WRIGHT, J., in *Reis In re, Ex-parte Clough*(1), where the learned Judge observed that there was a difference between the meaning of the words "adjudicated bankrupt" and the meaning of the words "becoming bankrupt." The expression in section 47 of the English Act is "If the settler becomes bankrupt." It was contended before WRIGHT, J., that the expression "becomes bankrupt" should be held to mean "being adjudged bankrupt" and he construed the expression "becoming bankrupt" as insolvency commencing at the time of the first of the acts of bankruptcy proved to have been committed within three months next preceding the date of the presentation of the bankruptcy petition. He did not accept the contention that the expression "adjudged bankrupt" meant only the actual adjudication of the insolvent. He only stated the contention that there was a distinction between the use of the words "adjudged bankrupt" and the use of the words "becoming bankrupt." There is no reason for overlooking the clear provision in section 28 (7) in considering the other sections of the Act. It is a well-known canon of construction that the Courts should construe the provisions of legislative enactments in such a way as not to impute inconsistency to the legislature. Where the provisions are reconcilable the Courts should try to reconcile. They should not attach importance to a single phrase or clause in one section and overlook the clear provisions in other sections which are of a general character. There are exceptions to the general

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(1) [1904] 1 K.B., 451.

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“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 petition,”

contains an exception to section 28 (7). A creditor or a debtor may present a petition for adjudication of the debtor. The petition may be returned for correction and some time may elapse before the petition is admitted by the Court. In such cases the date from which the time should be reckoned is not the date of the admission of the petition but that of the presentation thereof. Under section 55 which relates to *bona fide* transactions, a transaction would be held to be good if it takes place before the date of the order of adjudication and if the person with whom such transaction takes place had not, at the time, notice of the insolvency petition by or against the debtor. If the argument of the appellants is to hold good, a voluntary transfer made a day before the presentation of the insolvency petition cannot be attacked, if the Court does not adjudicate the insolvent for two years. The policy and the scope of the Insolvency Act is to prevent fraudulent preference and fraudulent transfers and the period mentioned in section 53 has nothing to do with the delay of the Court in passing the order of adjudication. The matter might be taken as far as the Privy Council and if it takes five years for the matter to be finally settled by the Privy Council, could it be said that a voluntary transfer made a few days before the presentation of the insolvency petition could not be attacked by reason of the adjudication not having been made for a considerable time owing perhaps to causes over which the Court might not have control? OLDFIELD and SADASIYA AYYAR, JJ., have given

cogent reasons for their conclusion that clause (6) of section 16 of the old Act corresponding to clause (7) of section 28 of the present Act governed section 36 of the old Act which corresponds to section 53 of the present Act. It is unnecessary to consider all the arguments advanced in that case.

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In *Rakhai Chandra Purkait v. Sudhindra Nath Bose*(1), a bench of the Calcutta High Court held that the provisions of section 36 of the Provincial Insolvency Act were to be read with section 16 (6) of the Act. In *Sheonath Singh v. Munshi Ram*(2), a bench of the Allahabad High Court concurred in the view taken by this Court in *Sankaranarayana Aiyar v. Alagiri Aiyar*(3). The learned Judges observed :

“ . . . the view which we take is the view which was always taken from the earliest days in the administration of the bankruptcy law for reasons inherent in the policy of the bankruptcy law, . . . some of which are contained in that judgment of the Madras High Court.”

The case that is strongly relied upon by Mr. K. Krishna-swami Ayyangar is *Nagindas v. Gordhandas*(4). In that case Sir NORMAN MACLEOD, C.J. and COYAJEE, J., held that the point of time from which the two years period mentioned in section 53 was to be calculated was the date on which the order of adjudication was made and not the date of the presentation of the petition. With very great respect we dissent from the view of the two learned Judges. They do not discuss at length the point whether clause (7) of section 28 controls the provisions of section 53. They refer to the judgment of WRIGHT, J., in *Reis, In re Ex-parte Clough*(5), and after referring to corresponding provisions in the English

(1) (1919) I.L.R., 46 Calc., 991.

(2) (1920) I.L.R., 42 All., 433.

(3) (1918) 35 M.L.J., 296.

(4) (1925) I.L.R., 49 Bom., 730.

(5) [1904] 1 K.B., 451.

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Act and the Provincial Insolvency Act conclude at page 738—

“It cannot be denied that a person is adjudged insolvent on the day on which the order is made, though the effect of the order on the insolvent’s property relates back to an earlier date,” and observe :

“Therefore, in our opinion if it had been intended that a voluntary transfer should be voidable if made within two years from the date of the presentation of the petition on which the adjudication order is made there was no reason why that should not have been as clearly stated in section 53 as it is in section 54, and we do not think that the doctrine of ‘relation back’ can be imported into the former section, so as to make it appear that the point of time from which the two years are to be calculated is the date of the presentation of the petition, and not the date when the transferor is adjudged insolvent.”

We fail to see why the general provision of law in clause (7) of section 28 should not be read into section 53 unless the clear terms of section 53 are against reading that clause into it. It cannot be suggested that the Indian Legislature made a departure from the English Law in enacting section 53. Under the English law the relation back is to the available acts of bankruptcy or the first of the available acts of bankruptcy. Section 43 of the English Act enacts :

“The bankruptcy of a debtor, whether the same takes place on the debtor’s own petition or upon that of a creditor or creditors shall be deemed to have relation back to, and to commence at, the time of the act of bankruptcy being committed on which a receiving order is made against him, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the bankruptcy petition.”

The Indian Legislature in enacting clause (7) of section 28 lays down that the order of adjudication shall

relate back to and take effect from the date of the presentation of the petition on which it is made and not from the act of bankruptcy on which a receiving order is made or, if there are more acts of bankruptcy than one, the first of the acts of bankruptcy committed within three months next preceding the date of the bankruptcy petition.

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In *Ghulam Muhammad v. Panna Ram*(1), the Lahore High Court takes the same view as that of the Bombay High Court in *Nagindas v. Gordhandas*(2). The learned Judges refer to the decision in *Sankaranarayana Aiyar v. Alagiri Aiyar*(3), and comment on the argument of SADASIVA AYYAR, J., and observe that his argument merely amounts to an admission that the framers of the Act committed a mistake and an explanation how the mistake came to be committed. The view of the two learned Judges is opposed to the view of the Calcutta High Court *Rakhal Chandra Purkait v. Sudhindra Nath Bose*(4), and to the decision in *Sankaranarayana Aiyar v. Alagiri Aiyar*(3). With due respect we must say that no convincing argument has been referred to in their judgment as to why section 16 (6) of the old Act should not be read into section 36 of the Act. In *Madhu Sardar v. Khitish Chandra Banerjee*(5), MOOKERJEE and BEACHCROFT, JJ., held that section 34 of the Provincial Insolvency Act restricts the operation of clause (6) of section 16, and the provision in section 34 with regard to the assets realized in execution must be held to be an exception to the general rule laid down in section 16 (6) of the old Act. On a careful consideration of the relevant sections of the Act and the case law on the point we have no hesitation in holding that the

(1) (1923) 72 I.C., 423.

(2) (1925) I.L.R., 49 Bom., 730.

(3) (1918) 35 M.L.J., 296.

(4) (1919) I.L.R., 46 Calc., 991.

(5) (1915) I.L.R., 42 Calc., 289.

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period of two years should be calculated backwards from the date of the presentation of the petition on which the adjudication is made.

[On the merits, their Lordships discussed the evidence and agreed with the learned District Judge that the sales were not *bona fide*.]

In the result the appeals fail and are dismissed with costs.

N.R.

APPELLATE CIVIL.

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

1926,
September
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SENJA NAICKEN AND ANOTHER (APPELLANTS), PLAINTIFFS,
v.

SECRETARY OF STATE FOR INDIA (RESPONDENT),
DEFENDANT.*

Land Acquisition Act (I of 1924), sec. 6 (1)—Contribution of one anna only, by Government towards acquisition—Validity of acquisition.

In the absence of proof that the acquisition of a particular land is brought about by improper motives or that the Land Acquisition Act is set in motion to annoy a private owner, the contribution of even one anna by the Government towards the compensation for the acquisition of a land for a public road (the rest of the amount required for the purpose being contributed by the villagers) satisfies the proviso to section 6 (1) of the Act which provides that no declaration of acquisition shall be made unless the compensation to be awarded is to be paid . . . wholly or partly out of the public revenue. *Ponnaiia v. Secretary of State for India*, (1926) 51 M.L.J., 338, dissented from;

* Second Appeal No. 1755 of 1922.