APPELLATE CIVIL.

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

1926, September 22

PUNNIAH (APPELLANT) 2ND RESPONDENT,

v.

KESARMAL FIRM AND 4 OTHERS, (RESPONDENTS) PETITIONERS.*

Provincial Insolvency Act (V of 1920)—Two partners liable on a joint debt—Acts of bankruptcy by each during continuance of debt—Single petition to adjudicate both as insolvents, maintainability of.

If two partners are liable on a joint debt and each of them is guilty of acts of bankruptcy during the continuance of the joint debt, by making alienations calculated to defeat or defraud the creditors of the firm, a single petition to adjudge both of them as insolvents is sustainable, though they may not have committed a joint act of insolvency. The test is whether if the petition were treated as a suit, the suit would be bad for multifariousness.

APPEAL against the order of E. PAKENHAM WALSH, District Judge of Guntūr, in I.P. No. 43 of 1923.

The facts are given in the judgment.

B. Satyanarayana for appellant.

B. Somayya for respondent.

JUDGMENT.

This appeal arises out of a petition filed by a creditor to adjudge respondents Nos. 1 and 2 insolvents. The second respondent is the son-in-law of the first respondent.

The main contention put forward on behalf of the appellant here (who was the second respondent in the

* Appeal against Order No. 317 of 1924.

lower Court) is that a single petition for adjudicating both the respondents as insolvents is bad for misjoinder, and therefore unsustainable. There is no doubt that they are liable to the petitioner for a joint debt. The learned District Judge has also found upon the evidence on record, that they are also partners. That finding has been challenged before us, but we are satisfied that the inference drawn by the learned Judge is on the whole correct. Each link in the chain of circumstances adverted to by him, may be inconclusive by itself, but the cumulative effect of all the links justifies his conclusion. We are not prepared to differ from him on this point. It is, however, contended by Mr. B. Satyanarayana that a single petition against both the respondents is unsustainable unless it is shown that they are guilty of a joint act or acts of insolvency. The observations on page 186 in William's Bankruptcy Practice (13th edition) are pertinent to the present case :—

> "In order to sustain a joint petition against two or more persons, it is necessary that some acts of bankruptcy shall have been committed by each of them. This may be a joint act of bankruptcy ; but it is not requisite that they should have committed a joint act of bankruptcy or that they should all have committed an act of bankruptcy of the same kind ; and in order to support a joint petition against all the members of a firm, the acts of bankruptcy must have been committed during the continuance of a joint debt and the petition must be founded on a joint debt."

We are of opinion that where two partners are liable to a creditor under a joint debt and each of them is alleged to have committed acts of bankruptcy, during the continuance of the joint debt, by making certain alienations with a view to defraud or defeat the creditors of the firm or with the object of giving a fraudulent preference, a single petition for adjudging both of them as insolvents, cannot be deemed to be unsustainable merely because they have not committed a joint act of

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insolvency. The test is, whether if the application were treated as a suit the suit would be bad for multifariousness, as was held in *Mamayya* v. *K. R. Rice Mill Co.*(1) In that case, the members of a joint Hindu family were sought to be adjudged insolvents. It seems to us, that that decision does not go to the length of laying down that, if the acts of insolvency are not joint but separate, a single petition would not lie, though it would not be bad for multifariousness, when treated as a suit. If the act of insolvency committed by each partner, would be one of the circumstances affording a cause of action against him, it has still to be shown that the two causes of action cannot be made the subject of trial on a single application as it would amount to a misjoinder. We are unable to find such inconveniences as would make it obligatory on the Court to ask the petitioner to confine his case to one of the respondents by way of election. We hold that there is no legal bar to the maintainability of a single petition against both the joint debtors who are also partners in this case.

As for the question whether the second respondent is shown to have committed an act or acts of insolvency, we cannot say that the learned Judge is wrong in his inference. The alienations effected by the second respondent are mortgages under Exhibits C and C-1, one of which was in favour of his own wife's sister's husband. There is a cloud of suspicion hanging over these transactions which would come under clauses (*b*) and (*c*) of section 6 of the Act. We hold that the order of the District Judge is correct, and dismiss this appeal with costs.

The respondent is entitled to his costs in the lower Court. We allow the memorandum of objections. The respondent will add the amount of his costs to the amount already due to him.

N.R.

(1) (1921) I. L.R., 44 Mad., 810.