

RAMA RAO
v.
KRISTNAMMA.
VENKATA-
SUBBA
RAO, J.

It declares that the provisions of section 6 of the Married Women's Property Act of 1874 shall apply in the case of any policy effected by any Hindu in Madras after the 31st December 1913 (the Full Bench decision having been given on the 19th December). It does not further enact that they shall not apply to policies effected before that date. What then about such policies? They are clearly governed by the old Act. The present policy was effected in 1894 and governed as it is by the earlier Act, the decision of the Full Bench applies. We therefore confirm the judgment of the lower Court and dismiss the appeal with costs.

K.R.

INSOLVENCY.

Before Mr. Justice Kumaraswami Sastri.

1928,
November 21.

THE NEDUNGADI BANK, LTD., MADRAS, APPLICANTS,

v.

THE OFFICIAL ASSIGNEE OF MADRAS, RESPONDENT.*

Presidency Towns Insolvency Act (III of 1908), sec. 52—Debtor's property taken possession by receiver—Debtor subsequently adjudicated insolvent—If section 52 applicable to property in receiver's possession—Property in possession of receiver appointed by Court—Legality of possession—If can be questioned by third parties while order appointing receiver remains in force.

Where the property of a debtor is taken possession of by a receiver appointed by the Court, and the debtor is subsequently adjudicated an insolvent, section 52 of the Presidency Towns Insolvency Act does not apply, and the property cannot, during

* I.P. No. 264 of 1928, Application No. 723 of 1928.

the continuance of the possession by the receiver, be held to be in the possession, order and disposition of the debtor.

When an order is made by the Court appointing a receiver, and the receiver takes possession of property, it is not open to third parties to question the legality of the possession of the receiver so long as the order appointing the receiver remains in force.

APPLICATION in the Insolvency of K. Audisesha Nayudu for an order directing the Official Assignee of Madras to deliver to the applicants certain goods and to pay them a sum of money alleged to have been realized by the sale of other goods.

T. L. Venkatarama Ayyar (*K. S. Nair* with him) for the applicants.

V. Varadaraja Mudaliar for respondent.

JUDGMENT.

This is an application by the Nedungadi Bank, Ltd., for an order directing the Official Assignee to deliver possession of five motor cars specified in the application and to pay Rs. 44 which is alleged to be the amount realized by the sale of one motor car which was sold by the Official Assignee.

The affidavit in support of the application sets out that the insolvent, Audisesha Nayudu, was the proprietor of the City Taxi Company, that he obtained an overdraft from the bank on the terms set out in a deed, dated the 1st of June 1926, by which it was *inter alia* provided that the bank should allow accommodation to the insolvent to the extent of Rs. 5,000 on the security of six motor cars described in the schedule to the registered deed, that the bank became the mortgagee of the six cars to the extent of the advances made, that the deed also provided that the bank would be entitled to take possession of the cars whenever desired by it, that one Sambamurthi claiming to be a creditor of the

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insolvent filed C.S. No. 69 of 1928 on the file of this Court for the enforcement of his claim in that suit, and Mr. K. G. Ramaswami Ayyangar, Advocate, was appointed receiver of the properties belonging to the insolvent, and the receiver took possession of the cars which had been mortgaged to the bank, that the bank on being informed of it wrote to the receiver on the 22nd of June 1928 demanding Rs. 2,225-3-11 due to the bank and asking that it should be paid on or before the 1st of July 1928, and stating that, in default, possession would be taken, that the receiver applied for further time on the 26th of June 1928 which was refused by the bank, that subsequently Audishesha Nayudu was adjudicated insolvent on the 10th of July 1928, that the Official Assignee had taken possession of the cars from the receiver, that the bank called on the Official Assignee to give possession of the cars, that one of the cars was sold by the Official Assignee for Rs. 44 and that the other cars are still with the Official Assignee.

The Official Assignee states that he is not aware of the claim of the bank, that the insolvent carried on the business of hiring motor cars in this City under the name of the City Taxi Company, and for the purpose of that business he purchased and registered cars in his own name, and the cars remained in his possession till the date of his adjudication, that under the deed of mortgage, dated the 1st June 1926, the cars were allowed to remain in the possession, order and disposition of the insolvent with the consent of the bank, the insolvent being the reputed owner thereof, that the receiver was appointed with a view to run the business under the guidance of the insolvent, and pay certain creditors specified in the order including the bank, that the appointment of the receiver has not the effect of changing the ownership of the insolvent over the cars, that

the acts of insolvency mentioned in the petition began from April 1928, and the adjudication of the 10th of July relates back to April, that the insolvent was the reputed owner of the cars, and that the bank has no claim. He says he did not take possession of one car No. 6118.

The deed of mortgage dated the 1st of June 1926 has been marked as Exhibit A. It provides that the bank shall have a first charge on the motor cars and that the bank may at any time require possession to be delivered to it. It also empowers the bank to take possession of all the cars in case the amount due is not paid when demanded. It also provides that if the mortgagor commits any breach of the agreement or if he commits any acts of insolvency or assigns his estate for the benefit of his creditors, the bank is entitled to enter on the premises and take possession of the cars.

It is not disputed that the cars were left in the possession of the insolvent, nor is it disputed that on the 12th of April 1928 a receiver was appointed to manage and run the business. The receiver application was opposed, but ultimately a receiver was appointed. The receiver was to be in charge of, manage and run the business of the City Taxi Company; he was to be guided by the advice of the defendant in the running of the business, and he was directed to make payments from the net earnings of the business to the creditors named in the counter-affidavit. It was also ordered that all the stock and good will of the company shall vest in the receiver.

This order (Exhibit B) was passed on the 12th of April 1928. The receiver wrote to the bank Exhibit C on the 5th of May 1928 intimating that he had taken possession. The bank wrote Exhibit D on the 7th of May asking for a copy of the order of Court appointing

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the receiver. On the 8th of June, the receiver wrote Exhibit E enclosing a copy of the order. On the 22nd of June, the bank wrote Exhibit F to the receiver sending him a copy of the mortgage deed (Exhibit A) and asking for payment by the 1st of July and threatening to take possession if the payment was not made by the 1st of July. On the 26th of June, the receiver wrote Exhibit G stating that the financial position of the company prevented him from making payment as desired by the bank, that he was running the business under the orders of the Court, that he had been directed to pay certain creditors including the bank, and requesting the bank to wait for some time, and stating that he would pay the amount in easy instalments from the collections. On the 28th of June the bank wrote Exhibit H stating that it could not wait any longer unless it knew something definite about the date of closing the loan. On the 3rd of July the receiver wrote Exhibit J stating that he hoped to pay something from the collections every month and that the bank could not take possession because the goods had vested in him as receiver.

On the 26th of June, the petition for adjudication was filed. On the 10th of July, the debtor was adjudicated. On the 30th of July, notice went to the bank informing it of the adjudication.

It is contended for the bank that by reason of the vesting of the property in the receiver, the order and disposition clause in section 52 of the Act does not apply as the property was in *custodia legis*, that the bank had prior to the insolvency petition given notice that it would take possession, and that any subsequent possession by the receiver being wrongful, the property was not with the consent of the bank in the possession of the defendant, even assuming that the receiver's possession was the possession of the defendant.

I am of opinion that section 52 does not apply as the property was not in the possession, order and disposition of the debtor, either at the date of the presentation of the petition, or at the date of adjudication. There is no evidence of any acts of insolvency committed before the petition so as to make the adjudication relate back.

I am of opinion that the appointment of a receiver removes the property from the possession of the insolvent. In *Taylor v. Eickersley*(1), it was held that the order and disposition clause did not apply when the property was taken possession of by the receiver appointed by Court. In *Fletcher v. Manning*(2), it was held that goods mortgaged before insolvency and which were at the time of bankruptcy in the hands of the Sheriff under an execution against the bankrupt were not under the order and disposition of the insolvent.

It has been argued by the respondent that, as the receiver appointed did not give notice to all the debtors, the property must be deemed to have remained in the order and disposition of the insolvent, and reference has been made to *Rutter v. Everett*(3), and *In re Neal, Ex parte the Trustee*(4). In the present case, the property is tangible movable property and, unlike debts, notice to the debtor is unnecessary to complete the title of the transferee.

It has also been argued that the Court had no jurisdiction to appoint a receiver in C.S. No. 69 of 1928, which was a simple claim for money, and reference has been made to *Chockalingam Pillai v. Pichappa Chettiyar*(5). I have in C.S. No. 473 of 1928 dealt

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(1) (1877) 5 Ch. D., 740.

(2) (1844) 12 M. & W., 571.

(3) [1895] 2 Ch., 872.

(4) [1914] 2 K.B., 910.

(5) (1925) 22 L.W., 579.

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with all the authorities on the subject, and come to the conclusion that under Order XL, rule 1, of the Code of Civil Procedure, the Court has power to appoint a receiver even in case of simple mortgages. I am also of opinion that when an order has been made by a Court and the receiver takes possession, it is not open to third parties to question the legality of the possession of the receiver, so long as the order appointing the receiver is in force.

It is argued for the bank that the notices sent by the bank to the receiver demanding possession put an end to the right of the mortgagor to remain in possession, and that where notice is given of the determination to take possession conferred by the deed of mortgage, it is sufficient to take the property out of the order and disposition of the insolvent. In view of my decision on the first contention as to the effect of the appointment of a receiver, I think it unnecessary to decide this question.

I allow the application, except as to car No. 6118, of which the Official Assignee did not take possession, with taxed costs payable out of the estate. The assignee will take the taxed costs of the application out of the estate.

B.C.S.
