

APPELLATE CIVIL—FULL BENCH.

*Before Sir Owen Beasley, Kt. Chief Justice,
Mr. Justice Sundaram Chetti and Mr. Justice Pakenham Walsh.*

1930,
July 30.

TATICHERLA PICHAMMA (FIRST RESPONDENT), APPELLANT,

v.

THE OFFICIAL RECEIVER OF CUDDAPAH AND
OTHERS (PETITIONER AND RESPONDENTS TO 4), RESPONDENTS.*

Provincial Insolvency Act (V of 1920), sec. 53—Amending Act (X of 1930), sec. 6—Effect of—Application to set aside transfer by insolvent—Transfer more than two years from date of adjudication but within two years of date of petition for adjudication—Amending Act (X of 1930), if retrospective.

A transfer of property of the description given in section 53 of the Provincial Insolvency Act (V of 1920), made by an insolvent more than two years before the date of the actual order of adjudication but within two years of the date of the presentation of the petition for adjudication, can be annulled by the Court under section 53 of the Act, at the instance of the Official Receiver.

By reason of the amendment of section 53 by Act X of 1930, by the insertion of the words "*on a petition presented*" after the words "*is adjudged insolvent*" in that section, the doubt as to the construction of the section on this matter has been set at rest by the Legislature.

The amendment made by Act X of 1930 has a retrospective effect and will apply to a pending proceeding.

Veerappa Chettiar v. Subramanix Ayyar, (1929) I.L.R. 52 Mad. 123 (F.B.), applied.

APPEAL against the order of the District Court of Cuddapah in Original Petition No. 73 of 1926.

*Appeal Against Order No 163 of 1928.

This appeal came on for hearing before ANANTA-KRISHNA AYYAR and CORNISH JJ, who referred the question specified in the opinion to a Full Bench.

PICHAMMA
v.
OFFICIAL
RECEIVER,
CUDDAPAH.

T. V. Muthukrishna Ayyar for appellant.—The question is from what point of time the period of two years, mentioned in section 53 of the Provincial Insolvency Act, 1920, should be reckoned in an application to set aside an alienation by an insolvent. The amending Act (X of 1930) was passed to settle the conflict as to the construction of the section. The question still remains, whether the amending Act has retrospective effect. The reference to the Full Bench in this case was two days prior to the passing of the amending Act. The Act is not declaratory in its nature. There are no such words as “it is hereby declared” in the amending Act. The principle contained in the Full Bench decision in *Veerappa Chettiar v. Subramania Ayyar*(1) cannot be applied to the operation of the amending Act (X of 1930). The amending Act, therefore, does not apply to the present case.

B. Somayya (with him *Kasturi Seshagiri Rao* and *G. N. Thirumalachari*) for respondents 1 to 3—The amending Act (X of 1930), section 6, is conclusive as to the construction of section 53, as it originally existed; the amending Act simply makes clear the intention of section 53; it has necessarily a retrospective effect. [Reference was made to the preamble of the amending Act and to the principle of the decision in the Full Bench case in *Veerappa Chettiar v. Subramania Ayyar*(1).]

The OPINION of the Court was delivered by

SUNDARAM CHETTI J.—The question referred to us for decision runs as follows :—

SUNDARAM
CHETTI J.

“Whether a transfer of property of the description given in section 53 of the Provincial Insolvency Act (Act V of 1920) made by an insolvent more than two years before the date of the actual order of adjudication but within two years of the date of the presentation of the petition for adjudication could be annulled by the Court under section 53 of the Act at the instance of the Official Receiver.”

The decision of this question depends upon the correct interpretation of the wording in section 53 of

FIGHAM MA
 v.
 OFFICIAL
 RECEIVER,
 CUDDAPAH.
 ———
 SUNDARAM
 CHETTI J.

the Act. The portion of the section relevant for our purpose is where it says that the adjudication of the insolvent should have been made within two years after the date of the transfer. As to the meaning to be attached to the point at which limitation has to be computed, there has been a conflict of judicial opinion. This High Court as also the Calcutta High Court has been of one opinion, namely, that a petition to annul an alienation can be filed, if it is within two years before the presentation of the insolvency petition. The decisions of these High Courts proceeded on the view that the adjudication relates back to the presentation of the petition and, following the view taken in the English decisions, it has been so held. But a different view has been taken by the High Courts of Bombay, Rangoon and Lahore. The question of interpreting the section is not quite free from difficulty; but, in view of the recent amendment of this section by Act X of 1930 which received the assent of the Governor-General on the 20th March 1930, any doubt on this matter must be taken to have been set at rest.

The only point now to be considered is whether the amendment made by section 6 of this Act has a retrospective effect, that is, will apply to a pending proceeding such as the one in question. If, by means of this amendment, a new or altered period of limitation is prescribed, then it may be for consideration whether such an alteration in the law will have retrospective effect or not; but what would appear from the statement of objects and reasons in connexion with this amending Act is that, in view of different interpretations having been put by several High Courts which led to a conflict of view, the Legislature wanted to set that doubt at rest by declaring clearly what the real meaning of the expression in the section was. By the insertion of the

words "on a petition presented" after the words "is adjudged insolvent" the meaning is made clear and that meaning is in accordance with the view taken by this High Court and the Calcutta High Court. If the amendment in question has now introduced a new period of limitation but has only clarified the meaning of the old section, there is no doubt that it must be taken to apply to the present case. The recent Full Bench decision of this Court in *Veerappa Chettiar v. Subramania Ayyar*(1) supports the view which we are taking. That case was in respect of an amendment made to a certain section in the Transfer of Property Act as to the meaning of the word "attestation," and it was held that that amendment had retrospective effect. It is difficult to distinguish in principle the present case from the one dealt with by the Full Bench. That being so, we think it unnecessary to canvass the decisions of the several High Courts which were given under section 53 of the Act before the amendment. We, therefore, answer this question in the affirmative.

PICHANMA
v.
OFFICIAL
RECEIVER
Cuddapah.
—
SUNDARAM
CHETTI J.

K.B.

(1) (1929) I.L.B. 52 Mad. 123.
