

APPELLATE CIVIL.

Before Sir Owen Beasley, Kt., Chief Justice and
Mr. Justice Cornish.

N. CHINNAPPA MUDALI AND THREE OTHERS (RESPONDENTS
1, 3, 4 AND 6), APPELLANTS,

1931,
September
18.

v.

THE OFFICIAL ASSIGNEE OF MADRAS (APPLICANT),
RESPONDENT.*

*Presidency Towns Insolvency Act (III of 1909), ss. 7 and 36,
sub-ss. 4 and 5—Presidency Towns Insolvency (Amend-
ment) Act (XIX of 1927), sec 2—Scope and effect of.*

The Official Assignee of Madras examined the father of the insolvent and one of his brothers, under section 36 of the Presidency Towns Insolvency Act (III of 1909), for the purpose of ascertaining whether the status of joint family was subsisting between the insolvent and the other members of his family and whether a business was a joint family business. Later on, he took out an application under section 7 of the Act for, *inter alia*, a declaration that the business was a joint family business and that the deed of partition entered into between the insolvent and the other members of his family was void against him.

Held that the amendment of section 7 of the Act by section 2 of the amending Act (XIX of 1927) refers only to such proceedings under section 36 of the Act (III of 1909) as come under sub-section 4 which deals with simple money claims and sub-section 5 which deals with the examination of persons supposed to be in possession of some property of the insolvent and to no other matters. Sub-section 5 of section 36 does not touch the case of a person who is examined for the purposes mentioned above and as such the application under section 7 of the Act (III of 1909) was a proper one.

Official Assignee of Madras v. Narasimha Mudaliar, (1929)
I.L.R. 52 Mad. 717 (F.B.), distinguished.

* Original Side Appeal No. 30 of 1931.

CHINNAPPA
MUDALIAR
v.
OFFICIAL
ASSIGNEE,
MADRAS.

APPEAL from the judgment and order of WALLER J. passed in the exercise of the Insolvency Jurisdiction of the High Court in Application No. 85 of 1930 in Insolvency Petition No. 29 of 1930.

T. R. Vijiaraghavachari for appellants.

V. C. Gopalaratnam for *V. V. Srinivasa Ayyangar* for respondent.

JUDGMENT.

BEASLEY C.J. BEASLEY C.J.—This is an appeal from an order of WALLER J. sitting in insolvency. The Official Assignee put in an application in the Insolvency Court for a declaration that the business of S. Chinnappa Mudaliar and Sons was the joint family business of the insolvent, his father, and the respondents to the application, and that the deed of partition entered into by them was void as against him, and for an injunction restraining the respondents from alienating any of the joint family property. WALLER J. held that there was a joint family, that with the exception of some property the property was joint family property, and that the yarn business carried on was the joint family business. The present appeal is against that order.

Before WALLER J., apart from facts, the point of law was raised that the Official Assignee was not entitled to make an application under section 7 of the Presidency Towns Insolvency Act because he had at an earlier stage examined the father of the insolvent and one of the brothers. That examination was for the purpose of ascertaining whether the status of joint family was subsisting and whether the business carried on was a joint family business. It was contended before WALLER J. that, under section 7 of the Presidency Towns Insolvency Act as amended by Act XIX of 1927, once there having been an examination of these two persons and a

denial by them that there was a joint family and that this was a joint family business, the jurisdiction of the Insolvency Court was ousted; and in support of this argument a Full Bench decision of this Court, viz., *Official Assignee of Madras v. Narasimha Mudaliar*(1), was quoted. I myself was a member of that Full Bench. WALLER J. held that that case arose directly under section 36 (4) of the Act, the supposed debtor not admitting indebtedness to the insolvent. That was the case of a simple money claim made by the Official Assignee against a person alleged to be indebted to the insolvency or the insolvent's estate; and what the Court was there considering was an appeal from an order of WALLER J. who had decided that, in so far as the person against whom the claim was made admitted the claim, a decree could be passed against him but that, in so far as he disputed the claim, proceedings could not be taken against him in the Insolvency Court, and therefore declined to pass a decree against him. That decision the Full Bench upheld. In view, however, of the importance of the question as to whether or not in a simple money claim, when the garnishee in the proceedings has been examined under section 36 and has disputed the claim, he can have proceedings brought against him under section 7 of the Insolvency Act, we were asked to decide that point and accordingly we did. Throughout the decision in that case the only case in contemplation was the case of a simple money claim, so that upon this point the Full Bench decision has no application at all and WALLER J. quite properly so held. Before us it was argued that what the amending section 2 of Act XIX of 1927 says is that, where an enquiry has been held under section 36 and where the

CHINNAPPA
MUDALI
v.
OFFICIAL
ASSIGNEE,
MADRAS.
—
BRASLEY C.J.

(1) (1929) I.L.R. 52 Mad. 717 (F.B.).

CHINNAPPA
MUDALI
v.
OFFICIAL
ASSIGNEE,
MADRAS.

BEASLEY C.J.

person questioned at such enquiry is unwilling for the matter to be decided, it cannot so be decided under section 7 of the Act. That, in my view, is far too wide an interpretation to be put upon the amending section.

In my view, the amending section merely refers to such proceedings under section 36 as come under sub-sections 4 and 5. Sub-section 4 of course deals with simple money claims. Sub-section 5 deals with the examination of persons supposed to be in possession of some property of the insolvent. In my view, sub-section 5 does not touch the case of a person who is examined in order to discover whether the insolvent was or was not a member of a joint family or whether the business carried on by him was a joint family business. That, in my view, is quite outside the scope of sub-sections 4 and 5. In my opinion, section 7 of Act III of 1909 as amended by section 2 of Act XIX of 1927 only applies to matters appearing in sub-sections 4 and 5 of section 36 and to no other matters. That being so, WALLER J. was quite right in holding that the application under section 7 against all the respondents was a proper one.

We have further, of course, to consider the question as to whether he was right on the facts in holding that this was a joint family and that the insolvent was a member of it and that the yarn business was a joint family business. Those three questions were pure questions of fact. The learned Judge had before him the witnesses and had also before him certain documents, and it is quite futile to contend on behalf of the appellants that there was no evidence—indeed he had ample evidence before him—upon which to come to the conclusions of fact which he did, namely, that this was a joint family, that the insolvent was a member of it and that the yarn business was a joint family business.

Produced in the case there was the partition deed. That the learned Judge has found to be a fraudulent one and he set it aside. Obviously it was a fraudulent one. It came into being only a year before the insolvency, failed to disclose as family debt any of the debts set out in the schedule, and was a contrivance clearly to defeat the creditors of the insolvent. It placed the entire debt upon the insolvent's shoulders and allowed the other members of the family to go away with the bulk of the property which otherwise would have been in the possession of the Official Assignee for the benefit of the creditors. The partition deed begins by stating that up to that time the status of joint family existed. That, we are asked to say, was an incorrect statement, that the joint family was not in existence, and that as a matter of fact the members of the joint family had years before divided themselves. We are asked to say that the statement was due to the mistake of a petition-writer. That of course is a perfectly futile argument to address to us. The partition deed was signed by all the members of the family, the signatures were witnessed, and the document was registered, and in view of that statement there was ample evidence before WALLER J. to say that this was a joint family. There was also other evidence to show that it was a joint family business. The account books of the yarn business were produced and they clearly showed that payments were made to the other members of the family. There being evidence before WALLER J. upon which he could come to the conclusion that this was a joint family and that it was a joint family business, we decline to consider the question as to whether or not he came to a right conclusion. I do not think it is proper for an appellate Court, where there is evidence and where the trial Judge on the Original

CHINNAPPA
MUDALI
v.
OFFICIAL
ASSIGNEE,
MADRAS.

BEASLEY C.J.

CHINNAPPA
MUDALI
v.
OFFICIAL
ASSIGNEE,
MADRAS.

Side or Insolvency comes to a conclusion upon the facts, to lightly upset such conclusion. That being so, this appeal must be dismissed with taxed costs.

CORNISH J.

CORNISH J.—I entirely agree. The appellant's argument seems to go to this length that, whenever the Official Assignee has held an examination under section 36, he can have no recourse to the provisions of section 7, but must have the matter which has to be determined decided in a suit. That startling result, which could never have been contemplated by the Legislature, can, I think, be avoided by giving, what seems to me, the natural construction to section 7. The section, as amended, provides that the Insolvency Court can decide all questions arising in any case of insolvency, provided that, unless all parties otherwise agree, the power shall be exercised in the manner and to the extent provided by section 36 for the purpose of deciding any matter arising under section 36. What are the matters arising for decision under section 36? They are contained in sub-sections 4 and 5, namely, whether a person supposed to be indebted to the insolvent is so indebted, and whether a person suspected of having in his possession property belonging to the insolvent has in fact any such property in his possession. If the person supposed to be a debtor to the insolvent or to have the insolvent's property in his possession does not admit the fact, then, unless all the parties otherwise agree, the Insolvency Court cannot determine the matter under section 7. But questions, whether the insolvent is a member of a joint family, or whether the business carried on by the insolvent is a business of the joint family, are not in my opinion matters falling within sub-section 4 or 5 of section 36, and they can be decided by the Insolvency Court in the exercise of its powers under section 7.