PULLI GOUNDAN v. KUMARASAMI GOUNDAN.

MADHAVAN NAIR J.

Bankruptcy will affect not only parties thereto but also other people; see also the observations in *Chowdappa Gounder* v. *Kathaperumal Pillai*(1).

We have no doubt that under section 75, clause 1, of the Provincial Insolvency Act the first respondent in the present case was competent to prefer the appeal to the lower appellate Court. In these circumstances we dismiss the revision petition with costs.

A.S.V.

APPELLATE CIVIL.

Mr. Justice Waller and Mr. Justice Krishnan Pandalai.

1931, August 18.

SIVASAMI ODAYAR (DEFENDANT), APPELLANT,

v.

C. R. SUBRAMANIA AIYAR (PLAINTIFF), RESPONDENT.*

Provincial Insolvency Act (V of 1920), sec. 52, as amended—Interim receiver's right to apply under—Immovable property under attachment by Court—Sec. 52 applies to.

An interim receiver is entitled to apply under section 52 of the Provincial Insolvency Act. Section 52, as now amended, contemplates the presentation of an application, not, as it used to do, after adjudication, but at an earlier stage—that is to say, after an insolvency petition has been admitted.

Subramania Aiyar v. *The Official Receiver, Tanjore,* (1925) 50 M.L.J. 665, dissented from.

Mahasukh v. *Valibhai,* (1927) 30 Bom. L.R. 455, referred to. Section 52 of the Provincial Insolvency Act applies to immovable property under attachment by a Court.

Haranchandra Chakravarti v. *Jay Chand,* (1929) I.L.R. 57 Calc. 122, followed.

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(1) (1926) I.L.R. 49 Mad. 794.

* Second Appeal No. 334 of 1927.

APPEAL against the decree of the Court of the Subordinate Judge of Kumbakonam in Appeal Suits Nos. 47 and 55 of 1926 preferred against the decree of the Court of the District Munsif of Kumbakonam in Original Suit No. 373 of 1922.

T. M. Krishnaswami Ayyar (with him *C. A. Seshagiri Sastri*) for appellant.

B. Sitarama Rao (with him *K. R. Rangaswami Ayyangar* and *S. Rangaraja Ayyangar*) for respondent.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by

WALLER J.—The appellant in this case is a person who took a lease of an insolvent's land from an Official Receiver. The respondent purchased the land in execution of a decree passed against the insolvent and his sons and he sued to recover the value of the crops removed from it by the appellant. The facts and dates are these. The land was attached in execution and proclaimed for sale, the sale being fixed for 30th September 1920. On 23rd the insolvent applied to be adjudicated and on 28th the Official Receiver was appointed interim receiver. Two days later he moved the Court under section 52 of the Provincial Insolvency Act to adjourn the sale. He did not, in terms, ask for possession of the land to be delivered to him, but, as he wanted the sale to be adjourned so that he himself might sell, such a request on his part may be implied. The Court refused the adjournment and the sale was conducted. On 23rd October the Receiver asked the Court not to confirm the sale, but his prayer was again refused. On 15th December the insolvent was adjudicated and the Official Receiver proceeded to lease his land to the appellant, after which the respondent obtained symbolical delivery from the Court. The Official Receiver subsequently applied

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to have the sale set aside. His application was rejected by the executing Court, but was allowed by the District Judge, whose order was, however, set aside by the High Court in a decision which is reported as *Subramania Aiyar* v. *The Official Receiver, Tanjore*(1). The Court held that the receiver referred to in section 52 of the Provincial Insolvency Act was the receiver appointed after adjudication and that no application under that section on the part of an interim receiver would lie. With great respect, we must express our dissent from this view. Section 52, as now amended, contemplates the presentation of an application, not, as it used to do, after adjudication, but at an earlier stage, that is to say, after an insolvency petition has been admitted. At that stage, the only receiver that can be in existence for the purpose of applying is an interim receiver. In *Mahasukh* v. *Valibhai*(2) an application had been presented under section 52 by an interim receiver and no one seems even to have argued that it was not maintainable for the reason that no interim receiver could apply. The truth is that section 52, in its present form, is entirely out of place under the heading "Effect of insolvency (in other words of adjudication) on antecedent transactions". Before amendment, it came properly under that heading. Now it is concerned with applications presented at an earlier stage. Mr. Sitarama Rao seeks to support the High Court's order on another ground that section 52 does not apply to immovable property, which cannot be said to be "in the possession of the Court". Were the matter *res integra*, we should be inclined to accept his argument. In India land is attached not by seizure, but by means of a prohibitory order and it is difficult to understand how,

(1) (1925) 50 M.L.J. 665. (2) (1927) 30 Bom. L.R. 455.

while it remains in the physical possession of the judgment-debtor or of a third party, it can be said also to be in the possession of the Court. There is, however, plenty of authority, for example, *Haranchandra Chakravarti* v. *Jay Chand*(1), for the view that the section applies to all kinds of property under attachment by a Court, and we do not propose to dissent from it. The result, then, is that, on the application of the interim receiver, the executing Court should at once have stayed the sale and directed delivery of possession to him, the section being peremptory in its terms. The sale, has, however, been confirmed by a Bench of this Court and, even if it could be set aside, no one is asking for it to be set aside. But it is important to define the true legal position, which has some bearing on the appellant's plea of *bona fides*. It is not disputed that he paid rent to the Official Receiver or that he deposited part of it in Court under Order XXI, rule 46, Civil Procedure Code. Under the circumstances, we do not consider that he should be asked to pay twice over. His payments to the Official Receiver seem to have been made *bona fide* and to be valid under section 50 of the Transfer of Property Act. The Official Receiver was quite justified in declining to recognize the title of the auction-purchaser under a sale that should not have taken place or been confirmed by a Court, which was required peremptorily by the statute to stay its hand and to transfer the attached property to the Receiver. As regards the deposit under Order XXI, rule 46, of the Code of Civil Procedure, the law allowed it and it can hardly be described as *mala fide*. The final argument is that the Receiver was not entitled to possession of the sons' shares and that

(1) (1929) I.L.R. 57 Calc. 122.

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the plea of *bona fides* could not be sustained in regard to them. As to that, the law at that time was not settled and there was some doubt whether the sons' shares also did not vest in the Receiver. Apart from that, it is clear that the auction-purchaser himself was not entitled to anything but symbolical possession. If he has a legal grievance at all, it is against the Official Receiver, who has received payment from his lessee.

We allow the second appeal and dismiss the suit with costs throughout.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Reilly and Mr. Justice Anantakrishna Ayyar.

1931, July 24.

VISWANATHA AYYAR (APPELLANT), APPELLANT,

v.

CHIMMUKUTTI AMMA AND FOUR OTHERS (RESPONDENTS 1 to 4 AND 6), RESPONDENTS.*

Mortgage—Sub-mortgage—Redemption suit by original mortgagor against original mortgagee—Sub-mortgagee not impleaded in—Right of, where redemption suit ends in redemption—Original mortgagor not having notice of sub-mortgage—Notice of sub-mortgage to mortgagor—Registration of sub-mortgage not of itself—Redemption suit—Preliminary decree in—Payment out of Court made after, and reported to Court by both mortgagor and mortgagee—Validity of—Third party's right to question.

A sub-mortgagee (of whose sub-mortgage the original mortgagor had no notice) left out of a redemption suit against his mortgagor, which ends in redemption, cannot claim afterwards to bring either the property originally mortgaged to his mortgagor or what was mortgaged to himself to sale. His

* Letters Patent Appeal No. 135 of 1926.