

## APPELLATE CIVIL.

Before Mr. Justice Jackson and Mr. Justice Mockett.

CHELLA RANGAPPA (PETITIONER), APPELLANT,

v.

YERRA VENKATAGIRI RANGAPPA AND TWO OTHERS  
(RESPONDENTS), RESPONDENTS.\*

1932,  
September  
16.

Res Judicata—*Insolvency proceedings—Applicability to—Provincial Insolvency Act (V of 1920), sec. 54—Official Receiver's petition under—Dismissal of—Fresh petition under section in respect of same sale by a creditor—Maintainability of.*

The doctrine of *res iudicata* is applicable to proceedings in insolvency.

*Held*, accordingly, that the dismissal of a petition under section 54 of the Provincial Insolvency Act by the Official Receiver in respect of a sale by the insolvent on the ground that the sale did not amount to a fraudulent preference was a bar to a subsequent petition under the same section by a creditor of the estate of the insolvent in respect of the same sale.

APPEAL against the order of the District Court of Anantapur, dated 7th March 1929 and made in Original Petition No. 19 of 1928.

T. R. Ramachandra Ayyar, R. Srinivasa Ayyangar and G. Musalappa Reddy for petitioner.

B. Somayya, S. Ranganadha Ayyar and T. R. Arunachalam for respondents.

*Cur. adv. vult.*

The JUDGMENT of the Court was delivered by  
MOCKETT J.—In this Original Petition No. 19 of 1928 MOCKETT J. the petitioner, a creditor of the estate of the second respondent (insolvent), seeks to set aside a sale to the first respondent of certain properties. The third

\* Appeal against Order No. 480 of 1929.

RANGAPPA respondent is the Official Receiver of Anantapur. The  
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 RANGAPPA. petition is stated to be under section 4 of the Provincial  
 MOCKETT J. Insolvency Act and paragraph 4 alleges that the sale  
 was "in fraud of other creditors". This same sale was  
 the subject of Original Petition No. 13 of 1924 filed by  
 the Official Receiver now the third respondent. That  
 petition was stated to be under sections 4, 54 and 56,  
 Provincial Insolvency Act, and prayed that "the  
 execution sale in favour of the first counter-petitioner  
 (now the first respondent) be set aside as fraudulent and  
 preferred."

The third issue in that original petition was  
 "whether the sale amounts to a fraudulent preference  
 . . ." and the fourth issue "whether in any  
 event the sale can be set aside under section 4,  
 Insolvency Act."

The learned Subordinate Judge held that on the  
 facts there was no fraudulent preference and that the  
 provisions of section 4 could not be invoked. It was  
 of course obvious that section 56 did not apply. The  
 matter came before the High Court in Civil Miscel-  
 laneous Appeal No. 115 of 1927 on a question as to  
 whether a second appeal lay from the District Judge  
 and RAMESAM and DEVADOSS JJ. gave judgment as follows  
 (Exhibit A) :—

"We think that the order of the Subordinate Judge was  
 passed under sections 51 and 54, Provincial Insolvency Act.  
 He expressly refuses to apply section 4 of the Act. The  
 order is therefore not an order under section 4. . . ."

Mr. T. R. Ramachandra Ayyar now argues that the  
 appellant (petitioner) is free to proceed with his present  
 petition as (i) it is *res judicata* that there has been  
 no decision under section 4 which is the basis of this  
 petition, and (ii) that the respondent cannot plead *res  
 judicata* to the decision under section 54 as section 11  
 of the Code of Civil Procedure does not refer to

insolvency proceedings which are not "suits". We agree with his contention as to the first point as Exhibit A is clear and in insolvency proceedings the Official Receiver represents the general body of creditors of whom the present appellant is one.

As to the second point it is true that no authority has been cited before us to the effect that insolvency proceedings can be the subject of *res judicata*, but there is ample authority for the position that section 11, Civil Procedure Code, is not exhaustive and that, as stated by the Privy Council in *Ram Kirpal Shukul v. Mussumat Rup Kuari*(1), "the binding force of such a judgment (i.e. a previous judgment) depends not upon section 13 of Act X of 1877, but upon general principles of law." The section referred to corresponds to section 11, Civil Procedure Code. "If" say their Lordships "it were not binding there would be no end to litigation." This is manifestly so and is especially applicable to insolvency proceedings. Were it otherwise it would be impossible for any one, whose possession of property received from an insolvent had been unsuccessfully impeached as a fraudulent transfer or preference, to be able to sell that property or even to enjoy its proceeds with any sense of security. This is a position which is clearly opposed to the principle "*Nemo debet bis vexari*". The above case, *Ram Kirpal Shukul v. Mussumat Rup Kuari*(1), was decided in 1883. Since then the Privy Council have reaffirmed their statement of the law bearing on the point in *Hook v. Administrator-General of Bengal*(2) and *Ramachandra Rao v. Ramachandra Rao*(3), the latter a case under the Land Acquisition Act.

On the authorities above cited we are of opinion that the doctrine of *res judicata* is applicable to

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MOCKETT J.

(1) (1883) L.R. 11 I.A. 37, 41.

(2) (1921) I.L.R. 48 Calc. 499 (P.C.).

(3) (1922) I.L.R. 45 Mad. 320 (P.C.).

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proceedings in insolvency and that the present petition is therefore unsustainable. We therefore agree with the learned District Judge and dismiss this appeal with customary costs throughout including pleader's fee. This disposes of the memorandum of objections.

A.S.V.

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## APPELLATE CIVIL.

*Before Mr. Justice Madhavan Nair and Mr. Justice Jackson.*

1932,  
October 21.

SRI VENKATACHALAPATHI NIDHI, LTD.,  
COIMBATORE, AND TWO OTHERS (PLAINTIFFS AND NIL),  
APPELLANTS,

v.

G. K. NANJAPPA GOUNDAN AND THREE OTHERS  
(DEFENDANTS ONE TO THREE AND NIL), RESPONDENTS.\*

*Negotiable Instrument—Suit on a, under the summary procedure under O. XXXVII of the Code of Civil Procedure (Act V of 1908)—Instrument silent as to interest—Power of Court to award the statutory rate of interest under sec. 80 of Indian Negotiable Instruments Act (XXVI of 1881).*

In a suit on a negotiable instrument under the summary procedure, the Court has power to award the statutory rate of interest, six per cent per annum, when there is no term in the instrument for the payment of interest. The operation of section 80 of the Negotiable Instruments Act is not excluded by Order XXXVII, rule 2 of the Code of Civil Procedure.

APPEAL against the decree of the Court of the Subordinate Judge of Coimbatore in Original Suit No. 64 of 1925.

*M. Krishna Bharati* for appellants.

*S. Ranganadha Ayyar* for respondents.