

MARGOP
v.
AYYAKANNU.

decides it, whatever the stage may be in the course of the trial. Moreover, the analogy of section 12 of the Court Fees Act, which says that even a Court of appeal, if it finds that a question was wrongly decided to the detriment of the revenue, may exact the proper court-fee, also shows the trial Court's power may be exercised at any stage of the suit.

I direct that the parties shall bear their own costs and the Government Pleader's fee in all the fourteen petitions is fixed at a consolidated sum of Rs. 200.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Pandrang Row.

THE OFFICIAL RECEIVER, KISTNA AT MASULI-
PATAM (PETITIONER), APPELLANT,

v.

GOGINENI KODANDARAMAYYA AND ANOTHER,
(RESPONDENTS), RESPONDENTS.*

Provincial Insolvency Act (V of 1920), sec. 52—Application under—Executing Court—Competent only to direct delivery to Receiver of property against which execution has issued—No longer competent to investigate or decide questions of disputed title.

In an application under section 52 of the Provincial Insolvency Act (V of 1920) where the conditions prescribed therein have been fulfilled, the executing Court has no other duty to perform than to direct the delivery to the Receiver of the property against which it has issued execution as the property of the insolvent. That section does not contemplate any enquiry

* Appeals Against Appellate Orders Nos. 176 and 177 of 1933.

at all as regards the rights of the insolvent in such property and the executing Court is no longer competent to investigate or decide questions of title in dispute between the insolvent-judgment-debtor and any other co-judgment-debtor or stranger.

OFFICIAL
RECEIVER,
KISTNA
v.
KODANDA-
RAMAYYA.

APPEALS against, and petitions under sections 115 of Act V of 1908 and 107 of the Government of India Act, praying the High Court to revise the order of the Court of the Subordinate Judge of Bezwada in Appeal Suit No. 150 of 1932, dated 12th April 1933 (Execution Application No. 995 of 1932 in Original Suit No. 330 of 1931, Court of the District Munsif of Bezwada) and the order of the Court of the Subordinate Judge of Bezwada in Appeal Suit No. 48 of 1932, dated 12th April 1933 (Execution Application No. 996 of 1932 in Original Suit No. 169 of 1931, Court of the District Munsif of Bezwada).

Ch. Raghava Rao and *A. Sundaram Aiyar* for *S. Rajaraman* for appellant.

V. Subrahmanyam and *V. Satyanarayana* for respondents.

JUDGMENT.

These appeals arise out of the order in appeal of the Additional Subordinate Judge of Bezwada, dated 12th April 1933. There were two appeals to the Subordinate Judge from one and the same order passed by the District Munsif of Bezwada in two applications made to him under section 52 of the Provincial Insolvency Act. Two different decree-holders had attached certain properties in execution of decrees obtained by them against two persons, father and son. Before the properties were actually brought to sale, the father filed an insolvency petition, and in that petition the Official Receiver, Kistna, was appointed Receiver

OFFICIAL
RECEIVER,
KISTNA
v.
KODANDA-
RAMAYYA.

of his properties. Thereupon the Official Receiver presented two applications under section 52 of the Provincial Insolvency Act praying that the sale of the properties may be stopped. The District Munsif after enquiry held that the properties brought to sale were the self-acquisitions of the father, Bapayya, and accordingly stopped the sales and directed the delivery of the entire properties to the Official Receiver. From this order the decree-holders appealed to the Subordinate Judge, and the Subordinate Judge held that it was not competent to the executing Court, to whom an application is made under section 52 of the Provincial Insolvency Act, to investigate and decide the questions of title arising between the insolvent and others, and accordingly he modified the order of the District Munsif to the extent of allowing the Official Receiver to take possession only of the interest of the insolvent, whatever it might be, in the properties, and allowing the decree-holders to proceed with the execution of their decrees so far as the second judgment-debtor's, i.e., the son's interest in the attached properties, whatever it might be, was concerned. Preliminary objection was raised before the Subordinate Judge to his competency to hear the appeals on the ground that the appeals must be deemed to have been presented under section 75 of the Provincial Insolvency Act, and that the Appellate Court under that section was the District Judge and not the Subordinate Judge. This objection was overruled by the Subordinate Judge, and it has not been pressed before me. It is therefore unnecessary for me to consider whether there is any substance in this objection.

The only point therefore that remains to be decided is whether the executing Court is competent to investigate questions of title as between the insolvent and his son, the other judgment-debtor, in an application under section 52 of the Provincial Insolvency Act. It has been stated on both sides that this point is not covered by any authority. Section 52 under which the applications were made belongs to a portion of the Act which is headed "Effect of insolvency on antecedent transactions", the first section dealing with this part of the law being section 51 which restricts the rights of creditors under execution. The second is section 52 followed by sections 53 and 54 which relate to avoidance of transfers as against the creditors. The general policy of the Insolvency Act is that when a person is adjudicated an insolvent his estate should be collected together by the Receiver appointed for the purpose, and various provisions have been enacted in order to enable the Official Receiver to perform this duty of getting the estate together into his hands by comparatively easy methods, and one of such methods is the method provided for in section 52 of the Act which applies to property which has been proceeded against in execution and is liable to sale in execution. In such a case the Court which is executing the decree is bound on application to direct the property which has been proceeded against in execution to be delivered to the Official Receiver. It would therefore appear that once it is established that there is some property against which execution has issued and which is saleable in execution, and it is found that the property so proceeded against is the

OFFICIAL
RECEIVER,
KISTNA
v.
KODANDA-
RAMAYYA.

OFFICIAL
RECEIVER,
KISTNA
v.
KODANDA-
RAMAYYA.

property of a person who has been adjudicated insolvent, the Court has nothing more to do than to deliver such property to the Receiver. The section does not contemplate any enquiry at all as regards the extent of the rights of the insolvent in the property proceeded against in execution. Whatever has been proceeded against as the property of the person who was subsequently adjudicated insolvent has to be delivered to the Receiver. The learned Subordinate Judge has given various reasons why in his opinion it would be more convenient that disputes of title as between the insolvent and his co-judgment-debtor should be decided by the Insolvency Court and not by the executing Court. Apart from these considerations which, I am bound to say, are entitled to considerable weight, I am of opinion that the policy of section 51 is really to put an end, as it were, to the powers of the executing Court to proceed against or do anything in respect of property against which it has issued execution as soon as it is found that the judgment-debtor as whose property it was proceeded against has been adjudicated an insolvent, and an application is made by the Receiver under section 52 of the Act. The subsequent fate of that property is left to the Insolvency Court to decide, if it thinks fit, or to a separate suit. It is obvious that the executing Court as well as the Insolvency Court cannot very well deal simultaneously with the same dispute. I am of opinion, therefore, that the view taken by the learned Subordinate Judge is right, and that in an application under section 52 of the Provincial Insolvency Act where the conditions prescribed therein have been fulfilled the executing

Court has no other duty to perform than to direct the delivery of the property in question to the Receiver, and is no longer competent to investigate or decide questions of title in dispute between the insolvent judgment-debtor and any other co-judgment-debtor or stranger. The appeals therefore fail and are dismissed with costs. No separate orders are necessary in the civil revision petitions which are dismissed.

OFFICIAL
RECEIVER,
KISTNA
v.
KODANDA-
RAMAYYA.

K.W.R.
