

APPELLATE CIVIL.

Before Mr. Justice Madhavan Nair and Mr. Justice Bardswell.

1934,
April 19.

SARVATHADA ISWARAYYA (PETITIONER), APPELLANT,

v.

KURUBA SUBBANNA AND ANOTHER (RESPONDENTS),
RESPONDENTS.*

Provincial Insolvency Act (V of 1920), sec. 9 (1) (c)—Three months' period prescribed by—Starting point of—Sale deed by debtor—Execution of, relied upon as act of insolvency—Sale deed dealing with property over value of one hundred rupees—Transfer of Property Act (IV of 1882), sec. 54—Effect of.

Under section 54 of the Transfer of Property Act, a sale deed dealing with property over the value of one hundred rupees to be valid requires registration. When, therefore, the execution of such a sale deed is relied upon as an act of insolvency by a petitioning creditor, the three months' period prescribed by section 9 (1) (c) of the Provincial Insolvency Act (V of 1920) must be calculated from the date of the registration of the deed and not from the date of its execution.

Muthiah Chettiar v. The Official Receiver of Tinnevelly District, (1932) 64 M.L.J. 382, relied upon.

APPEAL against the order of the District Court of Anantapur, dated the 18th August 1932, and made in Insolvency Petition No. 21 of 1930.

K. Srinivasa Rao for appellant.

S. Narayana Rao for respondents.

MADHAVAN
NAIR J.

The JUDGMENT of the Court was delivered by MADHAVAN NAIR J.—The petitioning creditor, who sought to get the first respondent adjudicated an insolvent, is the appellant before us. His petition was dismissed on the ground that the act of insolvency on which the petition was grounded

* Appeal against Order No. 58 of 1933.

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did not occur within three months before the presentation of the petition. The act of insolvency consisted in the execution of a sale deed by the first respondent in favour of the second respondent—Exhibit C. The document was executed on 10th January 1930 and it was registered on 13th February 1930. The petition for adjudication was filed on 23rd June 1930 on the re-opening day after the midsummer vacation. If the three months' period is calculated from 10th January 1930, it is obvious that the petition was presented more than three months after the act of insolvency and the petitioner had therefore no *locus standi* to present the petition. But if the time is calculated from 13th February 1930, he will be in time on 23rd June 1930, the three months' period from 13th February 1930 having expired during the midsummer holidays. So, the short question for determination in this case is whether the three months' period should be calculated from the date of the execution of the document, that is, on 10th January 1930, or from the date of its registration, 13th February 1930. The lower Court held that the period should be calculated from the date of execution and hence dismissed the petition.

In appeal, Mr. Srinivasa Rao argues that the period should be calculated from 13th February 1930 the date of the registration, his argument being that the document will be an effective sale deed only when it is registered and not when it is merely executed. Section 54 of the Transfer of Property Act is relied on in support of this contention. Under that section, a sale deed dealing with property over the value of one hundred rupees to be valid requires registration. No doubt,

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under section 47 of the Registration Act, once a document is registered, the effect begins to commence from the date of execution but, if the document is not registered, it can never have any legal effect as a sale deed. Therefore, Exhibit C in the present case cannot be considered to be an act of insolvency unless a valid transfer of property was made by that document and such a valid transfer could be said to have been made only when the document was registered on 13th February 1930. In our opinion, therefore, the act of insolvency can be considered to have taken place on 13th February 1930.

The above view is supported by a decision of this Court in *Muthiah Chettiar v. The Official Receiver of Tinnevelly District*(1). The question there arose in different circumstances and with reference to a mortgage deed but the point decided was the same. That question was whether the three months' period under section 54 of the Provincial Insolvency Act should be said to commence from the date of the execution of the document or from the date of its registration. It was held, having regard to section 59 of the Transfer of Property Act, which made registration compulsory to give validity to a mortgage, that the period should be calculated from the date of registration. On a similar reasoning we hold in this case that the act of insolvency was committed by the first respondent on 13th February 1930. It follows therefore that the appellant has *locus standi* to present the application.

The order of the lower Court is set aside. As the lower Court has found that the sale under

(1) (1932) 64 M.L.J. 382.

Exhibit C is fraudulent, we hold that an act of insolvency has been committed by the first respondent and he is therefore adjudicated an insolvent. The petition will be remanded to the lower Court for taking the necessary steps subsequent to adjudication and for fixing a time in which he may apply for discharge. The appellant is entitled to his costs both here and in the Court below.

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APPELLATE CIVIL.

Before Mr. Justice Bardswell.

DURAI PANDIYAN, MINOR, BY HIS MOTHER AND GUARDIAN,
KARUPPAYEE AMMAL (RESPONDENT), PETITIONER,

1934,
March 28.

v.

SOLAIMALAI PILLAI AND TWO OTHERS (PETITIONERS),
RESPONDENTS.*

Code of Civil Procedure (Act V of 1908), O. XXII—In forma pauperis—Application to sue—Character of—Death of applicant before passing of orders on—Application by his legal representatives to continue the proceedings on payment of proper court-fee—Validity of.

Pending an application for leave to sue *in forma pauperis* the applicant died. His sons applied to be joined as his legal representatives and sought to go on with the suit, which the applicant wanted to file, on payment of the necessary court-fees.

Held, that they could be joined as the legal representatives of the deceased applicant and could be allowed to pay the court-fee, upon which payment the application was to be filed as a suit.

* Civil Revision Petition No. 54 of 1934.