

already possessed by the company being thereby *transferred* to the allottee. Whatever may be the exact nature of the right which the allottee acquires between the date of allotment and the date of the entry of his name in the register, it is difficult to regard the issue of the shares to him by allotment as amounting to a "transfer of property" by the company to him. On this ground, we must hold that the contract of which the particulars were recorded in Form VII did not amount to a "conveyance" and that Form VII was properly treated by the parties as an "agreement".

Attorneys for respondent : *King and Partridge.*
A.S.V.

SECRETARY,
BOARD OF
REVENUE
v.
MADURA
MILLS CO.,
LTD.

APPELLATE CIVIL.

*Before Sir Owen Beasley, Kt., Chief Justice, and
Mr. Justice Stodart.*

SAMBASIVA REDDI (RESPONDENT), APPELLANT,

v.

THE OFFICIAL RECEIVER OF SOUTH ARCOT
(PETITIONER), RESPONDENT.*

1937,
January 5.

*Provincial Insolvency Act (V of 1920)—Subordinate Court—
Insolvency originating outside territorial jurisdiction of—
Petition under ss. 53, 54 and 4 of Act presented to
District Court in—Transfer by District Judge of, to Sub-
Court—Validity of—Jurisdiction of latter Court to deal
with petition—Notification by Local Government under
sec. 3 of Act—Effect of.*

Where a petition presented to the District Court at Cuddalore under sections 53, 54 and 4 of the Provincial Insolvency

* Appeal Against Order No. 97 of 1934.

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Act was transferred by the District Judge to the Subordinate Court of Cuddalore on the strength of a notification issued by the Local Government under section 3 of the Act but it appeared that the insolvency in question originated outside the territorial jurisdiction of that Subordinate Court,

held that the order of transfer of the petition by the District Judge to the said Subordinate Court was *ultra vires* and that the latter Court had no jurisdiction to deal with the matter.

Premchand Indoji v. Gopalappa, (1923) 45 M.L.J. 689, followed.

APPEAL against the order of the Court of the Subordinate Judge of Cuddalore dated 7th December 1933 in Interlocutory Application No. 6 of 1933 in Insolvency Petition No. 6 of 1930 on the file of the District Court of South Arcot (Interlocutory Application No. 450 of 1932 in Insolvency Petition No. 6 of 1930 on the file of the District Court of South Arcot).

T. R. Srinivasan for appellant.

S. Annamalai for respondent.

BEASLEY C.J. THE JUDGMENT of the Court was delivered by BEASLEY C.J.—This civil miscellaneous appeal arises from the following circumstances. The Official Receiver of South Arcot presented to the District Court at Cuddalore a petition under sections 53, 54 and 4 of the Provincial Insolvency Act to set aside two mortgages. The learned District Judge transferred that petition to the file of the Subordinate Court of Cuddalore which dealt with the petition and it was declared that the two mortgages in question were fraudulent and void as against the Official Receiver under sections 53 and 54 of the Provincial Insolvency Act. Hence this civil miscellaneous appeal. When the matter was first argued before us, we took the point that the

Subordinate Judge of Cuddalore had no jurisdiction to entertain the petition at all and, as there seemed to be at that time some doubt regarding the local limits of the jurisdiction of that Court and we wished to know how the petition came to be transferred by the District Court to that Subordinate Court, we adjourned the matter, requesting the District Judge to report the circumstances in which the Subordinate Judge came to try and decide the petition and also what the insolvency jurisdictions of the District and the Subordinate Courts are respectively and under what notification of the Government the Subordinate Court has been given insolvency jurisdiction. The matter now comes before us on the report of the District Judge at Cuddalore. He reports that the Subordinate Court, Cuddalore, was from 1st November 1913 invested with local jurisdiction over the whole of Cuddalore, Chidambaram and Vriddhachalam Taluks of the South Arcot District and that this was by notification at page 1796 of Part II of the *Fort St. George Gazette*, dated 28th October 1913. Then, as regards the insolvency jurisdiction, he reports as follows:

“Under G.O. No. 1731, Law (General), dated 5th June 1924, communicated in High Court's Dis. No. 1254 of 1924 published at page 650, Part I, of the *Fort St. George Gazette*, dated 10th June 1924, all Subordinate Courts in the Presidency were invested with jurisdiction under the Provincial Insolvency Act in respect of all petitions presented by creditors. Ever since then, the District Court has been exercising insolvency jurisdiction over the entire district while the Sub-Court was exercising concurrent jurisdiction over the three taluks of Chidambaram, Vriddhachalam and Cuddalore over which it had territorial jurisdiction.”

He adds that his predecessor, in order to give work to the Additional Subordinate Judge,

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transferred the petition in question to him and that was how the Subordinate Court came to hear and decide the petition.

The question is whether the District Judge had any power to transfer this petition to the Subordinate Judge of Cuddalore. It is common ground that this insolvency was outside the territorial jurisdiction of that Subordinate Court, that is to say, it originated in some place outside the local limits of the jurisdiction of that Court. The question therefore is whether the Provincial Insolvency Act gives any power to the Local Government by notification to give jurisdiction to a Subordinate Court, which, otherwise and apart from the notification, has no insolvency jurisdiction whatsoever, to deal with and dispose of insolvency matters which originate in some place which is not within the local limits of the jurisdiction of that Court. The notification in question was issued under section 3 of the Provincial Insolvency Act which reads as follows :

“ The District Courts shall be the Courts having jurisdiction under this Act.

Provided that the Local Government may, by notification in the Local Official Gazette, invest any Court subordinate to a District Court with jurisdiction in any class of cases and any Court so invested shall within the local limits of its jurisdiction have concurrent jurisdiction with the District Court under this Act.”

In pursuance of the powers given under that section, the Local Government issued the notification in question. We have heard a full argument upon this point and our attention has been drawn to a decided case of this Court which seems to us to be directly in point. Quite apart from that

authority, it seems to us to be quite clear from the words of the section itself that the Act does not invest a subordinate Court with jurisdiction to try any insolvency matter which originates outside the local limits of its jurisdiction. The words in the section

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“shall within the local limits of its jurisdiction have concurrent jurisdiction with the District Court under this Act” seem to us to be conclusive of this matter. Nevertheless, it has been contended on the other side that the words “the local limits of its jurisdiction” apply only to original insolvency matters and that the District Court has power by reason of the Civil Procedure Code to transfer any matter including insolvency matters to a subordinate Court, and section 5 (2) is invoked in support of this contention. In our view, that sub-section affords no assistance because the words there, viz., “subject to the provisions of the Insolvency Act” qualify the whole section. It must be borne in mind that a subordinate Court has no jurisdiction whatsoever in insolvency and it is only by reason of section 3 and notifications issued thereunder that it gets any jurisdiction. If no notification had been issued by the Local Government, then clearly the Subordinate Court of Cuddalore could not have dealt with insolvency matters at all. This position was clearly indicated in *Premchand Indoji v. Gopalappa*(1), a decision by SPENCER and DEVADOSS JJ. The headnote of that case is as follows :

“Under section 3 of the Provincial Insolvency Act the District Court is the only Court having jurisdiction to deal with

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a creditor's petition in the absence of any notification of the Local Government investing subordinate Courts with jurisdiction over such class of cases. In a case in which there was no such notification the District Judge's order transferring a petition to the Sub-Court for disposal was *ultra vires*."

We consider this case to be directly in point, although, in our view, having regard to the very clear words of section 3 of the Act, no authority is required. For these reasons, we are clearly of the opinion that the order of transfer by the District Judge of this petition to the Subordinate Court was *ultra vires* and that the Subordinate Court had no jurisdiction at all to deal with this matter. We have taken this objection ourselves which we consider to be decisive of this appeal and therefore the order before us must be set aside and the District Judge must be directed to take the case on his file and dispose of it according to law. In view of the fact that no objection was taken by the appellant to the jurisdiction of the Subordinate Court to entertain the petition and the objection was taken by ourselves, we direct the appellant to bear his costs of this appeal. The Official Receiver will get his costs out of the estate.

A.S.V.
