

APPELLATE CIVIL.

Before Mr. Justice Venkataramana Rao.

A. PR. L. M. L. LAKSHMANAN CHETTIAR
(RESPONDENT), APPELLANT,

1936,
August 28.

v.

K. SRINIVASA IYENGAR AND TWO OTHERS (APPELLANTS),
RESPONDENTS.*

*Insolvency—Hindu joint family—Insolvency of one member—
Effect—Vesting in the hands of Official Receiver—Subse-
quent annulment of adjudication on the ground that creditors
had been paid in full—Re-vesting of property in the hands
of the member—Character and incidents of.*

On the making of an order of adjudication of a member of an undivided Hindu family, his share vests in the Official Receiver and is in his hands not as joint family property but as separate property available for the benefit of the personal creditors of the insolvent member. When the insolvency of such a member is annulled on the ground that his creditors have been paid in full, the properties which remained in the hands of the Official Receiver go back to the debtor (member) with the same character in which it was held by the Official Receiver while the bankruptcy continued. The annulment would not completely wipe out the effect of a valid order of adjudication. The bankruptcy is wiped out to this extent, viz., that the properties go to the debtor (member) free from all claims in bankruptcy, so that he can deal with the properties as if they are his own, that is, with all the original powers and rights which he would have, had there been no bankruptcy.

APPEAL against the decree of the Court of the District Judge of Chittoor, dated 23rd February 1933, in Appeal Suit No. 51 of 1932 preferred against the order of the Court of the District Munsif, Sholinghur, in Execution Petition No. 491

* Appeal Against Appellate Order No. 180 of 1933.

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of 1931 in Original Suit No. 1098 of 1929 on the file of the District Munsif's Court, Gobichetti-palayam.

S. A. Seshadri Ayyangar for appellant.

D. Ramaswamy Ayyangar for respondents.

Cur. adv. vult.

JUDGMENT.

This miscellaneous second appeal raises a question as to the effect of an annulment in regard to the share of an insolvent who was at the moment of adjudication a member of an undivided Hindu family. The insolvent, one Raghava Ayyangar, and his brother, the first defendant, were undivided brothers of a joint Hindu family owning certain immovable property. In 1922 the said Raghava Ayyangar was adjudicated an insolvent by the High Court. Subsequent to his adjudication and before obtaining the order of discharge, he appeared to have borrowed from the plaintiff a sum of money on a promissory note. He died thereafter. Subsequent to his death, the plaintiff filed, in or about 1930, Original Suit No. 1098 of 1929 on the said promissory note against the first defendant and his sons, defendants 2 and 3, and also against the fourth defendant who was the widow of the said Raghava Ayyangar. A decree was passed in the said suit against the defendants for the amount claimed by the plaintiff payable out of the assets of the said Raghava Ayyangar in the hands of the defendants. On 28th September 1931 the adjudication order was annulled and I find from the report of the Official Assignee that it was at his instance that the order of adjudication was

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annulled. The ground for the annulment was that the creditors had been paid in full but in spite thereof the insolvent had not applied for annulment and as the insolvent was dead the Official Assignee desired that the adjudication should be annulled and that he may be permitted to draw his commission on the amount paid to the creditors. The plaintiff filed an application for execution of his decree, out of which this second appeal arises, by attaching and selling a half share in the properties mentioned by him in the execution petition. The application was resisted on two grounds : that the properties were the separate properties of the first defendant and, even assuming they were joint family properties, the first defendant had a half share on the date of adjudication and, on annulment, they reverted to defendants 1 to 3 as joint family property and they had taken the same by survivorship and the creditor had no right to attach the same. Both the Courts have concurrently found that the properties were not separate properties but joint family properties wherein Raghava Ayyangar had a half share. The District Munsif allowed execution to proceed ; but the learned District Judge dismissed the execution petition on the ground that, immediately on the annulment, the property vested in defendants 1 to 3 as joint family property, and it cannot be regarded as assets in the hands of the first defendant liable to be proceeded against for the debts of the said Raghava Ayyangar. This view of the learned District Judge has now been assailed before me as unsound by Mr. Seshadri Ayyangar. I am inclined to accept his contention.

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The legal consequences of a valid order of adjudication made on the insolvency of a member of a coparcenary in regard to his share in the joint family property may be thus stated. The share of the insolvent vests in the Official Receiver. In regard to an insolvent who is a father having undivided sons, the right of the father to dispose of his sons' share in the joint family property for the discharge of debts which are neither illegal nor immoral also vests in the Official Receiver. The insolvent does not cease to be a member of the joint family but still continues as a member thereof. In a recent decision of this Court the following observations occur :

“ neither the filing of the insolvency petition nor the adjudication of the applicant . . . can sever the joint family status”; *Venkatarayudu v. Sivaramakrishnayya*(1).

In that case it was held that the vendee from the Official Receiver of an undivided share of a member did not become a tenant in common with the other members of the family, and therefore was not entitled to claim mesne profits from the date of sale. Bankruptcy is an involuntary alienation. On the question whether an alienation of a share of a member of a joint family effects a severance in status there has been a conflict of opinion. One view is that it does effect a severance in status ; see *Soundarajan v. Arunachalam Chetty*(2) and *Chinnu Pillai v. Kalimuthu Chetti*(3). The other view is that it does not. The ground for this view may be thus stated. The severance of a joint family can only be effected by a mode known to and recognized by Hindu law,

(1) (1934) I.L.R. 58 Mad. 126, 136.

(2) (1915) I.L.R. 39 Mad. 159, 172 (F.B.).

(3) (1911) I.L.R. 35 Mad. 47, 59 (F.B.).

that is, what is called *vibagha* or partition. The effect of a partition according to Hindu law is that,

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“ whether it is effected amicably or by a decree of Court, it breaks up not only the joint ownership of property, but also the family union, i.e., the corporate character of the family ” ;
Aiyagari Venkataramayya v. Aiyagari Ramayya(1).

The effect of an alienation may be to break up the joint ownership of the property but the corporate character of the family can only be disturbed by a member. It is unnecessary for me to consider which view is correct. But there can be no doubt as to what the consequences of an alienation are. They are thus stated by
BHASHYAM AYYANGAR J. :

“ An undivided member of a family, though he may alienate the whole . . . , or any part of his undivided share, will continue to be an undivided member of the family with rights of survivorship between himself and the remaining members in respect of all the family property other than what he has transferred. No doubt such a member acts unfairly towards the rest of the family and if they are dissatisfied with his so doing, their only remedy is to become divided from him ” ;
Aiyagari Venkataramayya v. Aiyagari Ramayya(1).

The members of the family lose their right of survivorship in the share of the insolvent and it ceases to be joint family property, so that on the death of the insolvent the share which vested in the Official Assignee is not divested from him ; see *Fakirchand Motichand v. Motichand Hur-ruckchand*(2) and the observations of WALLACE J. in *Narayana Sah v. Sankar Sah*(3) :

“ . . . by the insolvency of a coparcener, of course for his personal debts, *his* share vests in the Official Assignee and is thus lost to the joint family . . . The death of the

(1) (1902) I.L.R. 25 Mad. 690, 717 (F.B.).

(2) (1883) I.L.R. 7 Bom. 438.

(3) (1929) I.L.R. 53 Mad. 1, 14 (F.B.).

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coparcener before partition would not restore to the joint family the share which has vested in the Official Assignee".

If this is the true legal position, the share of the insolvent is in the hands of the Official Assignee not as joint family property but as separate property available for the benefit of the personal creditors of the insolvent. The question is, what is the effect of an annulment on the said property in the circumstances of this case when there has been a valid adjudication? Mr. Ramaswami Ayyangar argues that under section 37, on annulment, the property reverts to the debtor. The effect of a reverter according to him is that the property regains its original character as joint family property and is taken by the members of the family as if no partition had taken place, with benefits of survivorship; and thereafter it will not be available to the personal creditors of the insolvent unless that share had been seized in execution and rendered available for the enforcement of the debts. Mr. Ramaswami Ayyangar relied on two English cases, viz., *Bailey v. Johnson*(1), and *Bailey v. Johnson*(2) the same case on appeal, for the position that the effect of an annulment is to remit the debtor to his original position at the moment of adjudication as if there had been no insolvency, and therefore, as, at the moment of adjudication, the debtor was a member of a joint family, the property went back to him as joint family property. Construing the analogous section 81 of the English Bankruptcy Act of 1869 KELLY C.B. in *Bailey v. Johnson*(1) observes thus :

“ . . . the only sensible meaning which can be attached to the word ‘revert’ is, that what was apparently the

(1) (1871) L.R. 6 Ex. 279, 283.

(2) (1872) L.R. 7 Ex. 263.

property of the trustee at the time of the annulling of the bankruptcy, shall thereupon become the property of the person whose bankruptcy has been annulled, as if it had always been his."

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This observation, in my opinion, does not support Mr. Ramaswami Ayyangar. If the language of KELLY C.B. is to be given full effect, it is this. At the date of annulment it was the property of the trustee and on annulment it becomes the property of the debtor, that is, the property goes back to the debtor with the same character in which it was held by the Official Receiver while the bankruptcy continued. The annulment would not completely wipe out the effect of a valid order of adjudication. The bankruptcy is wiped out to this extent, viz., that the property goes to the debtor free from all claims in bankruptcy so that the debtor can deal with the property as if it is his own, that is, with all the original powers and rights which he would have had had there been no bankruptcy. In the same case, *Bailey v. Johnson*(1), it will be seen that BLACKBURN J. was not prepared to say that the effect of section 81 in every case will be

"to go back to the beginning, and to place the bankrupt in the position of having always owned what is by the section to 'revert' to him . . .".

I agree with the remarks of REILLY J. in *Jethaji Peraji Firm v. Krishnayya*(2):

"Certainly it cannot be suggested that in this country annulment of adjudication puts the clock back as if the adjudication had never been."

It will be unsafe to rely upon observations in the cases decided in England where the conditions

(1) (1872) L.R. 7 Ex, 263, 265.

(2) (1929) I.L.R. 52 Mad. 648, 668.

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are not similar and where the conception of a joint Hindu family is unknown. If the effect of insolvency is to divest the share of the insolvent of its character as joint family property, it cannot regain that character when it comes back to the insolvent on annulment, unless he can by an unequivocal act of his own impress it with the said character. Under section 37 of the Provincial Insolvency Act, it reverts to the debtor as his property, that is, as his individual property, so that, if on the date of the reversion he is not alive, it will go to his heir under the law, and in this case to the widow, the fourth defendant. The property thus not being joint family property, defendants 1 to 3 have not taken it by survivorship. It is therefore available for the satisfaction of the debt of the plaintiff. I therefore reverse the decree of the learned District Judge and restore that of the District Munsif with costs.

G.R.
