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VARADACHARIAR J.

entering into the arrangement embodied in Exhibit I, Gopala acted, and rightly acted, on the footing that he had greatly benefited at the expense of Srinivasa is clearly established by the evidence. This, in my opinion, is sufficient to entitle Srinivasa to the benefit of the equitable principle above referred to; see *Natesa Iyer* v. *Rathai Ammal*(1). As the transfer had been completed by Exhibit I and the rights of the parties have to be determined as on the date of Exhibit I, the death of Gopala before the institution of this suit or the death of Srinivasa pending the suit can make no difference.

G.R.

APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao and Mr. Justice Newsam.

1937, August 3.

RM. AL. RM. ALAGAPPA CHETTIAR AND ANOTHER (DEFENDANTS), APPELLANTS,

v.

KANNAPPA CHETTIAR AND THREE OTHERS (PLAINTIFFS 2 TO 5), RESPONDENTS.*

Insolvency—Composition scheme selling all "assets" of insolvents mentioned in schedule—"Assets"—Meaning of—If includes Hindu father's right to bind his son's share for proper reasons.

In pursuance of a composition scheme the Official Assignee sold all the "assets" of the insolvents described in their schedule with all the right, title and interest of the insolvents therein to certain persons. On a point arising as to the meaning of the word "assets",

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(1) (1908) 19 M.L.J. 62.

* Appeal No. 228 of 1935.

held: The word "assets" is sufficiently wide to include a Hindu father's right to bind his son's share for proper reasons and as such the son's share was also validly conveyed.

Procedure to be followed in the administration of insolvents' estates pointed out.

APPEAL against the decree of the Court of the Subordinate Judge of Devakottai in Original Suit No. 75 of 1931.

B. Sitarama Rao and *V. Ramaswami Ayyar* for appellants.

S. Parthasarathi and *V. K. Thiruvenkatachari* for respondents.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by NEWSAM J.—The plaintiffs' suit for a declaration of their title to a house has been decreed. The two defendants appeal.

NEWSAM J.

The relevent facts may be briefly stated as follows: In Insolvency Petition No. 2 of 1927 on the file of the Rangoon High Court a firm of Nattukottai Chettiars, of which the father of each defendant was a partner, was adjudicated insolvent. On January 17, 1928, what is described as a composition scheme was approved by the Court in an order which has been exhibited as D. The terms were as follows: The Official Assignee was to be paid his expenses and his commission; the creditors agreed to receive and were guaranteed payment of five annas in the rupee by two Chettiar firms, who were described as sureties but who were in reality purchasers of the entire assets of the insolvent firm. In pursuance of this scheme the purchasers of the assets paid Rs. 52,173-9-9 privately to certain creditors and Rs. 55,450 to the Official Assignee for distribution

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to the remaining creditors. These payments amounted to paying five annas in the rupee of the insolvent firm's liabilities. Thereupon by a deed of indenture, dated 22nd February 1928, (Exhibit E) the Official Assignee transferred all the "assets" of the insolvents described in their schedule with all the *right, title and interest* of the said insolvents therein to the sureties (or rather purchasers).

On 28th September 1929 the purchasers sold the suit house to the plaintiff (Meyyappa Chetti) for Rs. 75,000.

The defendants (appellants) are the undivided sons of the insolvent partners. The chief argument developed on their behalf is that the order of the High Court, Rangoon, only empowered the Official Assignee to convey the "assets of the insolvents now vested in him". The power of a Hindu father, manager of a trading family, to sell his sons' share is not, it is argued, an "asset" of the insolvent father. It is an obligation of the sons to their father's creditors, it is said. On the contrary, we are of opinion that it is a pious obligation of the sons to their father, which can only be evaded by attacking the father's debts as immoral. No such attempt has been made in this case. We further think that the word "assets" is sufficiently wide to embrace the father's right to bind his son's share for proper reasons. It undoubtedly enhances a Hindu father's credit that he is entitled to pledge his sons' shares for the good of the family business. This right is therefore an "asset". The same result can be reached in another way: Admittedly the insolvent fathers'

power to sell their sons' share does vest in the Official Assignee. Admittedly also this power was exercised by the Official Assignee under Exhibit E, for he conveyed all the right, title and interest of the insolvents. There is absolutely nothing in the order of the High Court (Exhibit D) which negatived or forbade the exercise of this power. Consequently the sons' share was validly conveyed.

We overrule this contention. But, before leaving this part of the case, it may not be out of place to make a few general remarks on the administration of bankrupt estates. Any deviation from the letter or the spirit of Insolvency law is calculated to open the door to fraud and profiteering. It is far from our purpose to criticise what has happened in this case but to express our views as to what ought to be done in all cases. We think that both the realization and the distribution of the assets of an insolvent should be entirely carried out by the official agency. That is the only safeguard provided both for the insolvent and for his creditors. Incidentally it is the only way in which the Official Assignee can properly earn his commission. We are strongly of the opinion that a purchaser from the Official Assignee of an insolvent's assets should never be allowed to pay creditors direct out of his purchase money.

Moreover, a composition between an insolvent and his creditors and a sale of an insolvent's assets by the Official Assignee are two distinct things and should be kept distinct. When the two are combined in one hybrid transaction, the issue of the unnatural union must necessarily be of doubtful character.

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We express ourselves thus strongly because, while aware of the practice which exists both here and elsewhere, we think that a stricter adherence to the underlying principles of the Insolvency Act would clarify its complexities and inspire greater confidence by reducing the opportunities for fraud and speculation in bankrupt estates.

The other point taken in appeal is that there was a secret agreement between one of the insolvents (second defendant's father) and the transferees from the Official Assignee whereby the latter, in return for the former's help in realizing assets and a cash consideration of Rs. 5,000, promised to leave each insolvent brother his house. Now this was obviously a fraudulent agreement, assuming it to be a true agreement. It is an agreement which we cannot countenance, being a secret collusive agreement by the appellants' insolvent fathers and the purchasers of their assets from the Official Assignee not to make all their assets available to their creditors but to reserve something, in other words, to defeat the very object of the insolvency proceedings. That is clearly against public policy, and we can only add that the very fact that such an agreement should be openly pleaded is evidence that in insolvency matters dishonesty is commonplace.

We dismiss this appeal with costs.

G.R.