

dismissing the execution petition set aside. The execution petition must be restored to file and disposed of according to law after allowing the appellant to amend it in order to bring it into compliance with the requirements of Order XXI, rule 15. We think it is right to order that the appellant should pay the costs of all the respondents in the execution petition and in this appeal.

VEERAMMANI
v.
CHIKRA ROYAL.
BURN J.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Abdur Rahman.

SOMAVARAPU BALARAMI REDDI (FOURTH
RESPONDENT), APPELLANT,

1938,
November 1.

v.

THE OFFICIAL RECEIVER, NELLORE (PETITIONER),
RESPONDENT.*

Provincial Insolvency Act (V of 1920), sec. 51 (1)—“Benefit of the execution” in—Meaning of—Execution sale of judgment-debtors’ property after admission of petition to adjudicate him an insolvent—Assets realised by—Right of attaching decree-holder or other decree-holder to retain benefit of execution as against Receiver—Right of attaching decree-holder to retain costs of execution out of money realised.

Before K, who had obtained a money decree against two persons, could bring their property to sale in execution, an application for their adjudication was presented which was admitted shortly after. K nevertheless proceeded with his application for execution. Before the property was sold and money deposited in Court some other creditors who had also secured decrees against those judgment-debtors applied for execution and rateable distribution. In spite of the pendency of the insolvency petition, the property was sold and

* Appeal Against Order No. 465 of 1936.

BALARAMI
REDDI
?
OFFICIAL
RECEIVER,
NELLORE.

K and the other decree-holders drew their proportionate shares out of the sale-proceeds from the executing Court. An order of adjudication was passed against the judgment-debtors and thereupon the Official Receiver applied for refund of the money drawn by K and the other decree-holders. The Court below made an order allowing that petition, but while it ordered the other decree-holders to refund the whole of the money drawn by them, it permitted K to retain his costs out of the money realised by him. One of the former decree-holders appealed, contending that no distinction ought to have been made between K, the attaching decree-holder at whose instance the property was sold in execution, and the other decree-holders who were held entitled to rateable distribution.

Held that as the assets were realised in the course of the execution by sale not before but after the date of the admission of the insolvency petition, no person, whether he was an attaching creditor or other decree-holder, was entitled to derive the benefit of the execution against the Receiver and that the appellant could not, therefore, claim to retain any benefit for himself out of the money which he had realised in his execution.

No distinction can be made between an attaching creditor and other decree-holders so far as section 51 of the Provincial Insolvency Act is concerned.

Observations in *The Official Receiver of Tanjore v. Venkatarama Iyer*(1) referred to.

Swaminatha Ayyar v. Official Receiver South Malabar(2) dissented from in regard to the interpretation of the word "benefit" in section 51 of the Provincial Insolvency Act.

APPEAL against the order of the District Court of Nellore, dated 9th July 1936 and made in Interlocutory Application No. 297 of 1934 in Insolvency Petition No. 67 of 1933.

K. Sankara Narayanan for *U. Ramachandran* for appellant.

K. Kuppuswami for respondent.

Cur. adv. vult.

(1) (1921) 42 M.L.J. 361.

(2) (1933) I.L.R. 57 Mad. 330.

JUDGMENT.

ABDUR RAHMAN J.—This appeal raises a question of some importance. It relates to the interpretation of the word “benefit” occurring in section 51 (1) of the Provincial Insolvency Act. The facts which have led to this appeal are that one Konjeti Seshayya filed a suit (Original Suit No. 65 of 1931) for the recovery of money against Duvvur Rami Reddi and Subrami Reddi. This was decreed on 7th October 1932: but before the decree-holder could bring his judgment-debtors’ property to sale in execution, an application for their adjudication was presented. This was admitted shortly after. The decree-holder nevertheless proceeded with his application for execution and brought the judgment-debtors’ property to sale. Before the property was sold and money deposited in Court some other creditors who had also secured decrees against these judgment-debtors applied for execution and rateable distribution under section 73, Civil Procedure Code. In spite of the pendency of the insolvency petition, the property was sold and the attaching creditor and the other decree-holders succeeded in drawing their proportionate shares out of the sale-proceeds of their judgment-debtors’ property from the executing Court. After an order of adjudication was passed against these judgment-debtors, the Official Receiver applied for refund of the money drawn by the attaching creditors and the other decree-holders. This petition was allowed by the learned District Judge who, following a Madras case, permitted the attaching creditor to retain his costs out of the money realised by him. The same treatment was not accorded to the other decree-holders and they were ordered to refund the whole of the money drawn by them. One of these decree-holders

BALARAM
REDDIv.
OFFICIAL
RECEIVER,
NELLORE.—
ABDUR
RAHMAN J.

BALARAMI
REDDI
v.
OFFICIAL
RECEIVER,
NELLORE.
—
ABDUR
RAHMAN J.

has appealed and it has been contended on his behalf that it was wrong for the lower Court to draw a distinction between the attaching decree-holder at whose instance the property was sold in execution and the other decree-holders who were held entitled to rateable distribution. An attempt was made to support this contention by certain observations made in *The Official Receiver of Tanjore v. Venkatrama Iyer*(1). The facts have not been fully given in the report of that case but a distinction appears to have been attempted to be drawn on behalf of the appellant between the assets realised by the attaching creditor and those which were distributed amongst the other decree-holders rateably. It was claimed on behalf of the Official Receiver that the attaching creditor alone was entitled to retain the money realised by him under section 51 of the Provincial Insolvency Act and the other decree-holders who shared the balance of the sale-proceeds rateably were not entitled to do the same. This contention was repelled by the learned Officiating Chief Justice in the following words :

“It is contended that where rateable distribution has been ordered under section 73 of the Code of Civil Procedure the exception to section 51 (1) of the Provincial Insolvency Act only applies to the amount credited in favour of the attaching decree-holder and not to the amounts rateably distributed to the other decree-holders under the section. No authority is quoted and we can find nothing in the wording of section 51 to support such a view ; nor is any reason suggested for such a differentiation.”

This would show that the point which the learned Judges were called upon to decide in that case was entirely different from what has to be decided now. The observation that there was nothing in the words of section 51 of the Provincial Insolvency Act which

(1) (1921) 42 M.L.J. 361.

would entitle a Court to differentiate between an attaching creditor and other decree-holders is relevant, but it must be admitted that it was made in that case with a different object.

The main ground of attack on behalf of the appellant relates to the interpretation of the words "the benefit of the execution" used in section 51 (1) of the Provincial Insolvency Act. The section reads as follows :

"Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the Receiver except in respect of assets realised in the course of the execution by sale or otherwise before the date of the admission of the petition."

It has been contended that the words "the benefit of the execution" should be so construed as to cover "the net realisation in execution after paying the costs." It is not denied in this case that the assets were realised in the course of the execution by sale not before but after the date of the admission of the petition for insolvency. It would therefore follow that in these circumstances no person, whether he is an attaching creditor or other decree-holder, can be held entitled to derive the benefit of the execution against the Receiver. Would it be legitimate to contend then that a decree-holder should be entitled to retain the costs out of the money realised by him in the course of the execution by sale held after the date of the admission of the petition? The words of the section are, in my opinion, quite unambiguous and the only answer to this question must therefore be in the negative. It cannot be denied that, if permitted to do so, the creditor would be receiving the benefit of the execution to the extent of the costs incurred by and awarded to him. The learned Counsel for the appellant has placed his reliance

BALARAMI
REDDI
v.
OFFICIAL
RECEIVER,
NELLORE.

—
ABDUR
RAHMAN J.

BALARAMI
REDDI
v.
OFFICIAL
RECEIVER,
NELLORE.

ABDUR
RAHMAN J.

on *Swaminatha Ayyar v. Official Receiver, South Malabar*(1) where a learned Judge of this Court when construing section 51 of the Act observed as follows :

“ I agree that section 51 does vest the property which has been sold under such circumstances in the Official Receiver but it appears to me a reasonable interpretation of the word ‘ benefit ’ to hold that it is the net realisation in execution after paying the costs.”

No reasons were given by the learned Judge for arriving at this conclusion and the whole scheme of the Act appears to be opposed to this interpretation. Would not a decree-holder by realising his costs out of the proceeds of the sale, which have legally vested in the Receiver, derive a benefit for himself at the expense of other creditors ? The interpretation may have been considered to be justifiable in view of the provision contained in section 73 of the Code of Civil Procedure according to which the proceeds of sale have to be applied first in defraying the expenses of the sale before they are distributed amongst various decree-holders. But in view of the distinct provision in the Provincial Insolvency Act, an Act which is self-contained, a consideration of the provisions contained in any other statute would be wholly irrelevant and out of place. Although the case of *Swaminatha Ayyar v. Official Receiver, South Malabar*(1) was decided in connection with a claim by an attaching creditor against the Official Receiver, no distinction can be made between an attaching creditor and other decree-holders so far as section 51 of the Provincial Insolvency Act is concerned. The observations of the learned Officiating Chief Justice in *The Official Receiver of Tanjore v. Venkatrama Iyer*(2), although made in another connection, are apposite to this case. I

(1) (1933) LL.R. 57 Mad. 330.

(2) (1921) 42 M.L.J. 361.

would, in the absence of any reasons given by the learned Judge for his opinion in *Swaminatha Ayyar v. Official Receiver, South Malabar*(1) and with great deference, decline to follow the interpretation placed by him on the word "benefit" in section 51 of the Act.

BALARAMI
REDDI
v.
OFFICIAL
RECEIVER,
NELLORE.
—
ABDUR
RAHMAN J.

For the above reasons I would hold that the appellant cannot claim to retain any benefit for himself out of the money which he had realised in his execution. This appeal therefore fails and is dismissed with costs.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Varadachariar.

MARUDAMUTHU MUDALIAR (PETITIONER—FIRST
DEFENDANT), PETITIONER,

1938,
December 16.

v.

N. K. VENKATRAMA AYYAR (DEGREE-HOLDER),
RESPONDENT.*

*Code of Civil Procedure (Act V of 1908), O. XLIII, r. 1 (j)—
Order refusing to set aside sale—Order rejecting application
under O. XXI, r. 90, of the Code for failure to furnish
security if an—Effect of proviso added to O. XXI, r. 90, by
Madras High Court.*

A Court to which an application under Order XXI, rule 90, Civil Procedure Code, was made, acting under the proviso added in the Madras Presidency to that rule, ordered the applicant to deposit the sale amount in cash. He tendered a draft bond offering immovable property as security. The Court declined to accept it and accordingly rejected the petition.

(1) (1933) I.L.R. 57 Mad. 330.

* Civil Revision Petition No. 1447 of 1938.