APPELLATE CIVIL.

Before Mr. Justice Mya Bu, and Mr. Justice Baguley.

1936

Aug. 17.

M.R.M.S. CHETTIAR FIRM

v.

THE OFFICIAL ASSIGNEE, RANGOON.*

Insolvency—Higher title of the Official Assignee—Claim in Insolvency Court by Official Assignee against third party—Jurisdiction of Insolvency Court — Res judicata—*Presidency-Towns Insolvency Act (III of 1909).*

Where by the operation of insolvency law the Official Assignee has a higher title than the insolvent the Insolvency Court has jurisdiction to entertain a claim by the Official Assignee under s. 7 of the Presidency-Towns Insolvency Act against a third person.

A.N. Ayyar v. *Official Assignee of Madras*, I.L.R. 54 Mad. 739 ; *Ellis* v. *Silber*, 8 Ch. Ap. 383 ; *Jnanendra Bala Debi* v. *Official Assignee of Calcutta*, I.L.R. 54 Cal. 251 ; *In re Kancherla*, I.L.R. 51 Mad. 540 ; *Morley* v. *White*, 8 Ch. Ap. 214 ; *Official Assignee of Madras* v. *Mudaliar*, I.L.R. 52 Mad. 717—*referred to.*

Shortly after the adjudication in insolvency of a chettiar firm by the High Court, a chettiar firm in Pyapôn endorsed a promissory note in their favour to the appellant firm. The latter sued the debtors on the promissory note and settled the claim for a certain sum. In another matter between the appellant firm and the Official Assignee as receiver of the insolvent firm the Insolvency Court and the High Court on appeal had held that the Pyapôn firm was a branch of the insolvent firm. The Official Assignee applied to the Insolvency Court for payment by the appellant firm of the amount due on the promissory note.

Held, that the Insolvency Court had jurisdiction to entertain the application and that the question whether the Pyapôn firm was a branch of the insolvent firm was *res judicata* as against the appellant firm.

Hook v. *The Administrator-General of Bengal*, I.L.R. 48 Cal. 499—*referred to.*

Doctor for the appellant.

Aiyangar for the respondent.

BAGULEY, J.—This appeal arises under the following circumstances : On the 10th March 1930 the T.S.N. Firm was adjudicated insolvent under the

* Civil Misc. Appeal No. 42 of 1936 from the order of this Court in Insolvency Case No. 14 of 1930.

Presidency-Towns Insolvency Act by this Court. On the 28th March 1930 a promissory note executed by Po Thin and others in favour of the T.S.M.R.K. R.M. Chettyar Firm, hereinafter referred to as the Pyapôn firm, was endorsed by that firm in favour of the M.R.M.S. Firm. After this the M.R.M.S. Firm sued Ko Po Thin and others on the promissory note, got a decree, took out execution and in the end settled the claim for Rs. 1,500.

The next step was the filing of an application by the Official Assignee as Receiver in the insolvency of the T.S.N. Firm before the Original Side of this Court asking after certain amendments that it be declared that the M.R.M.S. Firm was liable to pay to him the full amount of the money due on the promissory note in question and that the M.R.M.S. Firm should be directed to pay the same to him. The basis of the allegation was that the Pyapôn firm was merely a branch of the T.S.N. Firm.

Objections were raised, of which the first to be dealt with was on the footing that the matter could not be dealt with by the Insolvency Court. This was disposed of by Ba U J. sitting as the Judge in insolvency and he held that the Insolvency Court could deal with the matter. After this the case came before Braund J. as the Insolvency Judge and he held that the question of whether the Pyapôn firm was a branch of the T.S.N. Firm was *res judicata* as between the parties. He declared that the endorsement dated the 28th March 1930 was of no effect as against the Official Assignee and he further directed an enquiry to be made by the Insolvency Registrar as to what damages, if any, the Official Assignee had suffered by virtue of the wrongful conversion by the M.R.M.S. Firm of the promissory note. It is against this order that the present appeal has been filed.

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The first point to be dealt with, and the one which is most important, is the point as to whether the Insolvency Court had jurisdiction to deal with a case of this nature. On behalf of the appellant reliance was placed chiefly upon *P.V.S. Krishnamurthy Pillai* v. *P.V.S. Sundaramurthy Pillai* (1) and *Ellis* v. *Silber* (2). In the first case the actual point which was before the Bench for decision is not important ; but in the judgment of Ramesam J. there are many observations in which he discusses *Ramachandra Ayyar* v. *Official Assignee of Madras* (3) and states that section 7 of the Presidency-Towns Insolvency Act does not enable partition suits to be filed in the Insolvency Court.

The second case does not seem to me to hold that the Bankruptcy Court has no jurisdiction to decide matters between the Trustee in Bankruptcy and the claim of a third person. The headnote is :

" Where a suit would, but for the fact of a bankruptcy, be fit to be entertained by the Court of Chancery, the jurisdiction is not taken away by the Bankruptcy Act, 1869."

It goes on :

" Therefore when a trustee in bankruptcy has, in respect of the bankrupt's estate, a claim against a third person, that claim may be prosecuted at law or in equity, and is not subject to the jurisdiction of the Court of Bankruptcy."

If this case be examined, it will be seen that it was an appeal against an order passed on a demurrer. A bill was filed in Chancery to set aside a deed of dissolution of partnership. The partnership firm was apparently wound up in bankruptcy and a demurrer was taken to the bill on the ground that the Bankruptcy Court had jurisdiction. The demurrer

(1) (1931) I.L.R. 55 Mad. 558. (2) 8 Ch. App. 83.
(3) (1930) I.L.R. 54 Mad. 739.

was allowed. On appeal the demurrer was overruled. In the judgment Lord Selborne L.C. stated that it had been argued very carefully and fully that the jurisdiction to administer justice in this case between the parties was in the Court of Bankruptcy and ought not to be administered here, *i.e.*, in the Court of Chancery ; but he found that the general proposition that whenever assignees or trustees in bankruptcy have a demand in law or in equity against a stranger to the bankruptcy, then that demand is to be prosecuted in the Court of Bankruptcy, was a proposition entirely without the warrant of anything in the Acts of Parliament. It will be noticed that what was actually found was not that the Court of Bankruptcy had no jurisdiction but that the Court of Chancery had jurisdiction and because the Court of Chancery had jurisdiction, even if the Court of Bankruptcy had concurrent jurisdiction, still the claim having been filed in the Court which had jurisdiction that Court should have dealt with it and not have allowed the demurrer.

That the Court of Bankruptcy had jurisdiction in a similar case is to be found in another case reported in the same volume : *Morley* v. *White* (1). This was a case in which there were proceedings with regard to the same matter both in the Court of Bankruptcy and in the Chancery Court. Applications were made in each Court to restrain the other Court from exercising jurisdiction and both matters came up on appeal and were heard together by the same Court of Appeal. James L.J. in his judgment pointed out that this was a case which showed how beneficial was the effect of section 72 of the Bankruptcy Act which corresponds to section 7 of the Presidency-Towns Insolvency Act. It was obvious

(1) (1872) 8 Ch. App. 214.

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that one Court had got to deal with the matter and he says :

"The Court of Bankruptcy is armed for that purpose with every power of a Court of Law and a Court of Equity, and there is not a single question stated to us as an important and difficult question arising in this matter which cannot be litigated and determined by that Court of Bankruptcy * * * and those questions, if decided in Bankruptcy, would come on appeal before the same Court as if they had been determined in Chancery, that is, before the same Judges sitting under one name instead of under another."

This case certainly shows that even though the Court of Chancery in a certain matter might have jurisdiction the Bankruptcy Court also had jurisdiction.

In support of the proposition that the Insolvency Court here had jurisdiction I refer first to the judgment of Rankin J., as he then was, in *Jnanendra Bala Debi* v. *The Official Assignee of Calcutta* (1). This was a case in which the Official Assignee claimed that certain property was held by the appellant as *benamidar* of the insolvent with whose estate he was dealing. In this way it was distinctly a claim by the Official Assignee against an outsider and on page 258 he says :

"But under section 7 of the Presidency-Towns Insolvency Act this Court in its Insolvency Jurisdiction has jurisdiction to determine such a point as that."

He goes on to say :

"As a rule, however, that class of proceeding against a mere third person as against whom the Official Assignee claims no higher title than the insolvent's is not brought in the insolvency jurisdiction, and in any ordinary case any such motion brought in that jurisdiction unfairly and unreasonably, would be refused as the learned Judge is in no way obliged in the Insolvency Jurisdiction to try such a question."

(1) (1925) I.L.R. 54 Cal. 251, 285.

He goes on to say that he does not lay down that the only proper subjects for such a motion are cases within section 55 or 56 of the Presidency-Towns Insolvency Act. There are many other cases and the case with which we are now dealing is certainly one in which the Official Assignee's claim is higher than the claim of the insolvent himself could have been because the allegation is that the promissory note in question was endorsed to the M.R.M.S. Firm by its holder. The claim arises from the fact that it is contended that the endorsement was made after the date of the adjudication of the insolvent and therefore at a time when the property in the promissory note had passed to the Official Assignee. This ruling was passed before section 7 of the Presidency-Towns Insolvency Act had been altered by the addition of the proviso which now comes into force, but this does not affect the present case because this matter could never come under section 36 for the M.R.M.S. Firm was not a firm or a person known or suspected to have in his possession any property belonging to the insolvent, nor was he supposed to be indebted to the insolvent. What has been ordered is an enquiry as to the damages caused to the estate by its action in suing upon the promissory note and accepting in full discharge a sum less than the amount due on the decree passed.

Another case which supports the judgment in appeal is *In re Kancherla Krishna Rao* (1), a decision of the Full Bench of the Madras High Court. This is a reference arising out of what is called a garnishee application and in the order of reference this passage is to be found:

"As regards the nature of a garnishee summons, I think that a garnishee summons is really a plaint which the Assignee

(1) (1927) I.L.R. 51 Mad. 540.

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has to file against persons whom he seeks to make liable for moneys due to the insolvent or for damages. If there was no insolvency, Kancherla Krishna Rao would have to file a suit for the recovery of damages for breach of the contract, and all that section 7 of the Presidency-Towns Insolvency Act does is to allow the Official Assignee to file an application for the recovery of any moneys which he claims instead of the expensive process of filing a suit for the same."

This case is also one decided before section 7 had the proviso added to it. The garnishee summons in question was one taken out to claim five lakhs of rupees for damages for breach of contract and it was held that section 7 gave the High Court jurisdiction in garnishee proceedings even when the garnishee lived outside the territorial jurisdiction but that it was a matter of discretion for the Judge in each case to either allow any particular claim to be tried in the Insolvency Court or to direct the Official Assignee to file a suit therefor in the ordinary course.

Another case is *The Official Assignee of Madras* v. *E. Narasimha Mudaliar* (1). This is another Full Bench decision and it considers the effect of the addition of the proviso to section 7. The original judgment is that of Beasley J. as he then was. He considers the effect of *Ellis* v. *Silber* (2) and *Ex parte Brown, In re Yates* (3) and states that in the ordinary way in a claim of this kind in England the Court of Bankruptcy ought not to assume jurisdiction, but where by the operation of the law of Bankruptcy a Trustee has a higher and better title than the bankrupt, the Court of Bankruptcy ought to decide the matter itself, and he goes on to quote with approval the judgment of Rankin J. in *Jnanendra Bala Debi* v. *The Official Assignee of Calcutta* (4). After doing so he refers to the question

(1) (1929) I.L.R. 52 Mad. 717.
(2) 8 Ch. App. 83.
(3) 11 Ch.D. 148.
(4) (1925) I.L.R. 54 Cal. 251, 258.

whether the amendment of sections 7 and 36 has altered the position as it was when Rankin J. delivered his judgment and he held that the effect of the proviso was that in a matter which came under section 36 the Court had no jurisdiction under section 7 to deal with it unless the garnishee admitted his indebtedness. As I have pointed out, however, in the present case the matter could not come under section 36.

In another case, *A. N. Ramachandra Ayyar* v. *The Official Assignee of Madras* (1), the Court held that under section 7 it has jurisdiction on the application of the Official Assignee to grant a declaration that the debts of an insolvent father are binding upon the sons to the extent of their shares in the joint family property, even though a suit filed by the sons for partition of the property is pending in a Civil Court at the time such an application is made. This follows *In the matter of Balusami Ayyar* (2) and also *Morley* v. *White* (3) and certainly goes a long way as the matter which the Insolvency Court took upon itself to try was one which was already being dealt with by a Court which had jurisdiction. Whether it may not perhaps go too far is a matter which need not be considered here, but it certainly shows the very extensive jurisdiction given by section 7 in the view of the Madras High Court.

The only other Courts in India in which a matter of this kind could be dealt with are the High Court of Bombay and the Court of the Judicial Commissioner, Sind, and no decision of either of these Courts has been quoted to show that they do not agree with the views of the Madras and Calcutta High Courts, nor has any decision to

(1) (1930) I.L.R. 54 Mad. 739. (2) (1928) I.L.R. 51 Mad. 417.
(3) (1872) 8 Ch. App. 214.

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the contrary of this Court been mentioned to us. I would, therefore, hold that the Insolvency Court had jurisdiction to deal with this matter.

The next point that was argued before us was that the finding of the trial Judge as to the question of whether the Pyapôn firm was a branch of the T.S.N. Firm was *res judicata* as between these parties. With respect I agree with the view taken by the learned Judge that the order relied upon as settling the matter of *res judicata* is somewhat obscure and its wording is a little difficult to understand. The decision is a decision of this Court in appeal in Civil Miscellaneous Appeal No. 235 of 1932. The appeal was between the M.R.M.S. Firm and the Official Assignee as Receiver in insolvency of the T.S.N. Firm.

The question before the Court was whether the assignment of certain mortgages executed in favour of the Pyapôn firm and assigned by it in favour of the M.R.M.S. Firm could be set aside owing to the fact that the Pyapôn firm was a branch of the T.S.N. Firm, in other words, it seems to me the question was whether the insolvency of the T.S.N. Firm involved with it the insolvency of the Pyapôn firm. The learned Judge in insolvency held that the transaction offended the provisions of section 55 and set it aside. The judgment of this Court on appeal contains a passage :

> "I agree with the finding of the trial Court that the T.S.M.R.K.R.M. firm (the Pyapôn firm) was a branch firm of the T.S.N. firm,"

and the appeal was dismissed.

The principle of *res judicata* is that when two parties have litigated with regard to any point before a competent Court, no other Court shall allow the

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matter to be litigated afresh before it. The Privy Council have held in *Hook* v. *Administrator-General of Bengal* (1) that section 11 of the Code of Civil Procedure is not exhaustive of the circumstances in which an issue is *res judicata*, and applying the main principle that what has once been held between two parties by a competent Court cannot be litigated again by them, I would hold that, in view of the fact that in the previous litigation it was held between these two parties that the Pyapôn firm was so intimately connected with the T.S.N. Firm that the insolvency of the T.S.N. Firm involved the right of the Official Assignee to have the transfers of the Pyapôn firm declared void, in the same way the endorsement on the promissory note with which we are now dealing by the Pyapôn firm is bad as against the Official Assignee. The first finding will be impossible unless the Court has held that the Pyapôn firm and the T.S.N. Firm were one and the same in the eyes of the Insolvency Court. This finding was necessary for the decision of the question before it and as the bar of *res judicata* is not merely confined to the decision itself but extends to all facts involved in it as necessary steps or ground work for the decision, that finding is *res judicata* as between the parties.

For these reasons I would dismiss this appeal with costs advocate's fee seven gold mohurs.

MYA BU, J.—I concur.

(1) (1921) I.L.R. 48 Cal. 499.