

(1932) 09 MAD CK 0017

Madras High Court

Case No: None

Chella Rangappa

APPELLANT

Vs

Yerravenkatagiri
Rangappa and Others

RESPONDENT

Date of Decision: Sept. 16, 1932

Acts Referred:

- Provincial Insolvency Act, 1920 - Section 4

Citation: AIR 1933 Mad 9 : (1933) ILR (Mad) 395 : 140 Ind. Cas. 461 : (1932) 36 LW 699 : (1932) 63 MLJ 778

Judgement

1. In this O.P. No. 19 of 1928 the petitioner, a creditor of the estate of the 2nd respondent (insolvent), seeks to set aside a sale to the 1st

respondent of certain properties. The 3rd respondent is the Official Receiver of Anantapur. The petition is stated to be u/s 4 of the Provincial

Insolvency Act and paragraph 4 alleges that the sale was ""in fraud of other creditors"". This same sale was the subject of O. P. No. 13 of 1924

filed by the Official. Receiver, now the 3rd respondent. Thai; petition was stated to be under Sections 4, 54 and 56, Provincial Insolvency Act and

prayed that "" the execution sale in favour of the 1st counter-petitioner (now the 1st respondent) be set aside as fraudulent and preferred"".

2. The third issue in that O.P. was ""whether the sale amounts to a fraudulent preference... ""and the fourth issue ""whether in any event the sale can

be set aside u/s 4, Insolvency Act"".

3. The learned Subordinate Judge held that on the facts there was no fraudulent preference and that the provisions of Section 4 could not be

invoked. It was of course obvious that Section 56 did not apply. The matter came before the High Court in C.M.S.A. No. 115 of 1927 on a

question as to whether a second appeal lay from the District Judge and Ramesam and Devadoss, JJ., gave judgment as follows (Ex. A):

We think that the order of the Subordinate Judge was passed under Sections 51 and 54, Provincial Insolvency Act. He especially refuses to apply

Section 4 of the Act. The order is therefore not an order u/s 4.

4. Mr. T.R. Ramachandra Aiyar now argues that the appellant (petitioner) is free to proceed with his present petition as (1) it is res judicata, that

there has been no decision under " Section 4 which is the basis of this petition, and (2) that the respondent cannot plead res judicata to the decision

u/s 54 as Section 11 of the CPC does not refer to insolvency proceedings which are not ""suits"". We agree with his contention as to (1) as Ex. A is

clear and in insolvency proceedings the Official Receiver represents the general body creditors of whom the present appellant is one.

5. As to the second point it is true that no authority has been cited before us to the effect that insolvency proceedings can be the subject of res

judicata but there is ample authority for the position that Section 11, Civil Procedure Code, is not exhaustive and that as stated by the Privy

Council in Rant Kirpal Shukul v. Mussmnat Rup Kuari (1883) L.R. 11 IndAp 37 : ILR 6 A. 269 (P.C.), ""the binding force of such a judgment

(i.e., a previous judgment) depends not upon Section 13 of Act X of 1877, but upon general principles of law"". The section referred to

corresponds to Section 11, Civil Procedure Code. ""If,"" say their Lordships, ""it were not binding there would be no end to litigation"". This is

manifestly so and is especially applicable to insolvency proceeding"^". Were it otherwise it would be impossible for any one, whose possession of

property received from an insolvent had been unsuccessfully impeached as a fraudulent transfer or preference, to be able to see that property or

even to enjoy its proceeds with any sense of security. This is a position which is clearly opposed to the principle " Nemo bis vexari debet". The

above case Ram Kir pal Shukul v. Mussumat Rup Kuari (1883) L.R. 11 IndAp 37 : ILR 6 A. 269 (P.C.) was decided in 1883. Since then the

Privy Council have reaffirmed their statement of the law bearing on the point in (1921) ILR 48 499 (Privy Council) and 26 CWN 713 (Privy

Council) , the latter a case under the Land Acquisition Act.

6. On the authorities above cited we are of opinion that the doctrine of res judicata is applicable to proceedings in insolvency and that the present

petition is therefore unsustainable. We therefore agree with the learned District Judge and dismiss this appeal with customary costs throughout

including pleader"s fees. This disposes of the memorandum of objections.