
(1940) 04 MAD CK 0040

Madras High Court

Case No: None

Ranganayaki Ammal

APPELLANT

Vs

Rajagopalaswami
Naidu and Others

RESPONDENT

Date of Decision: April 26, 1940

Acts Referred:

- Provincial Insolvency Act, 1920 - Section 34(2)

Citation: (1940) 52 LW 307 : (1940) 2 MLJ 239

Hon'ble Judges: Burn, J

Bench: Division Bench

Judgement

Burn, J.

It cannot be disputed that the claim for (1) marriage expenses, (2) arrears of maintenance, (3) lump sum on account of residence

and (4) clothing for first plaintiff was a claim for debts provable in insolvency. This together was over 90 per cent, of the claim put forward in the

suit. Even as regards the claim for future maintenance I am not satisfied, having reference to the language of Section 34(2) of the Provincial

Insolvency Act, that it is not a debt provable in insolvency. If it is not, it would seem that no insolvency proceedings against a Hindu with female

relations entitled to maintenance, could be taken effectively.

2. The plaintiff being a creditor to whom the insolvent was indebted in respect of a debt provable under the Act was forbidden by Section 28(2) of

the Act to bring any suit against him without the leave of the Insolvency Court. The cases reported in Jayanti Subbiah Vs. Mangamma, and

Suryanarayana Rao Naidu v. Balasubramania Mudali (1919) 38 M.L.J. 433 : ILR 43 Mad. 635, have little if any bearing on the question now at

issue. They were cases of sales in execution in which delivery was resisted by maintenance holders. Here we are concerned with the legality of the

filing of the suit. I agree with the lower Courts that Section 28(2) of the Provincial Insolvency Act was a bar to this suit. This appeal is dismissed

with costs of third respondent. Court-fee to be paid by the appellant.

3. Leave to appeal is refused.