

(1916) 10 MAD CK 0038

Madras High Court

Case No: None

Mujuluri Sivaramayya

APPELLANT

Vs

Singumahanti Bhujanga Rao and
AnotherRESPONDENT

Date of Decision: Oct. 4, 1916**Acts Referred:**

- Provincial Insolvency Act, 1920 - Section 22

Citation: 37 Ind. Cas. 773 : (1917) 5 LW 255**Hon'ble Judges:** Oldfield, J; Krishnan, J**Bench:** Division Bench

Judgement

Oldfield, J.

One Veeraraghava Bow having been adjudicated insolvent, his property vested in the Official Receiver of Godavari District. Veeraraghava Row bad on 24th May 1908 executed in favour of his father, the respondent, a promissory note and an agreement, Exhibit E, the latter providing that, in case the former were not discharged within a year, it should be discharged by the conveyance of certain property. On 6th October 1913 respondent moved the lower Court to grant leave to the Receiver to execute a release deed to him in respect of this property, as it had been treated as vesting with the insolvent's other property in consequence of the order of adjudication. The lower Court dealt with this petition first in circumstances referred to in this Court's order of remand in Appeal against Order No. 155 of 1914. On re-hearing it, it passed the order, against which 10th creditor, who alleges that he holds a mortgage over the property subsequent to Exhibit E, appeals.

2. The main objection to this order is that it was passed without jurisdiction, being unauthorised by Section 22 or any other provision of the Provincial Insolvency Act. It is accordingly necessary to go further into the circumstances. The petition of 6th October 1913 did not ask that any act or decision of the Receiver should be set aside, but it was accompanied by an affidavit, setting forth that (1) on 22nd

December 1911 respondent filed an affidavit, reciting the facts and praying for the execution of a conveyance by the Court or the Receiver; (2) as the Court passed no orders and time for suing would begin to run (meaning presumably---"would expire") on 24th May 1912, he filed a petition on 8th April 1912 u/s 16 (b) of the Act, asking for permission to sue the Receiver on Exhibit E, (3) as no orders had been passed on either his affidavit or petition, he now asked the Court to order the Receiver to execute the necessary conveyance. It appears from the evidence of respondent and from the affidavit to be referred to later that this affidavit and this petition, the only ones referred to in the petition, on which the order under appeal was passed, were filed in the Court and that the former was withdrawn, as the right to sue for execution of a document was barred, before it came on for orders. In the judgment under appeal the lower Court has, as I understand it, found that the mortgage to appellant was for consideration, but was taken with notice of respondent's agreement, Exhibit E, which, therefore, prevailed against it as regards all three items of the property in dispute. There is, however, nothing regarding respondent's prayer for a conveyance, the only relief granted being that the property was exempted from sale; that is, as appears from the formal order drawn up, from "sale by the Receiver of the insolvent's assets." The form of the order is to some extent intelligible on reference to a petition and affidavit dated 18th November 1913, which we have found in the record and in which respondent again asked for a document and also for a stay of the sale, which the Receiver was about to hold of the property. The petition of 18th November 1913, however, it should be noted, was not statedly disposed of or even referred to in the lower Court's order and is presumably still pending, The application of 6th October 1913, with which the lower Court dealt in the order under appeal, was, therefore, founded on the failure of respondent's petition to the Court and not to the Receiver, in whom the insolvent's estate vested and who alone was competent to give him the conveyance he required.

3. Attempts have been made to support the lower Court's order on two grounds. First, it is urged that it should be treated as passed u/s 22 of the Act, because respondent is a creditor or a person aggrieved by the Receiver's omission to give a conveyance in accordance with Exhibit E. One objection to this is that an application u/s 22 must be founded on an act or decision of the Receiver, and none is alleged in the petition. For his mere omission to give a conveyance, when no request to him is mentioned, cannot be treated as an act or decision; and the suggestion that an averment, which we have found only in the petition above referred to of 18th November 1913, of a request to the Receiver on 1st October 1913 can be treated as having been made in the petition of 6th October 1918 cannot be accepted. There is, however, a broader objection, which must in any case prevail, that Section 22 would even so not cover the application which respondent made, because he was not entitled to apply under it, as a creditor or person aggrieved. He is no doubt described as a creditor. But that is only because the insolvent so described him in

his petition, his debt in fact having been discharged, when under Exhibit E his right to the insolvent's property matured. The question is then whether he was "a person aggrieved" within the meaning of the Section.

4. In the leading authority on the subject, *Exparte Sidebetham, In re Sidebotham* (1880) 14 Ch. D. 458 : 42 L.T. 783., which has been followed in *Thiruvengkatachariar v. Thangayi Ammal* 29 Ind. Cas. 294, and other Indian cases, "a person aggrieved was defined as a man against whom a decision has been pronounced, which wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something;" and this definition may be accepted for the purpose of the present case, the material point being that the decision in question shall have been such as to affect the right claimed, not merely to impede the person concerned in his assertion of it. That is the view taken in *Haneswar Ghosh v. Rakhal Das Ghose* 20 Ind. Cas. 683. and a case recently decided in this Court, *Kumarappa Chettiar v. Murugappa Chettiar* 36 Ind. Cas. 771. To apply it to the facts before us, respondent attempted to obtain from the Receiver through the Court a recognition of his alleged rights and a conveyance in pursuance of it; but if the Receiver's failure to grant either implied his refusal to do so, that refusal was in no way a binding adjudication on that right and affected neither it nor respondent's remedy by suit. In these circumstances respondent was not entitled to apply to the lower Court u/s 22 and the lower Court had no jurisdiction to deal with his application thereunder.

5. Section 22 failing and it not having been suggested that any other is relevant, respondent's remaining contention is that the lower Court was competent to make its order without reference to any provision of law and in the exercise of its general powers of superintendence over the Receiver, its officer. And no doubt in *Haneswar Ghosh v. Rakhal Das Ghose* 20 Ind. Cas. 683 already referred to, though the Court's order was set aside as unsustainable with reference to Section 22, the case was remanded in order that these powers might be exercised and an enquiry be held. So also in *In re Rassul Haji Cassum* 9 Ind Cas. 344, the Court itself held an enquiry, though it recognized that the ultimate remedy by suit of the petitioner before it would be unaffected by the result. That, however, was not the nature of the enquiry held in this case by the lower Court, as appears from the facts that neither it nor the respondent originally made the Receiver a party and that when he had been made a party, though he apparently did not attempt to justify his conduct, the proceedings were continued on the evidence adduced by the 10th creditor, the present appellant. It is accordingly impossible to support the lower Court's jurisdiction as resting on this foundation.

6. The result is that the order under appeal must be set aside as passed without