

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CMSA No.12 OF 2012

J U D G M E N T:

This Civil Miscellaneous Second Appeal is preferred by the appellants/respondents challenging the judgment and decree dt.27.10.2011 in A.S.No.116 of 2009 of the District Judge, Krishna at Machilipatnam confirming the order dt.03.06.2009 in I.P.No.28 of 2005 of the file of Senior Civil Judge, Avanigadda

2. The creditors/petitioners filed a petition before the Senior Civil Judge, Avanigadda under Section 9 of the Provincial Insolvency Act, 1920 (for short 'the Act') to adjudge the respondents 1 to 3/appellants 1 to 3 herein as insolvents to annul the transaction covered by gift deed dt.20.06.2005 and mortgage deed dt.21.06.2005 as the act of gifting the property under Ex.A1 and creating mortgage over the property under the original of Ex.A2 amounts to transfer of property and thereby such transfer was affected only to delay and defeat the claims of the creditors/respondents 1 to 9 herein which is an act of insolvency within section 6(1)(b) of the Act.

3. The respondents 1 to 9 herein who are the petitioners/creditors before the trial Court obtained decree against the 1st appellant under the originals of Exs.A1 to A11 and thereby there exists relationship of debtor and creditor between 1st appellant and respondents 1 to 9 and the total liability is exceeding Rs.500/- as required under Section 9 of the Act and as such execution of Exs.A1 and A2 amounts to transfer of property as defined under clause 2(f) of the Act and such transfer is made only to defeat and delay the claims of the creditors. Therefore sought the relief of adjudging the 1st respondent as insolvent and to set aside the transactions covered by Exs.A1 and A2.

4. (a) The 1st respondent filed counter denying the material allegations contending that the gift covered by the original of Ex.A1 dt.20.06.2005 is not

intending to defeat and delay the claims of the genuine creditors and in fact executed on 20.06.2005 and delivered possession of the same to his daughter and the gift was acted upon by the 4th respondent, who is in possession and enjoyment of the schedule property and that the schedule property is the ancestral property and that the 1st respondent never borrowed any amount as Karta of the joint family from petitioners/creditors and never executed promissory notes agreeing to repay the same in the capacity of Karta of the joint family but they were created due to political rivalry in the village and hence the transactions covered by Ex.A1 and A2 are not liable to be set aside and that the 1st respondent cannot be adjudged as insolvent.

(b) The 2nd respondent remained ex parte.

(c) The 3rd respondent filed separate counter, denying the alleged borrowing of 1st respondent/appellant from petitioners/creditors as manager or Karta of joint family and by the date of alleged execution of the promissory notes they became majors and that the 1st respondent had no necessity to borrow any amount as Karta of joint family and that the amount was not borrowed to discharge the antecedent debts of the joint family. Therefore, the debts covered by Exs.A3 to A11 does not bind the 3rd respondent and that the mortgage deed executed by the 1st respondent in favour of the 5th respondent is not for the benefit of the joint family and that the amount was not utilized for the joint family. Therefore, 1st respondent cannot be adjudged as insolvent and that the share of the 3rd respondent is not liable for discharge of the debts so also official receiver is not entitled to take possession of the undivided share of the 3rd respondent to distribute the same to the creditors in discharge of the liability of the 1st respondent. It is finally prayed to dismiss the petition.

(d) The 4th respondent filed a separate counter contending that respondents 1 to 3 executed a registered gift deed dt.20.06.2015 and

delivered vacant possession, the same was accepted and acted upon by the 4th respondent. Since then, 4th respondent alone is in possession and enjoyment of the property and therefore the 1st respondent cannot be adjudged as insolvent and transaction covered by original of Ex.A1 cannot be annulled. It is further contended that the 1st respondent never acted as Karta or Manager of the joint family and he did not execute gift deed under Ex.A1 in the capacity of Manager or Karta of joint family, therefore, respondents 1 to 3 are only members of the Undivided Hindu Joint Family, consequently the original of Ex.A1 cannot be annulled, finally prayed to dismiss the petition.

(e) The 5th respondent filled a separate counter contending that the 1st respondent alone borrowed Rs.5,00,00/- for the benefit of respondents 2 to 4 and they all executed registered mortgage deed in favour of 5th respondent dt.21.06.2005 and thus the debt is a joint family debt creating a charge/mortgage over the 'B' schedule property and that the debt is not an individual debt of 1st respondent alone, therefore it binds all the members of the joint family. Consequently, the transaction pertaining to 'B' schedule property under Ex.A2 registered mortgage deed cannot be annulled and prayed to dismiss the petition.

5. During enquiry on behalf of the creditors/petitioners, PWs.1 and 2 were examined and marked Exs.A1 to A11. On behalf of the respondents, RWs.1 to 4 were examined and marked Ex.B1.

6. Upon hearing both the counsel, considering oral and documentary evidence on record, the trial Court adjudged 1st respondent as insolvent vesting 'A' and 'B' schedule property on the official receiver for general administration, granting one year time for discharge. However, the trial Court declined to annul the transactions covered by Exs.A1 and A2 but directed the Official Receiver on whom property is vested to take steps to set

aside transactions covered by Exs.A1 and A2.

7. Aggrieved by the said order, the respondents/appellants 1 to 4 preferred A.S.No.116 of 2009 before the District Judge, Krishna at Machilipatnam.

8. The said appeal was dismissed confirming the order passed by the trial Court.

9. Aggrieved by the said judgment and decree, the present Civil Miscellaneous Second Appeal is preferred by the appellants(respondents 1 to 4 before the trial Court) on various grounds. In ground No12 they raised the following substantial question of law:

“(a) Whether the Courts below are correct in arriving at a conclusion that the appellant No.1 is liable to be declared as insolvent in the circumstances of the case and whether the respondent Nos.1 to 9 established that the appellant No.1 is liable to be declared as insolvent ?

(b) Whether the impugned judgment and decree of the Courts below is not liable to be set aside on the sole ground of perversity ?

(c) Whether the Courts below are correct in arriving at a conclusion that the entire A, B and C schedule properties including the share o respondents 2 to4, vest with the Official Receiver, Krishna District at Machilipatnam for administration though they were not declared as insolvents ?

(d) Whether the Courts below are correct in recording a finding that mortgage covered by Ex.A2 mortgage deed also covered by Section 6 of the Provincial Insolvency Act, 1920 ?”

10. Out of four substantial questions of law urged by the counsel for the appellant, ground No.C alone (extracted above) is the substantial question of law and the other grounds are substantial questions of fact. Therefore, this court only framed the following substantial question of law for decision.

“whether the Courts below are correct in arriving at a conclusion that the certain A, B and C schedule property including the shares of respondents 2 to 4 vest with the

Official Receiver, Krishna, Machilipatnam for administration though they were not adjudged as insolvents.”

11. (a) During hearing, the learned counsel for the appellants, Sri V.S.R.anjaneyulu, mainly contended that in view of the principles laid down in the judgments of the Madras High Court in ***Chennappa Chetty v. Official Receiver, Salem and others***^[1] and ***S.Maruthamuthu Naicker and P.Kadir Badsha Rowther and others***^[2], when the 1st appellant alone was adjudged as insolvent, his share is liable for discharge of debts due to the general body of creditors and the Official Receiver is not entitled to take possession of the share of respondents 2 to 4 for general administration.

(b) With reference to the finding of the Courts below that the share of respondents 2 to 4 is also liable for general administration, since the debt was contracted by the 1st appellant for the benefit of the joint family in the capacity of Manager or Karta of the Joint family, it is contended that on this ground alone, the share of respondents 2 to 4 cannot be made liable and shall not be vested on the Official Receiver for general administration.

(c) It is further contended that even according to Exs.A3 to A11, the decrees were passed only against the 1st appellant not as a Karta of the Joint Family. In such circumstances, the debt covered by Exs.A3 to A11 is only an individual debt and apart from that in the absence of proof that those debts were contracted for discharging an antecedent debt of the Hindu Undivided Joint Family, the appellants 2 to 4 cannot be made liable and their share is not liable for discharge of the debts due to the general body of the creditors. But the trial Court without appreciating the facts and nature of decree passed under Ex.A3 to A11, passed the impugned order under challenge and therefore prayed to set aside the judgment and decree of the first appellate Court as well as the order and decretal order passed by the trial Court.

12. (a) Per contra, the learned counsel for the creditors/petitioners/respondents 1 to 9 herein contended that the debts covered by Exs.A3 to A11 were contracted in the capacity of Manager or Karta of the Hindu Undivided Joint Family and therefore the share of members of the Hindu Undivided Joint Family is liable for discharging the debts even otherwise when the debts are not proved to be avyavaharika, the share of members of the joint family is liable under pious obligation and therefore the trial Court and lower appellate Court basing on Section 28(a) of the Act passed the order and the same was confirmed by the lower appellate court. Hence, the share of appellants 2 to 4 shall vest on the Official Receiver to distribute the devident to the general body of the creditors proportionate to the debts due to them.

(b) Counsel for the respondents 1 to 9 strongly placed reliance on the judgment of the Apex Court in ***Chervu Nageshwaraswami v. Vadrevu Viswasundara Rao and others***^[3]; on the Full Bench judgment of this Court in ***Sajja Jaganmohan Rao v. Uppalapati Babu Rao and others***^[4] and finally on another judgment of this Court in ***Y.Keshava Sharma (died) per L.Rs. v. K.Venugopal Rao (died) per L.R. and others***^[5].

13. Considering rival contentions and perusing the orders of both the Courts below and other material on record, the sole point that arises for consideration is:

Whether the share of the appellants 2 to 4 shall vest on the Official Receiver for general administration and liable for discharge of debts due to respondents 1 to 9 herein and whether the order passed by the Senior civil Judge, Avanigadda confirmed by the District Judge, Krishna at Machilipatnam by judgment and decree in AS.No.116 of 2009 are liable to set aside.

14. **P O I N T:** This Court being the Court of Second Appeal has to refrain

from adverting to the factual findings except to decide the substantial Question of Law in view of the jurisdiction conferred on it under Code of Civil Procedure.

15. Undisputedly, the respondents 1 to 9 obtained judgment and decree against the 1st respondent under the originals of Exs.A3 of A11 for recovery of debts due to them on various dates. However, the appellants did not dispute execution of Ex.A1 gift deed dt.20.06.2005 and Ex.A2 Registered Mortgage deed dt.21.06.2005.

16. Ex.A1, Gift Deed, was executed by the appellants 1 to 3 being the members of Hindu Undivided Joint Family in favour of 4th appellant i.e., the daughter of 1st appellant and sister of appellants 2 and 3. The said Gift Deed was executed and acted upon since the date of execution i.e., on 20.06.2005, the 4th respondent is in possession and enjoyment of the property. Similarly execution of Ex.A2 Mortgage Deed is also not in controversy. But appellants 2 and 3 contended that the debt covered by original of Ex.A2 is not binding on them since it was executed by 1st appellant alone in his individual capacity but not as a Karta or Manager of Joint Family.

17. In view of the controversy regarding nature of transaction, it is necessary to advert to the contents of Ex.A1 to A11.

18. Ex.A1 is a gift deed dt.20.06.2005 donating the property in favour of 4th appellant-Padyala Nagamani, who is daughter of 1st appellant and it was executed by appellants 1 to 3. The contents of Ex.A1 disclosed that they donated the property towards 'pasupu-kumkuma' without any consideration and delivered possession of the same. Thus, the appellants 1 to 3 being the members of the undivided Hindu Joint Family executed original of Ex.A1 in favour of 4th appellant who was unmarried by then. In normal course of

events, execution of such gift deed towards pasupukumkuma would arise only when the marriage of 4th appellant was performed. But here, original of Ex.A1 was executed even before performance of her marriage, though she was aged 25 years by the date of execution of ex.A1. The transfer of property covered by Ex.A1 is voluntary in nature and without consideration its execution is contrary to normal conduct of a prudent person.

19. Ex.A2 is a mortgage deed executed by the 1st appellant alone creating a charge over the 'B' schedule property describing it as self acquired property of the 1st appellant for Rs.5,00,000/- for the purpose of discharging debts contacted by him alone for the purpose of agriculture.

20. The transaction covered by Exs.A1 and A2 are nothing but a transfers within the definition of Sec. 2(f) of the Act, as it includes both the transfer of movable or immovable property or creating a charge over the immovable property. Ex.A1 is a clear transfer of right in immovable property where as under Ex.A2, 1st appellant created a charge over the property i.e., by mortgaging the property. Therefore, both the transactions covered by Exs.A1 and A2 amounts to transfer within the meaning of Section 2(f) of the Act.

21. Coming to the liability of the share of appellants 2 to 4, it is the contention of the respondents 1 to 9 that the debts covered by Exs.A3 to A11 were contracted for the benefit of the joint family by 1st appellant in the capacity of Manager or Karta of the Hindu Undivided Joint Family. The trial Court and the lower appellate Court accepted the contentions of the respondents 1 to 9/petitioners-creditors, before the trial Court and ordered vesting of 'A', 'B' and 'C' schedule property on the Official Receiver for general administration and the same was confirmed by the lower appellate court.

22. Now the vesting of share of appellants 2 to 4 is challenged in the

present appeal contending that when the 1st appellant alone was adjudged as insolvent, the undivided share of joint family members cannot be vested and drawn the attention of this Court to Exs.A3 to A11 contending that the Courts passed judgments and decrees only against the 1st appellant and the appellants 2 to 4 were not made liable for the payment of the debt covered by those documents.

23. In view of the specific contention, it is apposite to advert to the contents of Exs.A3 to A11. Exs.A3 is the certified copy of judgment dt.12.02.007 in O.S.No.33 of 2005 passed by the Court of Senior civil Judge, Avanigadda.

The defendant therein was the 1st appellant herein. In para 2 of the judgment, the plaintiff therein claimed that the defendant being the Manager of Joint Hindu Family, borrowed Rs.65,000/- for the benefit of joint family and executed promissory note. But the defendant filed written statement, as per para 3 of the judgment, denying borrowing of Rs.65,000/- in the capacity of Manager of the joint family for the benefit of the joint family and the promissory note was concocted and therefore it is clear from the contents of paras 2 and 3 of the judgment, the plaintiff affirmed that the amount was borrowed for the joint family benefit in the capacity of Manager of the joint family by the 1st appellant herein and denied by the defendant. The decree was passed only against the 1st defendant. When a fact or law was affirmed by one party and denied by the other party, it would give rise to an issue under Order 14 Rule 1 of CPC but the trial Court did not frame an issue to decide whether the debt contracted by 1st defendant was in the capacity of manager of the joint family or for the benefit of the joint family but simply framed an issue "whether suit promissory note is binding on the defendant" and answered the issue in favour of the plaintiffs and against the defendant/1st appellant herein.

24. Similarly, in Exs.A4, A5, A6 and A7 both the plaintiffs and defendant in

all the suits raised similar contentions that the amount was borrowed by the 1st defendant/1st appellant herein for the benefit of the joint family and in the capacity of manager or Karta of the joint family, in none of the suits, the trial Court framed any issue with regard to the liability of the joint family for the debts contracted by 1st defendant and even the decrees were passed only against 1st defendant, not against the joint family estate.

25. Taking contents of the judgments marked as Exs.A3 to A11, the learned counsel Sri V.S.R.Anjaneyulu, contended that the said judgments are silent as to the nature and purpose of borrowing. In the absence of any finding recorded by the trial Court under Exs.A3 to A11, it is difficult to hold that the amount was borrowed by the 1st appellant herein in the capacity of manager or Kartha of the joint family and for the benefit of the joint family. Strangely, in the IP before the trial Court, the members of the joint family including the transferee of the debtor was impleaded as respondents 2 to 5 before the trial Court. But the trial Court adjudged the 1st appellant/1st respondent before the trial Court as insolvent, even in the entire judgment, the trial Court did not discuss anything about the liability of the respondents 2 to 4 for discharge of the debt due to the petitioners before the trial Court. However, a vague reference is made in paras 11, 12 and 13 about the share of respondents 2 to 4 and their liability to discharge the debts. Undisputedly, the respondents 2 to 4 herein became majors and they are the children of the 1st appellant. All the appellants, before this Court and before the appellate Court, vehemently contended that the debts covered by Exs.A3 to A11 were not for the benefit of joint family and was borrowed by the 1st appellant as Kartha or manager of the joint family.

26. The 4th respondent when examined before the trial Court as RW4, he deposed that 1st respondent acted as Kartha of the joint family. Similarly, the 1st appellant was examined as RW1 and in his cross-examination admitted

that all the suits were decreed against him and attained finality but the Senior Civil Judge at the end of para No.12 concluded that in all the judgments under Exs.A3 to A5, that the 1st appellant being the manager of the joint family borrowed amount for the benefit of the joint family. The said finding of the trial Court at the end of para No.12 of the order, is *ex faice* erroneous for the reason that the Senior civil Judge in the judgment in O.S.No.33 of 2005 marked as Ex.A3, did not record any finding as to the nature of borrowing i.e., for the benefit of the joint family by 1st appellant as Kartha of the joint family. Similarly, Exs.A4 and A5 are also silent about the nature of debt. In view of the admissions of RW4 and RW1 that the debt covered by Exs.A3 to A11 were contracted for the benefit of the joint family, consequently, share of respondents 2 to 4 is also liable for payment of such debts.

27. The main endeavour of the learned counsel for the appellants is that when the 1st appellant alone was adjudged as insolvent, in the absence of proof that the debts were borrowed for the benefit of joint family for discharging the debts of the Hindu Undivided Joint Family by the Kartha of the joint family, the share of respondents 2 to 4 cannot be vested on the official receiver for general administration.

28. In normal course of events, when the family is joint family and the debt was borrowed for the benefit of the said joint family or for discharging the debts of Hindu Undivided Joint Family, the members of the Hindu Undivided Joint Family are liable for discharging the debts.

29. In the present case, though the respondents 1 to 9 contended that these debts were contracted by the 1st appellant in the capacity of manager of the joint family and for the benefit of the joint family which was denied by the defendants, the trial Court under Exs.A3 to A11 did not record any specific finding that the debts were borrowed by the 1st appellant as kartha of the joint family for the benefit of the joint family. Now the question is in the absence of

any specific finding, the share of the members of the Hindu Undivided Joint Family is liable for discharging the debts due to the general body of the creditors or not.

30. The learned counsel for the appellants mainly placed reliance on judgment of Full Bench of Madras High Court rendered in ***S.Maruthamuthu Naicker***'s case(2 supra) and contended that the share of members of the joint family is not liable when the 1st appellant alone was adjudged as insolvent.

31. In ***S.Maruthamuthu Naicker***'s case(2 supra), the Full Bench of the Madras High Court held as follows:

“It is a fundamental principle of the law relating to negotiable instruments that no one whose name does not appear on the instrument can be held liable thereon, but this principle has unfortunately been lost sight of in some of the cases which have come before this Court. Befor examining the reports which have been quoted to us in the course of the arguments I wish to refer to a decision of the Privy Council and to two English cases as the law is to be found there clearly stated.”

Finally relying on the earlier judgment of the privy counsel, the Madras High Court concluded that the share of sons is not liable for discharging the debts due to the creditors.

32. Similar view is reiterated by the Full Bench of Madras High court in ***Chennappa Chetty***'s case(1 supra) as under:.

“Viewing the case apart from authority, it is clear to us that on the adjudication of an insolvent what vests in the Official Receiver is the interest of the insolvent and when a transaction entered into by the father not merely on his own behalf, but on behalf of others, who are not adjudicated and whose property does not vest in the Official Receiver is set aside, what vests in the Official Receiver as the result of such setting aside is merely the interest of the insolvent father and not that of the non-insolvents.

The question as to the father's power to allegate family property for the discharge of antecedent debts and the provision enacted in Section 28-A, Provincial Insolvency Act, vesting such a power in the Official Receiver is wholly irrelevant for the consideration of the present question; for we are not here concerned with any alienation

by the Official Receiver in which event alone the question of Section 28-A, Insolvency Act, will arise, but we are concerned with the effect of an alienation effected by the insolvent.

In so far as the insolvent's share of property is involved in the alienation, the Official Receiver would get it back when the alienation is set aside, but if under the powers vested in the insolvent father under the general law he has alienated the interests of his sons who are not insolvents, no order of the Insolvency Court under Section 54 can get back from the alienation and vest in the Official Receiver the interests of persons, who have not been adjudicated. The fact that the purpose for which the alienation has been effected is one binding on the sons either because it is for necessity or for the discharge of antecedent debts goes to confirm the title of the vendee quoad the sons, but is certainly not a ground for holding that on the transaction of sale being set aside under Section 54, Provincial Insolvency Act, the title of the alienee to the sons' share which 'ex concessis' was good under the general law is impaired and avoided. Of course we are not here concerned with the alienation which is sham and nominal to which different considerations would apply."

33. In view of the law declared by two Full Benches of Madras High Court, when the members of Hindu Undivided Joint Family are not parties to the suit and since they have not executed the promissory notes, the share of members of the Hindu Undivided Joint Family cannot be made liable for discharging the debts.

34. The learned counsel for the respondents while drawing attention to Section 28(A) of the Act, contended that the share of the members of the joint family is liable for discharging the debts due to the general body of the creditors and therefore their share is also be vested with the official receiver for general administration. In support of his contention, he placed reliance on ***Cheruvu Nageshwaraswami***'s case, wherein the apex Court held in para 10 as follows:

"The first point raised by the learned counsel, in our opinion, is well-founded and must succeed. There was some difference of judicial opinion as to whether the powers of a father under the Mitakshara law to alienate the joint family property including the interest of his sons in the same for discharge of an antecedent debt not contracted for illegal or immoral purposes vests in the Receiver on the adjudication of the father as an insolvent. Under the Presidency

Towns Insolvency Act, this power was held to vest in the Official Assignee under section 52(2) of the Act(1). As regards cases governed by Provincial Insolvency Act, it was held by a Full Bench of the Madras High Court that the father's power to dispose of his son's interest in the joint family property for satisfaction of his untainted (1) Sat Narain v. Sri Kishen, (1936) 63 I.A. 384. 901 debts was not "property" within the meaning of section 28 (2) (d) of the Provincial Insolvency Act(1) ; while a contrary view was taken by a Full Bench of the Patna High Court (2) . The conflict has now been set at rest by the enactment of section 28A in the Provincial Insolvency Amendment Act of 1948 which came into force on the 12th April, 1948. The new Section reads as follows :-

" The property of the insolvent shall comprise and shall always be deemed to have comprised also the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the insolvent for his own benefit at the commencement of his insolvency or before his discharge."

The language of the section indicates that its operation has been expressly made retrospective. The result, therefore, is that the power of the defendant No. 1 to alienate the interest of his sons, the defendants 2 and 3, in the mortgaged properties for satisfaction of his antecedent debts, did pass to the Receiver as "Property" within the meaning of the Provincial Insolvency Act and consequently OD a sale by the Receiver the interest of defendants 2 and 3 did vest in the sixth defendant, and he alone must be held competent to exercise the right of redemption."

The Apex Court concluded that when the debt is joint family debt, the share of the undivided members of the joint family is liable and shall vest on the official receiver for adjudging the Kartha as insolvent.

35. It is well settled that son is not personally liable for the debts of his father even if the debt is not incurred for an immoral purpose, sons obligation is limited to the assets received by him as his share of joint family property or his interest in the joint family as laid down in ***Pannalal v. Mt. Narain***^[6] wherein it was rule as follows:

"This pious obligation of the son to pay the debt of his father exists whether father is alive or dead. ; It os open to the father during his lifetime to effect a transfer of any joint family property including the interest of his sons in the same, to pay off an antecedent debt not

incurred for family necessity or benefit provided it is not tainted with immorality. It is equally open to the creditors to obtain a decree against the father and in execution of the same, put up for sale, not merely the father's but also the son's interest in the joint estate. Even if sons are not made parties, they cannot resist the sale unless they succeed in establishing that the debts were contracted for immoral purpose”

36. The objection of learned counsel for the appellants/respondents before the trial Court is that sons share cannot be made liable for discharge of debts of father and such an objection is not tenable in view of law declared by the Apex court in **Pannalal's** case(6 supra).

37. In another judgment of Full Bench of this Court in **Sajja Jaganmohan Rao v. Uppalapati Babu Rao and others**^[7] this Court took a similar view and held that until there is severance in joint status of the family, the share of the sons is liable. Execution of Ex.A1 by appellants 1 to 3 itself suffice to conclude that appellants 1 to 3 are continuing as members of Hindu Undivided Joint Family and executed Ex.A1 jointly. This Court, based on the principles laid down in **Cheruvu Nageshwaraswami's** case(1 supra) upheld the contention of the sons of the insolvent, whose property was attached in execution of a decree by vesting the share of father on official receiver for general administration but the official receiver filed an application for taking possession of the share of the sons. There upon son resisted the claim of the official receiver on the ground that his share cannot be vested on the official receiver for general administration. Ultimately concluded that when the share of the son is not attached, the official receiver is not entitled to take possession of the same.

38. In a later judgment in **Official Receiver, Krishna v. Uppalapati Babu Rao and Anr.**^[8] a single judge of this Court held in para 23 as follows:

“To sum up:

- (1) Under S. 4 of the Provincial Insolvency Act, the insolvency Court has full plenary powers to adjudicate upon all the questions arising in any

- case of insolvency, if it thinks expedient and in the interest of justice for due and proper distribution of the insolvent's property.
- (2) Upon a father being adjudged an insolvent, what vests in the Official Receiver under the Provincial Insolvency Act is his self-acquired property, his undivided share in the joint family property and his power of alienation over the interests of the sons in the joint family property provided the debts of the father are not tainted with illegality or immorality. It is only the father's power to alienate the interest or share of the son that vests in the Official Receiver but not the interest of the son or his share as such in the joint family property.
 - (3) On such vesting, the Official Receiver has three courses open;
 - (a) to exercise the power of the insolvent-father to dispose of by private sale;
 - (b) to apply to the Insolvency Court u/s 4 of the Provincial Insolvency Act; the property.
 - (4) Once there is an attachment of son's interest or share in the joint family property by a creditors, whether before or after the adjudication, of the father as an insolvent, the Official Receiver's power to dispose of such interest or share by private sale is lost.
 - (5) The Official Receiver, however, is entitled to delivery of possession of the son's share by getting the attachment raised.
 - (6) The Official Receiver, after taking delivery of possession of the son's share, stands vested with a right to get it sold through or by Court but not by private sale."

In the above judgment, this Court laid down certain principles as to when the undivided share of the sons vests on the official receiver.

39. The judgments of the Single Judge and of the Full Bench this court in **Sajja Jagannmohan Rao's** case(4 supra) are arising out of the same case and the subsequent judgment of this Court in **Official Receiver's** case(8 supra) based on the finding of the Full Bench of our High court. In view of the law declared by the Full Bench of our High court and Apex Court in both the judgments referred supra and single judge judgement of this court, the principles laid down by the Madras High court though binding, as they relates to the period prior to 1956, in view of the judgment of the Apex Court, I am unable to accept the contention of the learned counsel for the appellant that sons share is not liable for discharging the debt and the same cannot be vested on the official receiver, for the reason that the appellants 2 to 4 never contended that the debts covered by exs.A3 to A11 were contracted for immoral or illegal purposes. Hence, when the debts are not for immoral and illegal purposes by the Karta of the joint family, the share of his sons is liable

in view of the principle laid down in **Pannalal's** case(6 supra).

40. No iota of evidence is brought on record to establish that debts covered by Exs.A3 ot A11 were contacted for immoral or illegal purposes. On the other hand till today, the appellants 2 to 4 are continuing as members of the joint family and there is no severance in status. If there is severance in status of Hindu Undivided Joint Family, then the official receiver is not entitled to take possession of share of his sons. Therefore, the contention that when respondents 2 to 4 are not declared as insolvents, their share cannot be vested on the official receiver is without any merit.

41. In view of my foregoing discussion based on the principles laid down by the apex Court in **Cheruvu Nageshwaraswami's** case (3 supra) and full bench and judgment of single Judge of this Court in **Sajja Jaganmohan Rao's** case(4 supra), I am of the considered view that the old principles laid down by the Madras High Court have no application to the present facts of the case and that both the trial Court and appellate court did commit no error, warranting interference of this court either to set aside or overturn the orders passed by both the Courts. Consequently, I find no illegality to set aside the order passed by the Senior Civil Judge, Avanigadda, confirmed by the district Judge, Krishna at Machilipatnam in A.S.No.116 of 2009.

42. Having regard to the above, I find the substantial question of law Against the appellants and in favour of the respondents.

43 In the result, the Civil Miscellaneous Second Appeal is dismissed confirming the decree and judgment of the District Judge, Krishna at Machilipatnam in AS.No.116 of 2009 passed confirming the order and decretal order of Senior Civil Judge, Avanigadda in I.P.No.28 of 2005, but without costs.

44. Consequently, Miscellaneous Petitions pending, if any, shall stand dismissed.

29th October, 2015.

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[1] AIR 1955 Madras 51 (Vol. 42, C.N.11)
[2] AIR 1938 Madras 377 (Full Bench)
[3] AIR 1953 Supreme Court 370
[4] Air 1975 Andhra Pradesh 278(1) (FB)
[5] 2010(2) ALT 332
[6] 1952(1) SCR 544
[7] AIR 1975 AP 278(1)
[8] AIR 1982 AP 260