

*Present:* Dalton and Lyall Grant JJ.

1929.

ARUNASALEM CHETTY *v.* WILSON *et al.*

89—D. C. Colombo, 3,507.

*Insolvency—Adjudication of Indian firm at Madras—Ceylon branch of firm—District Court of Colombo as auxiliary—Assignee appointed in Ceylon—Power of District Court.*

Where persons carrying on business in partnership in India and Ceylon were adjudicated insolvent by the High Court of Madras and where the District Court of Colombo, acting as an auxiliary Court, appointed an assignee for the purpose of administering the estate of the firm in Ceylon,—

*Held*, that the rights of the assignee to deal with the assets in Ceylon is subject to the control of the District Court.

**A** PPEAL from an order of the District Judge of Colombo. The appellants are the assignees of the insolvent estate of three persons carrying on business in partnership in India and Ceylon. The partners were adjudicated insolvent in India on June 2, 1925, and the first appellant was appointed assignee by the High Court of Madras.

On November 15, 1925, the District Court of Colombo, acting as an Auxiliary Court, appointed the second appellant as provisional assignee in Ceylon. The second appellant was also appointed attorney of the first appellant in Ceylon. On January 17, 1928, the second appellant reported to the petitioners, who are the creditors in Ceylon, that he had a sum of Rs. 9,232.09 in his possession as proceeds of sale of properties and receipts on account of debts.

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On February 8, 1929, the creditors petitioned the District Court that the appellants be directed to file a balance sheet and account. The District Court thereupon ordered the second appellant to file an account of the moneys realized by him and not to pay the money to the assignee in India without an order from the Court.

*H. V. Perera*, for appellant.

*Keuneman*, for respondent.

November 27, 1929. DALTON J.—

The appellants here are the assignees of the insolvent estate of three persons carrying on business in partnership under the vilasam of "A. R. A. R. S. M.". The respondents are some of the Ceylon creditors.

The partners, we are informed, are or were domiciled in India where the principal business was carried on, but there were branches in Ceylon. The order of adjudication in India is dated June 22, 1925. The first appellant was appointed assignee by the High Court of Madras in September, 1925. The adjudication in Ceylon is dated August 25, 1925, the second appellant being appointed assignee the same day. On November 13, 1925, the District Judge, Colombo, made an order, on whose application Counsel cannot tell us, declaring that the District Court, Colombo, do act in aid of and as auxiliary to the High Court, Madras, and stating that it would be convenient if the provisional assignee in Ceylon be appointed attorney of the official assignee in Madras "to take the necessary action in this Court." The second appellant was thereupon appointed attorney of the first appellant in Ceylon, in addition to his appointment from the Court. The power of attorney recognizes that certain property in Ceylon vests in the provisional assignee by virtue of his appointment as such, and also sets out, perhaps unnecessarily, that any powers delegated to the attorney that by the law of Ceylon require the sanction and approval of the Court should only be exercised after the District Court in Colombo had given such sanction and approval. It is admitted that a considerable part of the assets in Ceylon consists of immovable property.

Thereafter the winding up proceeded, but slowly. The official assignee in India appears to have met with difficulties, but on January 4, 1927, reported to some of the Ceylon creditors, in reply to inquiries as to what progress was being made, that the realization of the assets was proceeding favourably and that he hoped to declare a dividend of 4 annas to the rupee within two months. Further delay occurred and as no dividend materialized, and information was difficult to obtain, the respondents to this appeal on February 8, 1929, petitioned the District Court, Colombo, that the present appellants be directed to file an account and balance sheet of all

moneys in Ceylon belonging to the insolvent with a report as to the position regarding the disposal of the proceeds, and generally as to the progress made in the realization of the Ceylon assets. It should be stated here that on January 17, 1928, the second appellant reported to the petitioners that he had the sum of Rs. 9,232.09 in his possession representing proceeds of sale of property and receipts on account of debts. On this petition Counsel appeared for the respondents (present appellants), but there is nothing before us to show what position they took up, or even whether they resisted the order sought by petitioners. The learned District Judge thereupon ordered the second appellant, "the assignee appointed by this Court," to file an account of the moneys in his hands realized in Ceylon by him, and not to pay that money to the assignee in India or to spend any money on the directions of that assignee without an order from "this" Court.

The appellants object to this order, and on appeal ask that it be set aside. They urge that the first appellant is directly responsible to the High Court, Madras, and the second appellant is his attorney, that the District Court, Colombo, by its order of November 13, 1925, declared itself as acting in aid of and as auxiliary to the High Court, Madras, and that it was not open to the petitioners to make any application to the Ceylon Court concerning the action of the appellants. The appellants seem however to have lost sight of the fact, for they make no mention of it, that the second appellant is the assignee appointed by the District Court, Colombo. The order appealed from refers to him alone and to assets in Ceylon alone, and is in no way an order upon the Indian assignee or concerning the Indian assets. It seems to me to be an order he had power to make, and an order which the material before him justified. His intimation at the end of his order to the Ceylon assignee that future applications by him to pay out moneys in his hands might depend upon what was done in India may have been, strictly speaking, unnecessary, but I can, under the circumstances here, see no objection to it. It is in no way an order on a person or in respect of property not subject to the jurisdiction of the Court. It is unfortunate that the estate is taking some years to wind up. Whether the delay has been unavoidable or not it is not possible for this Court to say, but it is admitted that some of the Indian creditors have received a dividend, whilst the Ceylon creditors have not. There is nothing before us to support the allegation that the Ceylon creditors are seeking to have all the Ceylon assets distributed for their benefit as well as part of the Indian assets.

For the reasons given I am of opinion that the appeal must be dismissed with costs.

LYALL GRANT J.—

The insolvents in this case traded both in India and Ceylon.

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On June 22, 1925, they were adjudicated bankrupt in Madras, and on August 3 the High Court of Madras in its decree requested the District Court of Colombo to act in aid.

The first respondent is the assignee appointed by the High Court of Madras.

On August 25, 1925, the District Court of Colombo adjudicated the firm insolvent and the second respondent was appointed provisional assignee under the Insolvency Ordinance.

On November 10, 1925, the District Court of Colombo declared that it was acting in aid of the Madras High Court and that for the purposes of administering the estate in Ceylon the second respondent should be appointed attorney of the first respondent. In compliance with this order a power of attorney was filed on December 10, 1925. The present petitioners are proved creditors in Ceylon. They averred that through their solicitors in Madras they had various communications with the first respondent. They complained that they were unable to obtain any proper report from the respondents of the administration of the estate either in India or Ceylon or any information as to what had happened to the income of the estate and the capital amount of the realized assets in India.

They petitioned the District Court of Colombo that the respondents be directed to file an account and balance sheet of all moneys and property in Ceylon, &c., with a report as to the progress made in the realization of the Ceylon assets.

They further asked for an order directing that no moneys realized in Ceylon be paid to the first respondent outside Ceylon without notice to them and that the Court should call on the first respondent through the High Court of Madras to submit an account of assets and that the High Court of Madras be requested to order the first respondent to comply with the above requirements and to declare a dividend.

The learned District Judge directed the second respondent to file an account of the moneys in his hands realized in Ceylon by him, not to pay that money to the assignee in India or to spend moneys on the directions of the first respondent without order of Court.

The District Judge also intimated to the second respondent that any application to pay or spend the money must be considered after a statement had been filed showing what had been done with the money realized in India.

From this order an appeal is taken by the assignees. The appellants maintain—

- (1) That the first appellant is responsible only to the High Court of Madras and the second appellant as his attorney is bound to carry out his directions, and that as the District

Court of Colombo is only acting in aid of the Madras High Court, it is not open to the creditors to make any application to this Court concerning the action of the appellants.

- (2) That the order places the second appellant in an embarrassing position as he is unable to decide whether he is to carry out the directions of the first appellant.
- (3) That the Court should have referred the matter to the High Court of Madras.

These are the principal grounds of objections to the order.

Section 122 of the Bankruptcy Act of 1914 provides that Courts in different parts of the Empire shall act as auxiliary to or in aid of each other.

The principles of International Law as laid down by Dicey are that an adjudication in one country affects movables wheresoever situated, but not immovable property in another country.

It seems clear that when the second respondent was appointed provisional assignee the movable property in Ceylon (assuming that the insolvents are domiciled in Madras, which is not clearly established) was already vested in the assignee appointed by the Madras High Court.

The adjudication of insolvency in Ceylon was not apparently made independently but was only made as auxiliary to the Court in Madras. Neither of these circumstances however affects the exclusive jurisdiction of the Ceylon Courts in Ceylon. Questions may arise as to the principles of law by which the Court is to be guided in the exercise of its powers as they affect movables and immovables respectively, but these questions do not arise at present.

Even in his capacity as attorney to the first respondent, the second respondent is subject to the jurisdiction of the Ceylon Courts and by appointing him the second respondent has submitted himself to that jurisdiction.

It seems to me that the powers of the second respondent to deal with the Ceylon assets and equally the powers of the first respondent are subject to any order that may be made by the Ceylon Court. I do not think it can be said that the Colombo Court has divested itself of jurisdiction in favour of the Madras Court, nor do I think it is competent for it to do so.

So far as the Ceylon assets are concerned, they remain subject to the orders of the Ceylon Courts.

No doubt that Court will exercise its jurisdiction in aid of the Madras Court, but it seems to me that if the situation so demands, it can as a condition of such exercise, require the Madras assignee through his attorney to file a statement of accounts.

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The District Judge has not actually made such an order, but he has intimated that until some statement is filed he will retain control of the Ceylon assets.

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I think that he is quite entitled to take up this attitude in order to protect the assets under his jurisdiction.

I would dismiss the appeal with costs.

*Appeal dismissed.*

