

Bansidhar Vs. Kharagjit

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Court : Allahabad

Decided On : Nov-09-1914

Reported in : AIR1914All220(2); (1915)ILR37All65

Judge : Chamier and ;Piggot, JJ.

Appellant : Bansidhar

Respondent : Kharagjit

Judgement :

Chamier and Piggott, JJ.

1. This is an appeal against an order of the District Judge of Mainpuri, passed in proceedings arising out of the insolvency of one Gur Narain. All the facts have not been properly ascertained, but for the purposes of this order they may be assumed to be as follows:

In 1905 the insolvent's father Girwar Dhari instituted three suits on mortgages. Either before or shortly after bringing these suits he transferred, or purported to transfer, all his rights in the mortgages to one Ratan Lal, who was made plaintiff in the suits. Decrees were obtained and one of them is said to have been satisfied. The other two were on the 23rd of March, 1910, transferred to Bansidhar, the present appellant, who took out execution, brought the property to sale and purchased some of it himself. Meanwhile Griwar Dhari had died, and on the 2nd of

July, 1909, Gur Narain had been adjudicated an insolvent. On the 13th of August, 1909, the respondent was appointed receiver of the insolvent's property. On the 13th of January, 1910, he put in a petition saying that certain persons who had been called upon to hand over property of the insolvent had not put in an appearance and praying that he, the receiver, might be put into possession at once. After considerable delay an order was passed that two of the deeds ' transferring the decrees to Ratan Lal should be made over to the receiver at once. Ratan Lal seems to have appeared in court and said that the transfers in his favour were fictitious, and that the transfers by him to Bansidhar were also fictitious. The District Judge then issued notice to Bansidhar and eventually passed the order now under appeal in which, after referring to various proceedings including an order of the Subordinate Judge of Mainpuri to the effect that the transfers to Ratan Lal were fictitious and an order of the Subordinate Judge of Aligarh holding that the transfers were valid, he has held that the property belongs to the insolvent and that the receiver is entitled to take possession of it at once. The meaning of the order is not clear. It is not possible to say whether the learned Judge means that the receiver should take over the decrees, or that he should take over the property purchased by Bansidhar.

2. Section 36 of the Provincial Insolvency Act certainly has no bearing on the case, for there was no transfer by the insolvent within two years before the adjudication. It follows that Bansidhar has no right of appeal under Section 46(2) of the Act. But along with his petition of appeal he presented a petition praying for leave to appeal under Section 46(3). We think that leave to appeal should be granted in this case, and we accordingly give the appellant leave to appeal *nunc pro tunc*. The respondent does not object to leave being given if the Court is of opinion that the proceedings in the court below are not satisfactory, but he maintains that the court below was competent to inquire and decide whether the property in question belongs to the insolvent, and that if after proper inquiry it is found that it belongs to the insolvent, the court should remove the appellant from the possession thereof and make it over to the receiver.

3. The learned vakil for the appellant contends that, if the case does not come within Section 36 of the Act, the receiver should be left to bring a separate suit. We

cannot accept this contention. It is true that the Indian Provincial Insolvency Act contains no such provision as Section 102 of the English Bankruptcy Act, which expressly empowers the Bankruptcy Court to decide 'all other questions whatsoever whether of law or fact which may arise in any case of bankruptcy coming within the cognizance of the court, or which the court may deem it expedient or necessary to decide for the purpose of doing complete justice and making a complete distribution of property in any such case;' but it is the duty of a receiver appointed under the Indian Act and of the court itself, where no receiver is appointed, to take possession of the property of the insolvent, and Section 18 of the Act empowers the court, where it appoints a receiver, to remove any person in whose possession or custody any property of the insolvent is from the possession or custody thereof, provided of course that the insolvent had a right to remove him.

4. We have no doubt that the court had power in the present case to inquire whether the disputed property in possession of the appellant was the property of the insolvent and on finding that it was the property of the insolvent to take steps to have it, handed over to the receiver. But in proceedings under the Act the court is required to follow the procedure of a Civil Court in a civil suit. The receiver and the appellant should have been required to state their respective cases in writing, and having ascertained the points in dispute, the court should have fixed issues and given the parties an opportunity of producing evidence. In simple cases it may be unnecessary to fix issues, but care should always be taken that the parties understand what the questions at issue between them are.

5. In the present case the proceedings of the court were of far too summary a nature. Even now it is difficult to say what allegations of fact by either party are admitted or denied by the other, and the parties do not seem to have been given any proper opportunity of producing evidence.

6. We accordingly set aside the order under appeal and direct that the record be returned to the court below, that the parties be required to state their respective cases in writing, and that the court do then proceed to try the questions in issue according to the procedure prescribed for the trial for an original civil case. Costs of this appeal will be costs in the proceedings to be dealt with by the court below.

