

Kashi and ors. Vs. Sheonandan

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SooperKanoon Citation : sooperkanoon.com/452206

Court : Allahabad

Decided On : Dec-04-1916

Reported in : (1917)ILR39All223

Judge : Piggott and ;Walsh, JJ.

Appellant : Kashi and ors.

Respondent : Sheonandan

Judgement :

Piggott and Walsh, JJ.

1. The facts of the litigation out of which this appeal arises are complicated; but the appeal before us raises a single and a simple point. One Bipat was declared insolvent on the 1st of October, 1910. In his schedule he appears to have recorded among his assets his mortgagee rights under a certain mortgage of the year 1907. The receiver, however, considered those rights worthless, and after making such efforts as he thought proper to realize the insolvent's assets for the benefit of his creditors, the said receiver reported to the District Judge that there were no other assets of the insolvent which in his opinion were capable of realization. Upon this Bipat was discharged by an order of the 24th of June, 1913. Since that date, that is to say, on the 20th of October, 1914, Bipat has found one Kashi who was willing to pay him Rs. 500 for his rights under the mortgage of 1907. The present suit was by Kashi to enforce the rights, if any, acquired by him

under this transfer. The court of first instance, although it framed a number of issues, dismissed the suit on the single finding that Bipat after his order of discharge had no rights left under the mortgage in question. The point taken was that Bipat's rights had vested in the Court, or the receiver, under Section 16 of the Provincial Insolvency Act, III of 1907, and that the order of discharge does not operate so as to re-vest those rights in Bipat. The learned District Judge in appeal has reversed this finding and has remanded the case to the first court for trial on the merits. We do not know at present whether the plaintiff Kashi has got value for his money or not; that question depends upon the determination of the issues not hitherto tried. We think the District Judge was right. The receiver having abandoned this particular item of property as worthless, Bipat became entitled to deal with it after the order of discharge, and if he succeeded in getting anyone to pay something for his rights, the circumstance that he was declared insolvent in 1910, and got an order of discharge in 1913, would not in itself make the transfer in favour of Kashi bad. We, accordingly, dismiss this appeal with costs.