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Court : Allahabad

Decided On : May-20-1925

Reported in : AIR1925All467

Appellant : Net Singh and ors.

Respondent : The Receiver of the Estate of Gajraj Singh and anr.

Judgement :

Daniels, J.

1. This is an appeal against an order of the District Judge of Jhansi refusing to set aside two alienations made by the insolvent after adjudication on the ground that this particular property does not vest in the receiver. The learned District Judge's order is so brief as to hardly amount to a judgment at all. He does not specify the nature of the property or give any reasons why it does not vest. He merely refers to a previous order of his which was passed on an application to prosecute the insolvent under Section 69 and which has no bearing on this question. From other papers on the record, however, it appears that the property is property to which the provisions of the Bundelkhand Alienation of Land Act of 1903 apply. The appellant before us is the principal creditor of the insolvent. The learned District Judge relied on Section 16 of the Bundelkhand Alienation of Land Act which says that no land belonging to a member of an agricultural tribe shall be sold in execution of any decree made after the commencement of this Act. Sub-section

(5) of Section 28 of the Provincial Insolvency Act provides that the property vesting in the receiver shall not include any property which is exempted by any enactment for the time being in force from liability to attachment and sale in execution of a decree. The appellant relies on two decisions of the Punjab High Court *Sardarni Datar Kuar v. Ram Rattan* (1920) 1 Lah. 192 and *Mauji v. Girdhari Lal* A.I.R. 1921 Lah. 44. In the latter of these cases the learned Judges held that notwithstanding a similar provision in the Punjab Alienation of Land Act, property of this kind did vest in the receiver. With all respect we are unable to follow the reasoning of this judgment. If we ask the question, could this property have been attached and sold in execution of a Civil Court decree? The answer, in view of Section 16 of the Bundelkhand Alienation of Land Act, must be 'No.' It follows, therefore, that this is property which is exempted from attachment and sale within the meaning of Section 23 of the Provincial Insolvency Act. We are, therefore, unable to accept this appeal which we accordingly dismiss. We make no order as to costs as the respondent is not represented.

Sulaiman, J.

2. I agree and would only like to add a few words with regard to the rulings that have been cited. The case of *Nagindas Bhukandas v. Ghelabhai Gulabdas* (1919) 44 Bom. 673 is not directly in point because in that case the question turned on the express provisions of Section 4 of the Provident Funds Act (No. IX of 1897) which make the deposit not liable to attachment and say that the receiver will neither be entitled to it nor have any claim on it. Similarly the case of *Sagar Mal v. Rao Girraj Singh* (1916) 39 All. 120 may be said to be not directly in point because there the question was whether the occupancy holding vested in the receiver. The decision turned to some extent on the provisions of the Agra Tenancy Act. That case, however, is helpful to this extent that even under the provisions of the Agra Tenancy Act there is no express prohibition against attachment and all that Section 20 says is that the tenancy is not transferable in execution of a decree of the Civil or Revenue Court. In the same way the Full Bench case of *Kalka Das v. Gajju Singh* A.I.R. 1921 All. 13 may be helpful.

3. The case of *Sardarni Datar Kuar v. Ram Rattan* (1920) 1 Lah. 192 is also distinguishable because there the learned Judges of the Lahore High Court came to the conclusion that under Section 72, Civil Procedure Code, a Civil Court has power to make a temporary alienation of the property.

4. It is unnecessary to express any opinion as to whether a Civil Court can order the Collector to take steps as provided in the section or whether it can only authorise him if he himself represents to the Court. It is quite sufficient to say that in these Provinces a notification under Section 68, Civil Procedure Code has actually been issued, which apparently is not the case in the Punjab, and that, therefore, Section 72 is wholly inapplicable here.

5. The case of *Mauji v. Girdhari Lal* A.I.R. 1921 Lah. 44 is certainly in point because the corresponding sections of the Bundelkhand Alienation of Land Act (No. 3 of 1903) and the Punjab Alienation of Land Act are identical in language. The learned Judges of Lahore have held that there is a difference between the expression 'attachment and sale' and the expression 'attachment or sale' and that inasmuch as there is no prohibition against attachment of properties, the case does not fall within Section 28 of the Insolvency Act.

6. In the first place, I would like to point out that the conjunction 'and' is not always used in its cumulative sense. The words that it joins need not always be taken individually; for example, the sentence 'sales and gifts of occupancy holdings are prohibited' does not mean that sales and gifts are to be taken together, but it means either of them individually. The sentence is a perfect equivalent of 'sales or gifts etc., are prohibited.'

7. If the expression 'attachment and sale' is to be given an altogether different meaning from the expression 'attachment or sale', then there may be some difficulty in applying that portion of Section 28, Sub-clause (5) of the Insolvency Act which mentions property exempted by the Civil Procedure Code from liability to 'attachment and sale' for the proviso to Section 60 of the Code speaks of 'attachment or sale.'

8. With great respect to the learned Judges of the Lahore High Court, I would say that the learned Judges, in their anxiety to avoid giving to the word 'and' the meaning of the word 'or' have attached to it the meaning which an expression like 'and also' or 'as well as' would have. Their interpretation of the section is that only property which is exempted from liability to attachment and also exempted from liability to sale does not vest in the receiver. With great deference I would say that the fallacy consists in supposing that the expression 'exempted from' governs the two words 'attachment' and 'sale' whereas it really governs only one word 'liability'. There is, therefore, no justification for splitting up the clause as if it read exempted from liability to attachment and also exempted from liability to sale.

9. The position is in no way improved by considering that the words 'attachment and sale' are indissolubly connected together. If this be so, then they together indicate the continued process of attachment followed by sale, that is, sale with attachment as distinguished from sale without attachment. Surely if a process consists of two stops and either of those steps is missing, the complete process itself is absent, Property which cannot be attached (though sold) or which cannot be sold (though attached) cannot obviously be 'attached and sold'. The Bundelkhand property is admittedly not liable to be sold in execution. If one condition is not fulfilled, it is obvious that both the conditions taken together cannot be said to be fulfilled. If a property is not liable to be sold, it is certainly not liable to be attached and sold. If 'liability to attachment and sale' is a narrower expression than 'liability to attachment or sale' than the negative expression 'non-liability to attachment and sale' assumes a wider scope than the negative 'non-liability to attachment or sale', and all properties within this wider compass would be exempted from vesting in the receiver.

10. The matter becomes abundantly clear if we ask ourselves the question 'Is this property liable to attachment and sale?' The answer cannot possibly be in the affirmative. It must be in the negative, and if the answer is 'No', the property is exempted from liability to 'attachment and sale' and, therefore, does not vest in the receiver at all.

11. The policy of the legislature obviously seems to be that properties which cannot be attached and sold do not vest in the receiver. There is no injustice in this for when creditors cannot recover their debts by sale of the properties, they suffer very little if their representative, the receiver cannot realise the debts out of such properties. The same protection seems to have been intended for members of the agricultural tribes in Bundelkhand as extends to tenants of non-transferable tenancies in the Agra Province 'In neither case the property is saleable in execution of any decree. It is, therefore, not available for the creditors and, therefore, it does not vest in the receiver. This view finds support from Section 17(A) of the Bundelkhand Land Alienation Act under which provision is made for the realization of the decrees for arrears of revenue and arrears of profits and not for Civil Courts' decrees.