

Secy. of State Vs. (Seth) Chand Mal

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Court : Allahabad

Decided On : Sep-18-1935

Reported in : AIR1936All89; 160Ind.Cas.1025

Appellant : Secy. of State

Respondent : (Seth) Chand Mal

Judgement :

1. This is an appeal by the Secretary of State for India in Council and arises from a suit brought by Seth Chand Mal, plaintiff-respondent, for recovery of Rs. 5,130, alleged to have been embezzled by defendant 2, Bhagwant Kishore Baijal. It appears that a firm styled Kundan Lal Gordhan Das borrowed Rs. 10,000 from the plaintiff, on the security of certain premises situate in Muttra. The aforesaid firm, was adjudged insolvent, and Bhagwant Kishore Baijal, defendant 2, who was the official receiver, was appointed receiver of the estate of the insolvent firm. Under the orders of the Court, the premises hypothecated to the plaintiff were to be sold by the receiver, whose duty it was to pay out of the sale proceeds such amount as was due to the plaintiff. The receiver sold the property for nearly Rs. 14,000, and paid thereout a sum of Rs. 8,000 to the plaintiff. Subsequently the receiver absconded with a large sum of money, including part of the sale proceeds of the property belonging to the insolvent firm, Kundan Lal Gordhan Das. Thereupon the plaintiff instituted the suit which has given rise to this appeal for recovery of the balance due to him from the Secretary of State for India in Council, impleaded as defendant 1, and Bhagwant Kishore Baijal, late, official receiver, as defendant 2.

The proceedings were ex parte against the latter; but the plaintiff's claim was contested on behalf of the Secretary of State. The learned Subordinate Judge of Agra decreed the suit against both the defendants. His decree is challenged in the present appeal by the Secretary of State.

2. The sole question involved in the appeal is whether the Secretary of State is liable in tort or otherwise for the consequences of wrongful acts of official receivers in the discharge of their duties under the Provincial Insolvency Act. The learned Subordinate Judge referred to a number of authorities in trying to establish the proposition that an official receiver is an officer of the Court. Having arrived at that conclusion, he proceeded to hold that an official receiver should be considered as a servant of the Secretary of State. In that view, he decreed the plaintiff's claim against the Secretary of State for such amount as remained unpaid to him in consequence of the embezzlement committed by defendant 2. It is to be regretted that authorities clearly bearing on the point in dispute between the parties were not quoted before the learned Subordinate Judge, who seems to have been at pains to find the right solution of the problem which presented itself to him. A receiver is an officer of the Court appointed under statutory provisions, and the fact that an official receiver is provided for a particular district and the Insolvency Court appoints him to act as a receiver in a certain case cannot make the receiver a servant of the Secretary of State for India nor is the latter responsible for the receiver's wrongful acts in the discharge of his duties. The point is covered by *Ram Shanker v. Secy. of State* 1932 ALJ 842, in which a Division Bench of this Court has reviewed many authorities and definitely held that the Secretary of State or the Government is not responsible for wrongful acts of official receivers appointed under the Insolvency Act. Following that ruling, we hold that the plaintiff's suit, so far as it was directed against the Secretary of State, was clearly misconceived. Accordingly we allow this appeal, set aside the decree of the lower Court so far as it is against the appellant, the Secretary of State for India in Council, and dismiss the plaintiff's claim against him with costs in both Courts.