

Desraj Vs. Sagar Mal

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Court : Allahabad

Decided On : Aug-04-1915

Reported in : AIR1915All389; 31Ind.Cas.716

Judge : Henry Richards, C.J. and ;P.C. Banerji, J.

Appellant : Desraj

Respondent : Sagar Mal

Judgement :

1. This appeal arises out of an insolvency matter. One Sagar Mal was adjudicated an insolvent upon his own petition on the 1st of August 1914. His petition of insolvency was presented on the 3rd of May previously. A Receiver was duly appointed, who attached certain crops growing on an occupancy holding which belonged to the insolvent. Desraj objected and said that the crops were his, Sagar Mal having executed a lease in his favour on the 16th of April 1914. He lodged security with the Receiver and had the crops released. He then made an application to have his money returned to him. Rao Girraj Singh, one of the creditors who had obtained a decree against Sagar Mal, challenged the validity of the lease, alleging that the lease was fictitious and that the value of the occupancy holding was far beyond the rent mentioned in the lease, which was the sum of Rs. 260 per annum. He further alleged that the insolvent was in actual possession and cultivated the land. The learned District Judge in a short judgment states as follows: 'Under Section 37, Act III of 1907, this lease shall be deemed fraudulent

and void and I now annul it. Desraj then has no locus standi. He has got the crops and his deposit of Rs. 330 is forfeited. I dismiss this objection with costs.' Later on the learned Judge says: 'The Receiver will arrange to surrender the insolvent's occupancy rights and to vacate the holding. He should enter into negotiations with Rao Girraj Singh for this purpose. The Government demand must be secured and my official expenses.' It seems to us that the order of the District Judge was altogether wrong. In the first place, Section 37 had no application whatsoever. This section deals entirely with transfers, payments, et cetera, made in favour of one creditor by an insolvent with a view of giving that particular creditor a preference over the other creditors (see marginal note to the section). If the insolvent in the present case had in truth made a lease in favour of Desraj at a reasonable rent, the transaction would have been a perfectly valid one. The Receiver would step into the shoes of the insolvent and become entitled to the rent reserved by the lease, which he would hold for the benefit of the creditors. Of course, on the other hand if the Court came to the conclusion that the lease was a mere blind, that it never was intended that any person except the insolvent should cultivate the land, then the crop which was attached still belonged to the estate of the insolvent and the Receiver was entitled to it. It seems to us also that the learned District Judge made a great mistake when he directed the Receiver to surrender the occupancy holding. According to the objection taken by Rao Girraj Singh, the occupancy holding was a very valuable holding. He goes so far as to say that it would let for Rs. 450 a year. It is very difficult to see how the creditors of the insolvent would profit by the surrender of this very valuable holding. It is the duty of the Receiver and the Court when administering the estate of an insolvent to preserve such estate, as far as possible, for the benefit of the creditors. The last thing desirable would be to give up any property that was of value. We allow the appeal, set aside the order of the District Judge and remand the case to him with directions to re-admit it under its original number in the file and to proceed to hear and determine the same according to law, having regard to what we have said above. Costs of both aides will be costs in the matter.