

Moti Ram Vs. E.H. Roowell and anr.

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SooperKanoon Citation : sooperkanoon.com/481127

Court : Allahabad

Decided On : Oct-24-1922

Reported in : AIR1923All159; 76Ind.Cas.749

Judge : Piggott and ;Walsh, JJ.

Appellant : Moti Ram

Respondent : E.H. Roowell and anr.

Judgement :

1. We entirely agree with the judgment of the learned Judge. It really could not have been better put than he has put it. It is not necessary to follow him and speculate as to what would be the result under the Provincial Insolvency Act or under the English Law. It is sufficient to say that the mortgage in this case which was registered is not challenged as such. Before the insolvency, the Bank of Upper India were a secured creditor holding a legal charge upon the moveable property of the debtor. On the making of the order of adjudication against the debtor, property in his possession or ownership of within his order or disposition, under such circumstances as constituted him the reputed owner, vested in the Receiver, subject to the rights of a secured creditor. Sub-section (6) is as clear as it can possibly be, and provides unambiguously that no property over which a Secured creditor has a legal charge, shall be affected by any of the provisions in the sub-sections which precede it. The Bank were a secured creditor within the meaning of Sub-section (6), and their charge is not affected by any of the other

provisions of Section 28. We are convinced that inasmuch as the existence of a mortgage over immoveable property, which remains in the possession of the debtor, would raise all sorts of questions as to the meaning Of the terms 'true owner' and 'reputed owner' used in Section 28, that was why the Legislature went out of its way to enact Sub-section (6). It must be clearly understood, indeed, it does appear clear from the Judge's order that, if the Receiver realises the property, the debt due to the Bank at the date of such realisation, constitutes a charge payable to the Bank out of the amount so realised. Section 47 indicates what a secured creditor in such a case can do, but of course his rights under Section 47 must be necessarily postponed when the legality of his alleged Charge is called in question as it, was here. It is presumably in effect too late for the provisions of Section 47 to be applied, or, at any rate the Bank has not chosen to object to the course proposed by the Receiver of realising by sale and discharging the debt due out of the proceeds. But it must not be supposed as a matter of practice that the judicial proceeding which has now come to an end has affected the option given to the creditor under Section 47. The appeal must be dismissed with costs.