APPELLATE CIVIL.

1937

June 10.

Before Costello A. C. J. and Edgley J.

ABDUL RAHMAN MIYA

v.

GAJENDRA LAL SHAHA.*

Insolvency—Hindu law—Father's debts—Heirs—"Debtors"—Right to present a petition in insolvency—Creditor's right, if any—English Bankruptcy Act, 1914 (4 & 5 Geo. V, c. 59), s. 130—Presidency-towns Insolvency Act (III of 1909), s. 108—Provincial Insolvency Act (V of 1920), ss. 7, 10, 13, 25 (2), 27.

Under Hindu law the heirs are not personally liable for the debts of the deceased, not even if they be the sons, grandsons or great grandsons of the deceased.

In respect of the deceased father's debts his sons are not "debtors" entitled to present a petition in insolvency under the provisions of s. 7 and s. 10 of the Provincial Insolvency Act.

Nagasubrahmania Mudaliar v. *Krishnamachariar* (1) referred to.

It is as unjust and inequitable for the creditor of a deceased insolvent to present a petition against a deceased insolvent's representative as for a representative of a deceased insolvent to present a petition against himself.

Section 130 of the English Bankruptcy Act, 1914, is reproduced in s. 108 of the Presidency-towns Insolvency Act, 1909, but similar provisions find no place whatever in the Provincial Insolvency Act, 1920 ; and under both the former Acts it is only a creditor who can present a petition for the administration of a deceased insolvent's estate.

APPEAL FROM ORIGINAL ORDER by the creditors.

The facts of the case as well as the arguments in the appeal appear in the judgment.

Paresh Nath Mukherji (Jr.) for the appellant.

Ambika Charan Ghosh for the respondents.

*Appeal from Original Order, No. 287 of 1936, against the order of S. M. Masih, District Judge of Mymensingh, dated Mar. 28, 1936.

(1) (1927) I. L. R. 50 Mad. 981.

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COSTELLO A. C. J. This appeal raises a question of some importance. It has been fully argued by Mr. A. C. Ghosh on behalf of the respondents. The respondents are two brothers named Gajendra Lal Shaha and Harendra Lal Shaha. On November 8, 1935, they presented a petition in the Court of the District Judge of Mymensingh asking that they should be adjudicated insolvents and (as they put it in para. 10 of their petition) "thereby exonerated "from the liability of all the debts." The petition was registered on November 11, 1935, and on March 28, 1936, an order was made in these terms :—

Considering all the circumstances I think that the petitioners cannot be denied the protection they seek. As the debts are more than Rs. 500 and they are unable to pay, I adjudicate them as insolvents and direct that they should come up for discharge after six months.

The debts referred to in the petition had been incurred not by the petitioners themselves but by their deceased father whose heirs they are. In para. 3 of the petition the petitioners stated that—

the two petitioners are unable to pay the said debts of their father. They have neither any power nor any means to do so and the properties left by their father are not sufficient for payment of the whole of the said debts which amount to Rs. 14,614.

In the next paragraph they indicate by reference to the schedules attached to the petition certain properties and assets belonging to their deceased father which had come to them as the heirs of their father. Subsequently a supplementary petition was filed on February 15, 1935, in which they stated that they had acquired certain properties from their paternal grandfather and that, therefore, they were including those properties in their schedule of assets.

It was contended at the hearing before the learned District Judge by the creditors of the deceased that the petitioners ought not to be adjudicated insolvents because the debts were those of the father of the petitioners and not of the petitioners themselves. The learned Judge puts the matter in this way :—

I have carefully considered the objection raised by the creditors as to the petitioners being adjudicated insolvents on the ground that debts being

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those of their father the petitioners' interests are not in jeopardy and they have no *locus standi* to seek the protection of the Insolvency Court.

The position, therefore, was this, that in effect the creditors were saying that the petitioners were not "debtors" for the purpose of the Provincial Insolvency Act, 1920. The relevant sections of that Act are these: first of all s. 7 which says:—

Subject to the conditions specified in this Act, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor, and the Court may on such petition make an order (hereinafter called an order of adjudication) adjudging him an insolvent.

Then s. 10 says:—

A debtor shall not be entitled to present an insolvency petition, unless he is unable to pay his debts and (*a*) his debts amount to five hundred rupees.

Then follow certain other conditions.

Section 13 says:—

Every insolvency petition presented by a debtor shall contain the following particulars, namely:—

(*a*) a statement that the debtor is unable to pay his debts.

Section 25(*2*) says:—

In the case of a petition presented by a debtor the Court shall dismiss the petition if it is not satisfied of his right to present the petition.

Apparently the learned Judge was satisfied as to the right of these two persons to present the petition of November 8, 1935, and then acted under the provisions of s. 27(*1*) which says:—

If the Court does not dismiss the petition, it shall make an order of adjudication, and shall specify in such order the period within which the debtor shall apply for his discharge.

It is clearly under the provisions of that section that the order now complained of, that is to say, the order of March 28, 1936, was made.

Mr. P. N. Mukherji appearing on behalf of the creditors (they are the appellants before us) has argued that the requisite conditions for the making

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of the order of adjudication upon a petition presented by the debtor himself did not exist in that there was no petition by a "debtor", because the petition related not to debts for which the petitioners themselves were liable, but only to debts for which they were responsible to the extent of the assets of their deceased father coming into their hands. The learned Judge seems to have thought that because the parties are governed by the *Dâyabhâga* school of Hindu law, the position is different from what it would have been or might have been had the parties been governed by the *Mitâkshará*. When I say "the "parties", I mean of course the petitioners and their father. They were in fact subject to the *Dâyabhâga* school of Hindu law. In our opinion, that makes no difference at all. The position of Hindu sons as regards their responsibility for debts incurred by their father is clearly stated in Sir Dinshaw Mulla's well-known book on Hindu Law in para. 288 in these words:—

> As regards the liability of an heir of a deceased Hindu to pay the debts of the deceased, it is settled law that he is liable only to the extent of the assets inherited by him from the deceased. The heir is not personally liable to pay the debts of the deceased, not even if he be a son or grandson.

There are a number of authorities which give support to that proposition. We have also been referred to a passage in the note to para. 302 of the same book where Sir Dinshaw Mulla observes:—

> On the death of a Hindu governed by the *Dâyabhâga* law, his separate property as well as his undivided interest in coparcenary property passes to his heirs and they become assets of the deceased in their hands. Therefore, if he dies leaving debts, the heirs are bound to pay the debts not only out of the separate property left by the deceased, but also out of his undivided interest in the coparcenary property. The heirs, however, are not personally liable for the debts of the deceased, not even if they be the sons, grandsons or great grandsons of the deceased.

We accept these propositions of law as being wholly correct.

It is to my mind clear beyond all controversy, that the two petitioners in the present case were only liable for the debts of their deceased father to the

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extent of the assets coming into their hands, and in no sense whatever were they personally liable for the debts of their father. That being so it seems to me quite impossible to hold that in respect of such liability they were "debtors" entitled to present a petition in insolvency under the provisions of s. 7 and s. 10 of the Provincial Insolvency Act of 1920. We are supported in that view of the matter by a decision of the Madras High Court—a decision which was cited before the learned Judge in the Court below—which, however, he appears not to have treated with that amount of attention it obviously calls for. I refer to the case of *Nagasubrahmania Mudaliar* v. *Krishnamachariar* (1). The head note runs as follows :—

Until there is a personal decree under s. 52, Civil Procedure Code, a decree against a person as the legal representatives of another (such as in this case a decree against the son for the debt of his deceased father to the extent of the assets in his hands) does not make him liable to adjudication under the Provincial Insolvency Act.

At page 984 Venkatasubba Rao J. said this :—

The question that has to be decided is : when a debt is due from a person in his representative character, is he liable to be adjudicated an insolvent under the Provincial Insolvency Act ? An amount became due to the respondent from the appellant's father.

Later in the same page he says :—

There is thus no doubt that the decree as it now stands excludes altogether the personal liability of the appellant. In these circumstances, can the appellant be adjudicated an insolvent ?

Then follows this very significant and to my mind conclusive statement :—

The proposition that any person who happens to be a debtor in his representative capacity is liable to be adjudicated an insolvent, cannot be seriously argued, for in that case any executor or administrator may be so adjudicated by reason of his occupying that limited capacity. This of course would be absurd.

With great respect I entirely agree with the observations of the learned Judge of the Madras High Court. In my view, it would indeed be absurd

(1) (1927) I. L. R. 50 Mad. 981, 984.

to hold that two persons who happened to be the sons of a man who died in an insolvent condition would be entitled to present an insolvency petition against themselves in respect of debts for which they were not personally liable.

Mr. A. C. Ghosh sought to argue that what happened in this case was in effect analogous to proceedings for the administration of the estate of a person dying insolvent, under the provisions of s. 130 of the English Bankruptcy Act, 1914. Unfortunately for the success of that line of argument Mr. Ghosh seems to have overlooked the fact that s. 130 of the English Bankruptcy Act, 1914, is reproduced in s. 108 of the Indian Presidency-towns Insolvency Act, 1909: But similar provisions find no place whatever in the Provincial Insolvency Act, 1920, which is the Act under which the order we are now considering was made, and which governs this appeal. Moreover, had Mr. Ghosh looked into the matter a little more closely, he would have discovered that both under the provisions of the English s. 130 and the Indian s. 108 it is only a *creditor* who can present a petition for the administration of a deceased insolvent's estate. It is difficult to see how there could possibly be either in the English Bankruptcy Act or in the Indian Acts any provision for the presentation of a petition by a person who is neither the insolvent nor personally liable for the debts in respect of which the petition is sought to be presented. As I pointed out to Mr. Ghosh in the course of his argument if it were possible for a representative of a deceased insolvent to present a petition against himself, per contra it ought to be equally possible for the creditor of a deceased insolvent to present a petition against a deceased insolvent's representative. That, to my mind, would be not only absurd but a most unjust and inequitable state of affairs. We are quite satisfied that the learned Judge took a mistaken view as to the law applicable to this matter. He ought

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to have held that the petitioners were not debtors within the meaning of the insolvency law applicable to the case, and so they were not entitled, if that is the right word to use, to obtain, as the learned Judge puts it, "the protection which they seek".

The result is that the order of the learned Judge must be set aside, the adjudication will be annulled and the petition of November 8, 1935, rejected. The appeal is allowed with costs.

EDGLEY J. I agree.

Appeal allowed.

G. S.