1892

HAR GOBIND v. NONI BAHU.

defendants were under to tender it in evidence to the lower appellate Court, if they wanted to rely on it. S. 142A cl. (2) is explicit, and the document in question not having been admitted in evidence cannot be treated as forming part of the record, although in fact it is found amongst the papers on the record. We do not consider whether the document was admissible in evidence under the Registration Act or whether if it was inadmissible in evidence under the Registration Act, a Court of justice could look at it or not. It was not tendered in evidence in the lower appellate Court, and no question consequently arises upon it. The other matters raised in the appeal are concluded by the findings of fact in the lower appellate Court. The appeal is dismissed with costs.

Appeal dismissed.

1892. *February* 29.

CIVIL REVISIONAL.

Before Mr. Justice Straight.

GAURI DATT (DECREE-HOLDER, PETITIONER) *v.* SHANKAR LAL (JUDGMENT-DEBTOR, OPPOSITE PARTY.)*

Execution of decree—Insolvency—Two reliefs not concurrent—Civil Procedure Code, ss. 351 et seqq.

A decree-holder in respect of whose judgment-debtor an order declaring him insolvent and appointing a receiver has been passed under s. 351 of the Code of Civil Procedure, and whose decree has been placed on the list of the judgment-debtor's scheduled debts, cannot, *pari passu* with the proceedings in insolvency, go on executing his decree in the ordinary way against that judgment-debtor. *Badal Singh* v. *Biroh* (1), and *Abdul Rahman* v. *Behari Puri* (2), distinguished.

The facts of this case sufficiently appear from the judgment of Straight, J.

Munshi *Ram Prasad* and Kunwar *Parmanand,* for the applicant.

Babu *Jogindro Nath Chaudhri,* for the opposite party.

STRAIGHT, J.—This is an application for revision under s. 622 of the Code of Civil Procedure of an order of the Small Cause Court Judge of Allahabad, dated the 29th of August 1891. Gauri

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* Miscellaneous Application for revision under s. 622 of the Code of Civil Procedure.

(1) I. L. R. 15 Calc. 762. (2) I. L. R. 10 All. 194.

1892

GAURI DATT
v.
SHANKAR
LAL.

Datt, the petitioner, held a decree for money, dated the 11th of February, 1887, against Shankar Lal. In the early part of 1888, Shankar Lal got into difficulties, and upon the 14th of April 1888 an order was passed under s. 351 of the Code, declaring him an insolvent, and upon the same date a receiver was appointed. Subsequently to the order in insolvency certain parties, alleging themselves to be the creditors of Shankar Lal, came forward, and among them was Gauri Datt, the holder of this money decree, and a schedule of creditors was prepared, and in that schedule was included the name of Gauri Datt, and there it remains to the present moment. Now Gauri Datt, outside of the proceedings in insolvency, has gone with his decree to the Court of Small Causes, and, despite the pendency of those insolvency proceedings, has sought execution of it in the ordinary way. The learned Small Cause Court Judge has held that that money decree of Gauri Datt has become part and parcel of the scheduled debts under s. 352 of the Code of Civil Procedure, and that any rights Gauri Datt has under that decree must be regulated by Chapter XX of that Code.

Mr. *Ram Prasad* has strenuously argued to the contrary, and in support of his contention he has referred to two cases, *Badal Singh* v. *Birch* (1) and *Abdul Rahman* v. *Behari Puri* (2). With regard to the first of these rulings I think it enough to say that it is distinguishable upon the ground, first, that no receiver was appointed, and, secondly, that the decree of the decree-holder was obtained after the order in insolvency had been made. With regard to the second ruling, it seems to me clearly distinguishable, because, whether rightly or wrongly, the learned Judges who decided that case held that under the circumstances therein disclosed there was bar to a suit under s. 283 by the party who had obtained a decree against a person in respect of whom an order in insolvency had been made.

It seems to me that Mr. *Ram Prasad's* contention, if effect were given to it, would practically render the whole provisions of Chapter XX of the Code nugatory and useless. I presume that

(1) I. L. R., 15 Calc. 762. (1) I. L. R., 10 All. 194

1892

GAURI DATT v. SHANKAR LAL.

they were framed with two objects: first, the relief of an embarrassed judgment-debtor from obligations that he was honestly unable to meet, and secondly, that creditors who came in and proved in the insolvency proceedings were to share and share alike out of the proceeds or assets derived from the property of the insolvent, and provision is made in ss. 357 and 358 as to what protection is to be afforded to the insolvent, and under what circumstances he is to be held discharged from further liability in respect of his scheduled debts. If Mr. *Ram Prasad's* contention is to be given effect to, this startling state of things would arise, that where an order of insolvency had been passed and the insolvent had a hundred creditors, fifty of whom were decree-holders and fifty of them entitled to sums of money from him, not only might they avail themselves of the provision of s. 352, but the fifty decree-holders might, *pari passu*, go on executing their decrees in fifty different Courts, and that the other fifty parties entitled to money from the judgment-debtor might institute fifty suits in fifty different Courts. Unless I read s. 352 as excluding not only the capacity to institute execution proceedings but also to institute suits, in either case it would be open to a decree-holder or creditor to adopt the above course. Mr. *Ram Prasad* says, unless there is a prohibition in terms to a decree-holder's executing his decree he must be allowed to do so, even though he is a scheduled creditor. My reply is that the position he contends for is wholly inconsistent with the scope and effect of the provisions of Chapter XX. The learned Subordinate Judge is right in the view he took, and I refuse this application with costs.

Application refused.