

either expressly or impliedly, acquiesced in or relinquished his claim to pre-emption. It is found by the Judge that he made no communication whatever to the vendor after he became aware that a sale was being negotiated, nor did he make it known to him that, while he stood upon his pre-emptive right, he declined to pay the Rs. 4,000, because it was not the condition agreed on between the vendor and the vendee."

The rule laid down in that case was, that the pre-emptor may be estopped by conduct amounting to an admission before the sale occurs which is the basis of the exercise of the pre-emptive right. The report does not, of course, enter fully into the peculiar circumstances of the case ; but if I thought that the decision bore the interpretation placed upon it by Mr. Amir-ud-din, I should be unable to concur in it,—an interpretation which could not be reconciled with the ruling of the same learned Judge in the case of *Subhagi v. Muhammad Ishak* (1). I agree in the order passed by my learned brother Oldfield.

Appeal allowed.

Before Mr. Justice Straight and Mr. Justice Brodhurst.

SUKRIT NARAIN LAL (JUDGMENT-DEBTOR) v. RAGHUNATH SAHAI
(DECREE-HOLDER). *

Insolvent judgment-debtor—Civil Procedure Code, s. 351 (b)—“Property”—Fraudulent intent.

S. 351 (b) of the Civil Procedure Code contemplates a case of active concealment, transfer, or removal of substantive property since the institution of the suit in which was passed the decree in execution of which the judgment-debtor was arrested or imprisoned, with intent to deprive the creditor or creditors of available assets for division ; and it does not cover an omission by the judgment debtor, in his application for a declaration of insolvency, of a statement as to his right to demand partition of ancestral estate in which he is a sharer, especially where there is no evidence of any intent to defraud.

THIS was an appeal from an order under s. 351 of the Civil Procedure Code, refusing to declare the appellant an insolvent. The facts of the case are stated in the judgment of Straight, J.

Munshi *Kashi Prasad*, for the appellant.

Munshi *Sukh Ram*, for the respondent.

* First Appeal No. 140 of 1884, from an order of R. J. Leeds, Esq., District Judge of Gorakhpur, dated the 1st August, 1884.

(1) I. L. R., 6 All., 463.

1885

THAMMAN
SINGH
v.
JAMAL-UD-
DIN.

1885
March 3.

1885

SUK-IT
NARAIN
LALv
RAGHUNATH
DAHAL.

STRAIGHT, J.—It appears to me that the Judge was wrong. The applicant in this case was arrested in execution of a decree for Rs. 263-4 0. and, no doubt, as my brother Brodhurst has suggested, it is extraordinary, considering the well-to-do relatives that he has, that the amount due under so small a decree has not been satisfied. But, after all, we have only to do with his own position as an imprisoned debtor seeking the protection of the Court, and to see whether the Judge was warranted in refusing his application to be declared an insolvent. He seems to be one of the three sons of a Hindu father, who, jointly with his two brothers and himself, holds ten ancestral villages in the Gorakhpur district, in which villages the appellant has at any time a right to demand a partition of his share, which right, it has been held, can pass by execution-sale to an auction-purchaser.

The value of this right must necessarily be to a certain extent doubtful, and I cannot say that, because the appellant did not disclose it in his application, he should be regarded as guilty of bad faith in respect thereof. The Judge was mistaken in supposing that such a case came within s. 351 (b) of the Civil Procedure Code. That does not contemplate such a case as this, but one of an active concealment, transfer or removal of substantive property since the institution of the suit in which was passed the decree in execution of which the judgment-debtor was arrested or imprisoned, with intent to deprive the creditor or creditors of available assets for division. It does not seem to me to cover an omission by the judgment-debtor in his application for a declaration of insolvency of a statement as to his right to demand partition of ancestral estate in which he is a sharer, and certainly not where, as in the present case, there is no evidence of any intent to defraud. Under the circumstances, our order will be that the appeal is allowed, and, reversing the refusal of the Judge to entertain the petition, we direct him to restore the case to his file, and to dispose of it according to law.

BRODHURST, J.—I concur.

Appeal allowed.