

1908

UMAN
KUNWARI
v.
JABBAN-
DHAN.

We accordingly allow the appeal, set aside the order of the Court below, and restore the decree of the Court of first instance. The appellant will have his costs here and in the Court below.

Appeal decreed.

APPELLATE CIVIL.

Before Mr. Justice Richards and Mr. Justice Griffin.

C. E. GREY, OFFICIAL ASSIGNEE, (APPLICANT) v. HAZARI LAL
(DECREE-HOLDER).*

1908
July 14.

Civil Procedure Code, section 244—Official Assignee—Disallowance of claim of Official Assignee to have proceeds of sale in execution of decree against insolvent judgment debtor paid to him—Appeal.

Held that, the Official Assignee not being the representative of an insolvent judgment-debtor, no appeal would lie against the disallowance of his claim to have the proceeds of a sale in execution of a decree against an insolvent judgment-debtor paid over to him. *Kashi Prasad v. Miller* (1), *Sardarmal v. Aranvayal Sabhapathy* (2) and *Chandmull v. Ranees Soondery Dossee* (3) referred to.

THE facts out of which this appeal arose were as follows:—

One Hazari Lal obtained a decree against Dhani Ram and his son, Lachmi Narain on the 2nd of May 1907. In execution of this decree, property belonging to the judgment-debtors was sold on the 27th and 28th May 1907. The judgment-debtors were declared insolvent by the Calcutta High Court and vesting orders in respect of their property were passed in the case of Dhani Ram on the 17th May 1907 and in the case of Lachmi Narain on the 29th May 1907. The insolvents' schedules were not filed until the 7th April 1908. The appellant, who is the Official Assignee, applied to the Court below for payment to him of the proceeds of the sale. The Court below (Subordinate Judge of Cawnpore) relying on the ruling in the case of *Kashi Prasad v. Miller* (4) refused the application.

The Official Assignee thereupon appealed to the High Court.

* First Appeal No. 257 of 1907, from a decree of Girdhari Lal, Subordinate Judge of Cawnpore, dated the 5th of August 1907.

(1) (1885) I. L. R., 7 All., 752. (3) (1894) I. L. R., 22 Calo., 259.
(2) (1896) I. L. R., 21 Bom., 205. (4) (1885) I. L. R., 7 All., 752.

Munshi *Gulzari Lal* and Babu *Satya Chandra Mukerji*, for the appellant.

Pandit *Moti Lal Nehru*, for the respondent.

RICHARDS and GRIFFIN, JJ.—The respondent decree-holder obtained a decree against Dhani Ram and his son, Lachmi Narain on the 2nd of May 1907. In execution of his decree, property belonging to the judgment-debtors was sold on the 27th and the 28th May 1907. The judgment-debtors were declared insolvent by the Calcutta High Court and vesting orders in respect of their property were passed in the case of Dhani Ram on the 17th May 1907 and in the case of Lachmi Narain on the 29th May 1907. The insolvents' schedules were not filed until the 7th April 1908. The appellant, who is the Official Assignee, applied to the Court below for payment to him of the proceeds of the sale. The Court below relying on the ruling of this Court in *Kashi Prasad v. Miller* (1) refused the application.

The Official Assignee comes here in appeal. An objection is taken that no appeal lies, on the ground that he is not the representative of the judgment-debtors within the meaning of section 244 of the Code of Civil Procedure and that this application does not relate to the execution, discharge or satisfaction of the decree and consequently no appeal lies.

The decision cited above is clearly in favour of this objection. That decision has never been overruled by this Court, and has been followed in the case of *Sardarmal v. Aranvayal Sabhapathy* (2) and *Chandmull v. Ranee Soondery Dossee* (3). With reference to these authorities we must sustain the objection and hold that no appeal lies. The result is we dismiss this appeal with costs.

Appeal dismissed.

(1) (1885) I. L. R., 7 All., 752. (2) 1(896) I. L. R., 21 Bom., 205.
(3) (1894) I. L. R., 22 Cal., 259.