

Judge, awarded to the plaintiff a half share in the properties subsequently acquired by Autar Singh. Janki Prasad has died since the institution of this appeal, and he is now represented by his minor son Dharaband Singh. It is contended on his behalf that by the custom of the family these acquisitions became part of the original estate, and are, therefore, not subject to the ordinary rules of inheritance.

Both the courts in India have come to the conclusion that the evidence is insufficient to establish the alleged custom. And no adequate reason has been shown to induce their Lordships to take a different view. The only other point that remains to be considered is whether the lands subsequently acquired were as a matter of fact incorporated with the taluqa. As has been pointed out by this Board in the case of *Parbati Kumari Debi v. Jagadis Chunder Dhabal* (1), the question whether properties acquired by an owner become part of "the ancestral estate for the purpose of his succession," depends on his intention to incorporate the acquisitions with the original estate.

The courts in India have concurrently found against the defendant on this point, and their Lordships see no reason to differ from their conclusion. Both courts appear, however, to have fallen into an error in respect of one property, Kamrauli, for a half share of which they have made a decree in favour of the plaintiff. It is admitted on his behalf that Kamrauli is one of the villages for which Autar Singh obtained a decree in the regular settlement proceedings. The decree of the lower court must, therefore, be varied by the elimination of Kamrauli.

Subject to this variation both appeals will be dismissed, each party bearing his own costs.

And their Lordships will humbly advise His Majesty accordingly.

*Appeals dismissed.*

Solicitor for Janki Prasad Singh:—*The Solicitor, India office.*

Solicitors for Dwarka Prasad Singh:—*Barrow, Rogers & Nevill.*

J. V. W.

(1) (1912) I. L. R., 29 Calc., 433 ; L. R., 29 I. A., 82.

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## APPELLATE CIVIL.

1913  
May, 1.

*Before Mr. Justice Sir George Knox and Mr. Justice Muhammad Rafiq.*

AMIN-UD-DIN HAIDAR (JUDGEMENT-DEBTOR) v. SHEORAJ SINGH  
(DECREE-HOLDER) \*

*Civil Procedure Code (1882), Chapter XX—Insolvency—Insolvent discharged without a schedule of debts being framed—Attempt on the part of creditor to proceed against after-acquired property.*

Where an insolvent had taken advantage of the provisions of chapter XX of the Code of Civil Procedure, 1882, and had been discharged under section 351, but no schedule of debts had been framed, it was held that a judgement-creditor of the insolvent could not thereafter have recourse against property which had come into the hands of the insolvent subsequently to his discharge.

THE facts of this case were as follows :—

One Amin-ud-din Haidar was declared a discharged insolvent in 1904. In his application for insolvency, among others, a debt due to Sheoraj Singh was mentioned, but no schedule of creditors was prepared, nor were any objections taken to his discharge. Another debtor, Ratan Lal, had applied to prove his debt and the District Judge had ordered his debt to be entered in a schedule and his name to be recorded as that of a creditor who had proved his claim; but that order was reversed in appeal to the High Court (1). Some time after his discharge, Amin-ud-din Haidar inherited certain property, and thereupon Sheoraj Singh applied to proceed against this property by way of execution. His claim was dismissed, and he was directed to take proceedings under the Provincial Insolvency Act. He then applied to prove his debt and have the property distributed among the creditors through a receiver who, it seems, had been appointed in the interval. The Judge dismissed the objections of Amin-ud-din Haidar, and allowed the application, on the ground that, although the High Court had reversed the order including Ratan Lal's claim, the order of appointment of the receiver had not been appealed against and had become final. The insolvent appealed to the High Court.

Mr. S. N. Mushran (The Hon'ble Dr. Tej Bahadur Sapru with him), for the appellant :

\* First Appeal No. 4 of 1913, from an order of G. C. Badhwar, District Judge of Shahjahanpur, dated the 21st of September, 1912.

(1) F. A. F. O. 105 of 1910, decided by Knox and Piggott, J.J., on the 5th of May, 1911.

This was an attempt to get behind the order of the High Court disallowing the claim of Ratan Lal. No schedule of creditors was prepared and no steps could be taken against the discharged insolvent. Proceedings had been taken under section 351 of Act XIV of 1882. It was not material whether the debt was admitted or not. It had to be proved by the creditor to the satisfaction of the court. It was a matter between the creditors *inter se* as well as between creditor and debtor. The preparation of the schedule was imperative. Otherwise any fictitious claim could be admitted and the right of creditors defeated. Section 357 also spoke of "scheduled creditors" only. These proceedings were taken under section 24 of the Provincial Insolvency Act, but that provided for steps before the discharge and not after. The applicant could not now proceed against the property of the discharged insolvent

Mr. *Nihal Chand* (for Mr. *B. E. O'Connor*), for the respondent:

It appeared that Amin-ud-din Haidar was declared discharged at the same time as he was declared insolvent. He had no property and it was not necessary to appoint a receiver. The debt of Sheoraj Singh was admitted by the appellant in his application for insolvency. The order appointing a receiver and vesting property in him had not been appealed against and had become final. Property was with the receiver and under section 24 applicant could prove his debt. The insolvent could not be said to have been properly discharged.

KNOX and MUHAMMAD RAFIQ JJ :—Hakim Amin-ud-din is a judgement-debtor of one Kunwar Sheoraj Singh. There were proceedings in the court of Shahjahanpur prior to the proceedings out of which these proceedings have risen and with regard to those proceedings it is sufficient to say that Hakim Amin-ud-din did apply to be declared an insolvent. He was declared an insolvent and he was discharged under section 351 of the Code of Civil Procedure of 1882. These proceedings relating to his discharge have been laid before us and we have examined them. We find that in one of them, i.e., an order by the District Judge, dated the 27th of January, 1904, it is set out, "no other creditor except Ratan Lal proves his claim to-day, though called upon." It was doubtless for this reason that no schedule was prepared and

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very properly so; for a schedule cannot be prepared by a court until the creditors have proved their claims. This was the law under the procedure prevailing up to the passing of the Provincial Insolvency Act of 1907.

In 1912 Sheoraj Singh applied to the court of the District Judge and he asked that certain property which had come into the possession of the judgement-debtor might be placed at the disposal of the Collector of Budaun, so that he might arrange for the payment of the debt due to Sheoraj.

The application was opposed by Hakim Amin-ud-din, the judgement-debtor, who said that he had been discharged from all debts and the court had no power to make the property which he had since acquired liable. The District Judge granted the application of Sheoraj and directed that one Saiyid Janab Ahmad who had been appointed receiver in 1910 should realize the assets of the insolvent and divide them between the two scheduled creditors, Ratan Lal and Sheoraj Singh.

It is this order which forms the subject of the present appeal.

We have looked at the record ourselves. We cannot find, and neither of the learned counsel for the parties can point to, any schedule of creditors. Amin-ud-din in his memorandum of appeal himself says that as no schedule of creditors was prepared before the discharge of the insolvent the applicant cannot be allowed to proceed against the appellant. There being no schedule of creditors to this case Kunwar Sheoraj Singh cannot now enforce his decree as though he were a scheduled creditor.

The appeal prevails, the order of the court below is set aside, but we do not think this is a case in which the judgement-debtor is entitled to his costs.

*Appeal allowed.*