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The plaintiff, who purchased under a sale held in execution of the decree, brings the present suit for physical possession of the two plots, alleging that the perpetual lease was fraudulent and collusive. It is quite clear as a general rule that a plaintiff in a suit for ejectment claiming physical possession must show a right to possession against all the world. It, therefore, becomes of importance to see whether, if the perpetual lease had never been made, the plaintiff would have been entitled to a decree for physical possession against the mortgagor. The Tenancy Act provides that when a proprietor's proprietary right is sold he *ipso facto* becomes an ex-proprietary tenant of his *sir*. This is a right which neither the court nor the proprietor himself can take away or give up. Consequently it is clear that the plaintiff would not have been entitled to a decree for possession against the mortgagor. This being so, it is clear that she cannot have a decree for possession against the present appellant. She is, no doubt, assuming the lease to be fraudulent, entitled to the rent which the ex-proprietary tenant ought to pay for the two plots. In our opinion the decree of the lower appellate court was under the circumstances a proper decree, and we accordingly allow the appeal, set aside the decree of this Court and restore the decree of the lower appellate court. We think under the circumstances (particularly as both parties contested the propriety of the decree of the lower appellate Court) that each party should bear his own costs in this court.

Appeal allowed.

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February, 25.

FULL BENCH.

Before Sir Henry Richards, Knight, Chief Justice, Mr. Justice Ryves and Mr. Justice Piggott.

TRILOKI NATH (APPLICANT) *v.* BADRI DAS AND OTHERS (OPPOSITE PARTIES).*

Act No. III of 1907 *(Provincial Insolvency Act), sections* 5, 6, 15 *and* 16—*Insolvency—Petition by debtor—Grounds for dismissing petition—Possibility of assets exceeding liabilities.*

Where an insolvency petition is presented by a debtor whose debts amount to Rs. 500, and such petition fulfils the requirements of section 11 of the Provincial Insolvency Act, 1907, it is not a valid ground for dismissing the petition

*First Appeal No. 149 of 1913 from an order of Muhammad Shafi, Additional Judge of Meerut, dated the 25th of June, 1913.

that there may exist some reason for supposing that the debtor may not after all be unable to pay his debts in full, unless there are circumstances indicating that the presentation of the petition was fraudulent and an abuse of the process of the Court

The provisions of section 15 of the Act are intended to apply to a creditor's petition and not to one presented by a debtor.

Uday Chand Maibi v. *Ram Kumar Khara* (1); *Kali Kumar Das* v. *Gopi Krishna Ray*, (2); *Girwardhari* v. *Jai Narain* (3); *Bidhata Din* v. *Jagannath* (4); referred to. *Nathu Mal* v. *The District Judge of Benares* (5) distinguished. *Ponnusami Chetti* v. *Narasimma Chetti* (6) not followed.

THE facts of this case were as follows :—

One Triloki Nath filed an insolvency petition in the court of the Additional Judge of Meerut.

The petitioner complied with the provisions of section 11 of the Provincial Insolvency Act. He alleged that his debts amounted to Rs. 2,500, and that his property, which was worth only Rs. 3-10-0, was not enough to pay them all. Some of the creditors opposed the petition. They stated that the property of the petitioner was worth more than Rs. 3-10-0, and that in fact his assets were more than the debts, and that he was not entitled to be declared an insolvent. The court below found that the father of the petitioner was possessed of considerable movable and immovable property, over Rs. 63,000 in value. It further found that during the life-time of the father the applicant executed a deed of release of his share in the property in favour of the father, and that the father died leaving a will in favour of the applicant's brother and mother. These documents in the opinion of that court were not *bonâ fide*, and therefore the petitioner was possessed of sufficient property to pay his debts. It therefore dismissed the petition. The petitioner appealed to the High Court.

Babu *Sital Prasad Ghose*, for the petitioner, submitted that the petition fulfilled the requirements of section 11 of the Act and the court was bound to declare the petitioner an insolvent if he proved that he was unable to pay his debts, which exceeded Rs. 500. (Section 6, cl. 3 of the Provincial Insolvency Act). Section 15 of the Act did not apply to this case, as it was applicable only to applications presented by creditors. An application made by a

(1) (1910) 15 C. W. N., 213.
(2) (1911) 15 C. W. N., 990.
(3) (1910) I. L. R., 32 All., 645.
(4) (1912) 9 A. L. J., 699.
(5) (1910) I. L. R., 32 All., 547.
(6) (1913) 25 M. L. J., 545.

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debtor could only be dismissed if it was shown that the debtor was not entitled to present it. [Section 15 (1) of the Act was referred to.] The duties of debtors are set out in section 43, and if the debtor fails to carry out the provisions of that section he is liable to imprisonment. The latter part of sub-section (1) of section 15 of the Provincial Insolvency Act (Act III of 1907) is a *verbatim* reproduction of section 7, sub-section (3) of the English Bankruptcy Act of 1883, and this section merely refers to an insolvency petition presented by a creditor. Section 8 of the English Act refers to petitions presented by a debtor, and under that section upon a debtor's statement as to inability to pay his debts the order follows as a matter of course. He referred to *Nathu Mal* v. *The District Judge of Benares* (1); *Bidhata Din* v. *Jagannath* (2); *Udai Chand Maiti* v. *Ram Kumar Khara* (3); and *Kali Kumar Das* v. *Gopi Krishna Ray* (4).

Dr. *Surendra Nath Sen* (with him Munshi *Girdhari Lal Agarwala*), for the respondents:—

If the applicant is able to pay his debts the Court should not declare him an insolvent. For in declaring him an insolvent the court will take his property in its possession and will be an agent of the petitioner. The application presented would be an abuse of the process of the Court. The explanation to section 5 gives the Court power to make an order both on the petition of the debtor and the creditor. The word used there is "may," and the Court would not be bound to make an order of adjudication as a matter of course. The provisions of section 15 (1) only apply to cases where the Court is bound to dismiss the petition. The Court should consider whether a petition is made *bonâ fide*. There should be no distinction between applications by debtor and creditor. The Court has inherent power to dismiss petitions. It is an abuse of the bankruptcy law to ask the Court to take possession of the property which is in the hands of the petitioner's brother and proceed to distribute the same among creditors; Halsbury's Laws of England, Vol. II, p. 46, paragraph 72; *Ponnusami Chetti* v. *Narasimma Chtti* (5).

(1) (1910) I. L. R., 32 All., 547. (3) (1910) 15 C. W. N., 213.
(2) (1912) 9 A. L. J., 699. (4) (1911) 15 C. W. N., 990,
(5) (1913) 2 I. C., 293; 25 M. L. J., 545.

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RICHARDS, C. J., and RYVES and PIGGOTT, JJ.—This appeal arises out of insolvency proceedings under Act III of 1907. The petitioner presented a petition asking that he should be adjudicated an insolvent. His petition complied with the provisions of section 11, and contained a statement that he was unable to pay his debts, which exceeded Rs. 500. Notice went in the ordinary course to the creditors, some of whom were represented or appeared when the debtor was examined and opposed adjudication. The debtor was examined and stated that his debts exceeded Rs. 500 and that his means and property were quite insufficient to pay those debts. At the instance of the opposing creditors his brother was examined, and he produced certain documents connected with the property of the family to which the debtor belonged. The learned Additional Judge appears to have considered that the documents which were produced were devices for saving the property of the debtor from his creditors. One of these documents purported to be a will of the debtor's father, the other purported to be a deed of relinquishment made by the debtor in favour of his father in the life-time of the latter. It seems to us that the opinion of the learned Additional Judge amounted to no more than this that he was not satisfied on the evidence that the debtor's debts exceeded his assets. He seems to have been largely influenced in arriving at this opinion because he thought that the alleged will and deed of relinquishment would not have been upheld in a court of law. He does not appear to have found or intended to find that the documents were forgeries. The petition was dismissed.

The petitioner debtor has appealed to this Court, and it is argued on his behalf that under the circumstances of the case the Court was bound to adjudicate him an insolvent under section 16 (1) of the Act.

On behalf of the respondents it is contended that under the provisions of section 15 (1) the Court has power for any "sufficient cause" to dismiss the petition, and that the fact that the petitioner debtor was unable to satisfy the Court that his debts exceeded his assets was quite sufficient cause for dismissing the petition. It was further contended that even if section 15 (1) did not apply, still the Court had power under its inherent jurisdiction to dismiss the petition in the present case as an abuse of the process of the court.

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Section 6, clause (3), provides that a debtor shall not be entitled to present an insolvency petition unless his debts amount to Rs. 500, or he has been arrested or imprisoned in execution of a decree of any court for payment of money, or an order of attachment in execution of such a decree has been made and is subsisting against his property. It is admitted in the present case that the debts did amount to Rs. 500. The debtor was, therefore, clearly "entitled to present" an insolvency petition. An act of bankruptcy had been committed under section 5 by the presentation of his petition. Section 16 (1) provides that where a petition is not dismissed under the preceding section and the debtor is unable to propose any composition or a scheme which shall be accepted by the creditors and approved by the Court in the manner thereafter provided, the Court shall make an order for adjudication.

We have now to see whether the petition in the present case could have been dismissed under section 15 (1). This clause is taken almost *verbatim* from section 7 (3) of the English Bankruptcy Act of 1883. This section deals entirely with a creditor's petition and does not apply in any way to a debtor's petition. It seems to us that the words "or is satisfied by the debtor that he is able to pay his debts or that for any other sufficient cause no order ought to be made, the Court shall dismiss the petition" refer to the Court being satisfied by the debtor that some sufficient cause exists why the order should not be made. It seems to us that there is a fundamental distinction between the adjudication of a person as an insolvent on his own petition, and an adjudication on the petition of a creditor. All the disgrace and other consequences which flow from an adjudication of insolvency in the case of a petition by the debtor himself are the result of his own petition. Furthermore, the creditors would not as a general rule be prejudiced or suffer loss by an adjudication of insolvency. All the assets of the debtor ought to be available in payment of his debts, and if his assets exceed the latter so much the better for the creditors. We are very far from saying that there is no inherent power for the Court by its orders in insolvency matters to prevent an abuse of the process of the Court; and in certain cases it may be quite necessary to dismiss a debtor's own petition to be adjudicated an insolvent. All that it is necessary for us to

say in the present case is that in our opinion the presentation by the debtor of his petition in this case did not amount to an abuse of the process of the Court.

The view that we take of section 15 is supported by the case of *Uday Chand Maiti* v. *Ram Kumar Khara* (1) and also by the case of *Kali Kumar Das* v. *Gopi Krishna Ray* (2). A similar view was taken by this Court in the case of *Girwardhari* v. *Jai Narain* (3), and the case of *Bidhata Din* v. *Jagannath* (4).

The case of *Nathu Mal* v. *The District Judge of Benares* (5) has been referred to. It is clear that the remarks in the judgement cannot be regarded as a decision on the point now in question. The question there related entirely to a criminal trial and the question which arises in the present appeal was neither argued nor discussed. Reliance is placed by the respondent upon the case of *Ponnusami Chetti* v. *Narasimma Chetti* (6). In that case the facts were not altogether unlike the facts in the present case. The Court, however, came to the conclusion on the facts before it that the presentation of the petition amounted to an abuse of the process of the Court. We have already stated that in our opinion the facts of the present case do not constitute an abuse of the process of the Court. The question whether or not the assets would or would not exceed the debts would depend upon the result of a suit at law.

In our opinion the present appeal ought to be allowed. We accordingly allow the appeal, set aside the order dismissing the petition, and under the provisions of section 16 (1) we adjudicate the petitioner an insolvent and direct that the record be returned to the court below so that the matter may be proceeded with according to law. The cost of the appeal will be in the discretion of the court below when making its final order.

Appeal allowed.

(1) (1910) 15 C. W. N., 213.
(2) (1911) 15 C. W. N., 990.
(3) (1910) I. L. R., 32 All., 645.
(4) (1912) 9, A. L. J., 699.
(5) (1910) I. L. R., 32 All., 547.
(6) (1913) 25 Mad. L. J., 545.