

1915

EMPEROR
v.
DIP NARAIN.

Muhammad Ishaq to a far greater extent than did the trying Magistrate; only he has used it to discredit the witness Chedi and to throw doubt on the prosecution case generally, as if the prosecution could be made responsible for all the allegations which Muhammad Ishaq saw fit to make against the Honorary Magistrate.

[The judgement again proceeded to discuss the facts and evidence.]

We set aside the Session Judge's order of acquittal, and we restore the Magistrate's convicting Dip Narain on the charge under sections 211/109 of the Indian Penal Code as framed. No special argument has been addressed to us on the subject of sentence, and we see no adequate reason for departing from the sentence originally passed by the trying Magistrate. We sentence Dip Narain to be rigorously imprisoned for one year and to pay a fine of Rs. 60. In default of payment of fine he will undergo further rigorous imprisonment for two months. He must surrender to his bail accordingly. Any period of imprisonment which he may have already undergone will count towards execution of the sentence now imposed.

APPELLATE CIVIL.

Before Mr. Justice Chamier and Mr. Justice Piggott.

KHUSHHALI RAM (APPLICANT) v. BHOLAR MAL

AND OTHERS (OPPOSITE PARTIES)*

1915
February, 5.

Act No. III of 1907 (Provincial Insolvency Act), section 36—Insolvency—Right of one creditor to challenge claim of another—Duty of Court to inquire—Jurisdiction.

Held that it is open to any creditor of an insolvent to challenge the validity of a debt set up by another creditor and, if he does so, the Judge is bound to inquire into the truth of his allegations in the insolvency, and cannot merely refer the applicant to his remedy by suit.

THE facts of this case were as follows:—

One Mutasaddi Lal applied on the 10th of March, 1914, to be adjudicated an insolvent. His application was opposed by one of his creditors named Khushhali Ram, on various grounds, but he was so adjudicated by an order of the same date. On the 6th of April, 1914, Khushhali Ram presented to the court an application,

* First Appeal No. 113 of 1914, from an order of G. K. Darling, Additional Judge of Meerut, dated the 6th of April, 1914.

the substance of which was that a mortgage-deed executed by the insolvent on the 26th of November, 1913, in favour of one Bholar Mal, for a sum of Rs. 1,500 was a fictitious transaction entered into merely to defeat the creditors of the executant. The Judge, considering that he had no jurisdiction to inquire into the allegation contained in Khushhali Ram's petition as part of the insolvency proceedings before him, directed the applicant to seek his remedy by a separate suit and rejected the application. The applicant appealed to the High Court.

Babu *Sital Prasad Ghosh*, for the applicant.

Dr. *Surendro Nath Sen*, for the opposite parties.

CHAMBER and PIGGOTT, JJ.—This is an appeal from an order passed by the Additional Judge of Meerut in an insolvency proceeding. One Mutasaddi Lal applied to be adjudicated an insolvent, on the 10th of March, 1914. His application was opposed by one of his creditors, named Khushhali Ram, on various grounds, but he was so adjudicated by an order of the same date. On the 6th of April, 1914, Khushhali Ram, who was a creditor shown on the insolvent's schedule, presented an application to the court, the rejection of which has led to the present appeal. The application was badly drafted. It referred to no definite section of the Provincial Insolvency Act and alluded in a confused manner to two separate transactions, with one of which we are not now concerned. In substance, however, the application was one which deserved more consideration at the hands of the Additional Judge than it has received. The allegation was that a mortgage-deed executed by the insolvent on the 26th of November, 1913, in favour of one Bholar Mal, for a sum of Rs. 1,500, was a fictitious transaction, entered into merely to prejudice the creditors of the executant. Whether the application is to be regarded as one asking for the removal of the name of Bholar Mal from the schedule of creditors, or as one falling under the provisions of section 36 of the Provincial Insolvency Act (III of 1907), the matter was one which required investigation. The learned Additional Judge seems to have thought that it was quite sufficient for him to note that he had before him a registered document admittedly executed by the insolvent. He held that no further inquiry was required, or could properly be conducted, in the insolvency

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proceedings, and that Khushhali Ram's remedy, if any, was by way of a separate suit. In our opinion the learned Judge misconceived the extent of his jurisdiction in insolvency proceedings. He was bound to inquire into this question of the alleged mortgage, at the instance of any creditor who claimed to be prejudiced thereby. He might have come to the conclusion that there had been a transfer by way of mortgage under circumstances calling for interference on his part under section 36 of the Insolvency Act, or he might have found that there had been a purely fictitious transaction, not involving any transfer; in either case the name of Bholar Mal would require to be removed from the list of creditors and the property purporting to be affected by this mortgage would become available for the benefit of all the creditors, free of incumbrance. We think that Khushhali Ram's application should have been taken up, notice of the same given to the insolvent and to Bholar Mal, and the question raised inquired into and decided. We set aside, accordingly, the order complained of and remand the case to the court below with directions to inquire into the matter as stated above. The costs of this appeal will abide the result of this further inquiry hereby directed.

Appeal allowed.

Before Mr. Justice Chamier and Mr. Justice Piggott.

1915
February, 8.

SHER KHAN AND OTHERS (DEFENDANTS) v. DEBI PRASAD (PLAINTIFF)*
Act (Local) No. II of 1901 (Agra Tenancy Act), section 167—Jurisdiction—Civil and Revenue Courts—“Matter in respect of which a suit might be brought” in the Revenue Courts.

The owners of certain zamindari property first mortgaged the property and then executed a perpetual lease of some land appertaining thereto. The mortgagees brought the zamindari to sale, and it was purchased by a stranger. The auction purchaser then sued the lessees in the civil court for recovery of possession of the land held by them. The lessees were directed to institute a suit in the revenue court to determine the question whether they were or were not tenants of the plaintiff. In this suit the auction purchaser admitted the existence of a tenancy, but pleaded that the precise nature of the tenancy, and in particular the validity of the perpetual lease, was not a matter for determination *in that suit*. A decree was passed by the revenue court to the effect that the lessees were tenants of the plaintiff auction purchaser.

* First Appeal No. 102 of 1914, from an order of H. E. Holmes, District Judge of Aligarh, dated the 4th of May, 1914.