Before Mr. Justice Chamier and Mr. Justice Piggott.

1914
November, 9.

BANSIDHAR (PETITIONER) *v.* KHARAGJIT (OPPOSITE PARTY).*

Act No. III of 1907 *(Provincial Insolvency Act), sections* 18,36 *and* 47—*Power of Court to dispossess third persons of property belonging to an insolvent—Inquiry as to ownership of property alleged to belong to the insolvent—Procedure.*

A court exercising jurisdiction under the Provincial Insolvency Act, 1907, has power to inquire whether property in the possession of a third party and alleged by the receiver to be property of the insolvent is really so or not, and if it finds that such property is the property of the insolvent, to order its delivery to the receiver. But in making such an inquiry the court should follow the procedure of a Civil Court in a civil suit; should require the receiver and the party in possession to state their respective cases in writing; should fix issues, and should give the parties an opportunity of producing evidence.

THE facts of this case were as follows:—

On the 2nd of July, 1909, Gur Narain was adjudicated an insolvent. The respondent was appointed receiver. He applied to be put in possession of certain items of property which he claimed belonged to the insolvent, but which were in the possession of Ratan Lal and Bansidar. These items consisted of mortgages which had been assigned by the insolvent's father in 1905 to Ratan Lal, and of decrees which had been obtained on some of those mortgages, and which had been assigned to Bansidhar on the 23rd of March, 1910. In execution of these decrees Bansidhar had purchased some of the properties which had been mortgaged. The court issued notice to Ratan Lal and Bansidhar. The former admitted that both sets of assignments were fictitious. The latter claimed that they were genuine. The court without taking written statements of the parties, or framing issues, or giving the parties proper opportunity to produce evidence came to the conclusion that the items of property belonged to the insolvent and passed an order that the receiver was entitled to take possession of them at once. Bansidhar appealed against this order.

Babu *Piari Lal Banerji* (with him Mr. *M. L. Agarwala*) for the appellant:—

The District Judge exercising insolvency jurisdiction could not summarily decide questions relating to the validity of transactions entered into by the predecessor in title of the insolvent

* First Appeal No. 52 of 1914 from an order of E. C. Allen, District Judge of Mainpuri, dated the 19th of March, 1914.

1914

BANSIDHAR v. KHARAGJIT.

more than two years before the adjudication of insolvency. Section 36 of the Provincial Insolvency Act limits the powers of the court to a consideration of the validity of transfers made by the insolvent within two years of the date of adjudication. The Judge does not say under what section the order is, but the only other possible section would be section 18. Under that section the Judge could not order dispossession of the appellant, for under the proviso to that section the insolvent would be met by section 66 of the Code of Civil Procedure. In any case the Judge should decide the matters in controversy in a proper manner, adopting the procedure of a regular suit. No issues were fixed and no opportunities were given for producing evidence.

Babu *Girdhari Lal Agarwala*, for the respondent :—

The order is not passed under section 36 and is therefore not appealable under section 46, clause (2).

[The Court intimated that it was disposed to give leave to appeal under section 46 (3) as prayed for by the appellant.]

Then the matter may be remanded to the lower court for a decision according to law and proper procedure.

CHAMIER and PIGGOTT, JJ.—This is an appeal against an order of the District Judge of Mainpuri, passed in proceedings arising out of the insolvency of one Gur Narain. All the facts have not been properly ascertained, but for the purposes of this order they may be assumed to be as follows :—

In 1905 the insolvent's father Girwar Dhari instituted three suits on mortgages. Either before or shortly after bringing these suits he transferred, or purported to transfer, all his rights in the mortgages to one Ratan Lal, who was made plaintiff in the suits. Decrees were obtained and one of them is said to have been satisfied. The other two were on the 23rd of March, 1910, transferred to Bansidhar, the present appellant, who took out execution, brought the property to sale and purchased some of it himself. Meanwhile Griwar Dhari had died, and on the 2nd of July, 1909, Gur Narain had been adjudicated an insolvent. On the 13th of August, 1909, the respondent was appointed receiver of the insolvent's property. On the 13th of January, 1910, he put in a petition saying that certain persons who had been called upon to hand over property of the insolvent had not put in an appearance and praying

that he, the receiver, might be put into possession at once. After considerable delay an order was passed that two of the deeds transferring the decrees to Ratan Lal should be made over to the receiver at once. Ratan Lal seems to have appeared in court and said that the transfers in his favour were fictitious, and that the transfers by him to Bansidhar were also fictitious. The District Judge then issued notice to Bansidhar and eventually passed the order now under appeal in which, after referring to various proceedings including an order of the Subordinate Judge of Mainpuri to the effect that the transfers to Ratan Lal were fictitious and an order of the Subordinate Judge of Aligarh holding that the transfers were valid, he has held that the property belongs to the insolvent and that the receiver is entitled to take possession of it at once. The meaning of the order is not clear. It is not possible to say whether the learned Judge means that the receiver should take over the decrees, or that he should take over the property purchased by Bansidhar.

Section 36 of the Provincial Insolvency Act certainly has no bearing on the case, for there was no transfer by the insolvent within two years before the adjudication. It follows that Bansidhar has no right of appeal under section 46 (2) of the Act. But along with his petition of appeal he presented a petition praying for leave to appeal under section 46 (3). We think that leave to appeal should be granted in this case, and we accordingly give the appellant leave to appeal *nunc pro tunc*. The respondent does not object to leave being given if the Court is of opinion that the proceedings in the court below are not satisfactory, but he maintains that the court below was competent to inquire and decide whether the property in question belongs to the insolvent, and that if after proper inquiry it is found that it belongs to the insolvent, the court should remove the appellant from the possession thereof and make it over to the receiver.

The learned vakil for the appellant contends that, if the case does not come within section 36 of the Act, the receiver should be left to bring a separate suit. We cannot accept this contention. It is true that the Indian Provincial Insolvency Act contains no such provision as section 102 of the English Bankruptcy Act, which expressly empowers the Bankruptcy Court to

1914

BANSIDHAR v. KHARAGJIT.

decide "all other questions whatsoever whether of law or fact which may arise in any case of bankruptcy coming within the cognizance of the court, or which the court may deem it expedient or necessary to decide for the purpose of doing complete justice and making a complete distribution of property in any such case;" but it is the duty of a receiver appointed under the Indian Act, and of the court itself, where no receiver is appointed, to take possession of the property of the insolvent, and section 18 of the Act empowers the court, where it appoints a receiver, to remove any person in whose possession or custody any property of the insolvent is from the possession or custody thereof, provided of course that the insolvent had a right to remove him.

We have no doubt that the court had power in the present case to inquire whether the disputed property in possession of the appellant was the property of the insolvent and on finding that it was the property of the insolvent to take steps to have it handed over to the receiver. But in proceedings under the Act the court is required to follow the procedure of a Civil Court in a civil suit. The receiver and the appellant should have been required to state their respective cases in writing, and having ascertained the points in dispute, the court should have fixed issues and given the parties an opportunity of producing evidence. In simple cases it may be unnecessary to fix issues, but care should always be taken that the parties understand what the questions at issue between them are.

In the present case the proceedings of the court were of far too summary a nature. Even now it is difficult to say what allegations of fact by either party are admitted or denied by the other, and the parties do not seem to have been given any proper opportunity of producing evidence.

We accordingly set aside the order under appeal and direct that the record be returned to the court below, that the parties be required to state their respective cases in writing, and that the court do then proceed to try the questions in issue according to the procedure prescribed for the trial for an original civil case. Costs of this appeal will be costs in the proceedings to be dealt with by the court below.

Appeal decreed.