On these grounds we allow the appeal, and, restoring the order of the Munsif, dismiss the action with costs here and below.

Appeal decreed.

1917

PITA RAM
v.
JHUJHAR SINGH.

Before Justice Sir Pramada Charan Banerji and Mr. Justice Ryves.

1917
May, 15.

JAGRUP SAHU AND OTHERS (PETITIONERS) *v.* RAMANAND SAHU AND OTHERS (OPPOSITE PARTIES).*

Act No. III of 1907 *(Provincial Insolvency Act), section* 18—*Sale-deed executed benami by the insolvent—Receiver entitled to remove the so-called purchasers from possession of properties sold—Act No. IX of* 1908 *(Indian Limitation Act), schedule I, article* 91.

Where insolvents, in order to save their property from their creditors, had executed fictitious sale-deeds thereof in favour of relations, but never gave, and never intended to give, the so-called purchasers possession, it was *held* that such transaction was no bar to the receiver taking possession of the property comprised in the said sale-deeds as the property of the insolvents. *Petherpermal Chetty* v. *Muniandy Servai* (1) referred to.

THE facts of this case were as follows:—

In November, 1913, Ramanand and Naurangi Lal, two brothers, applied to be adjudicated insolvents. The order of adjudication was, however, not passed until the 25th of August, 1914, when a receiver applied to the court for possession of the property of the insolvents. In this he was resisted by certain persons who claimed to be purchasers of the insolvents' property under three sale-deeds, dated the 1st of July, 1911, the 13th of July, 1911, and the 3rd of August, 1911. The court went into the matter, examined the evidence adduced on both sides, and came to the conclusion that the sale-deeds were mere fictitious and nominal documents executed by the insolvents in favour of their relatives, not as real transactions, but merely as a blind to prevent their property being availed of by their creditors; that the insolvents themselves were in possession, and that the so-called purchasers had never got possession. The court accordingly ordered that the receiver should take possession of the property and deal with it as required by law. Against this order an appeal was preferred to the High Court by three of the alleged purchasers.

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* First Appeal No. 144 of 1916, from an order of E. Bennett, District Judge of Gorakhpur, dated the 3rd of July, 1916.

(1) (1908) I. L. R., 35 Calc., 551.

1917

JAGROP SAHU v. RAMANAND SAHU.

Dr. *Surendra Nath Sen* and Munshi *Haribans Sahai*, for the appellants.

Munshi *Jang Bahadur Lal*, for the respondents.

BANERJI and RYVES, JJ.:—This appeal arises out of an insolvency matter. In November, 1913, Ramanand and Naurangi Lal, two brothers, applied to be adjudicated insolvents. The order of adjudication was not made until the 25th of August, 1914, when a receiver was appointed. The receiver applied to the court for possession of the property of the insolvents. Apparently he had been resisted by the present appellants, who claimed to be the purchasers of the insolvents' property under three sale-deeds, dated respectively, the 1st of July, 1911, the the 13th of July, 1911, and the 3rd of August, 1911. The learned Judge went into the matter, examined the evidence adduced on both sides, and came to the conclusion that the sale-deeds were mere fictitious and nominal documents executed by the insolvents in favour of their relatives, not as real transactions, but merely as a blind to prevent the property being availed of by their creditors; that the insolvents themselves were in possession, and that the so-called purchasers had never got possession. The learned Judge accordingly ordered that the receiver should take possession of the property and deal with it as required by law. This appeal has been presented by three of the alleged purchasers. The first contention is that the court below had no jurisdiction to deal with this matter in insolvency proceedings. Section 36 of the Provincial Insolvency Act has clearly no application to the present case, inasmuch as the alleged transfer purported to have been made beyond two years prior to the date of adjudication in insolvency. Section 18 of the Act, however, provides in clause (*c*) that where the court appoints a receiver it may remove the person in whose possession or custody the property of the insolvent is from the possession or custody thereof. If the property in question is in the possession of the insolvent, the court undoubtedly has the power under this clause to remove the insolvent from the custody of the property and to put it in the custody of the receiver. There is, however, a proviso to the clause to the effect that the provisions of the clause will not authorize the court to remove from the

possession or custody of the property any person whom the insolvent has not the present right to remove. If, as has been found in this case, the alleged sales were in reality no sales and the sale-deeds were mere waste-paper, the insolvents could remove the purchasers, if they sought to take possession, from the possession of the property. Therefore, acting under section 18, clause (3), the court was fully competent to order that the property should be placed in the possession of the receiver and to inquire whether the property was in reality in the possession of the insolvent and whether the receiver was entitled to obtain possession of it. It is said that the insolvents were bound to bring a suit to set aside the sale within three years from the date thereof. We do not think that this is so. If there was no sale, and if the transaction was a mere *benami* transaction, it was not necessary for the insolvents, and the receiver who had stepped into their shoes, to have the sales set aside and cancelled in order to maintain their possession over the property. The ruling of their Lordships of the Privy Council in *Petherpermal Chetty* v. *Muniandy Servai* (1) appears to be in point. The learned Judge of the court below was therefore justified in holding that article 91 of schedule I, to the Limitation Act had no application to the present case. In our judgement the plea that the court below had no jurisdiction to inquire into this matter is without force. On the merits of the case we see no reason to come to a different conclusion from that at which the court below arrived. The circumstances referred to in the judgement of that court show that the sales were in reality mere sham transactions. As regards the deed of relinquishment of sir lands no argument was addressed to us in this appeal. Furthermore, the case of the deed of relinquishment would come within the operation of section 36 of the Act. We dismiss the appeal with costs.

Appeal dismissed.

(1) (1908) I. L. R., 35 Calc., 551.