

APPELLATE CIVIL.

*Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice
Muhammad Rafiq.*

1917
February, 16.

CHUNNOO LAL (RECEIVER) v. LACHMAN SONAR (OBJECTOR)
AND BHAWANI SHANKAR (INSOLVENT)*

*Act No. III of 1907 (Provincial Insolvency Act), section 36 - Insolvency - Procedure
- Application by receiver to have annulled a transfer made by the insolvent.*

Where a receiver in insolvency seeks to have set aside, under the provisions of section 36 of the Provincial Insolvency Act, 1907, a transfer made by the insolvent he should file a written statement (similar to a plaint in ordinary suits) setting forth the grounds on which the transfer is challenged, the transferee should put in a written reply, and the proceedings should continue very much as in a suit. Such matters should not and cannot properly be disposed of in a summary manner.

THE facts of the case were as follows :—

One Bhawani Shankar, on the 22nd of May, 1912, executed a mortgage in favour of Lachman Sonar. On the 16th of January, 1914, he executed a promissory note for Rs. 1,500 in favour of Chunnoo Lal. On the 9th of November, 1914, Chunnoo Lal commenced a suit on his promissory note. On the 11th of November, 1914, Bhawani Shankar executed a sale-deed in favour of Lachman Sonar, the consideration purporting to be the discharge of the mortgage of the 22nd of May, 1912. The property sold was part of the property mortgaged, namely, a fixed rate tenancy, the house which belonged to the mortgagor being exempted. On the 14th of December, 1914, Chunnoo Lal obtained a decree on the promissory note. On the 22nd of March, 1915, Bhawani Shankar was arrested in execution of the simple money decree. On the same day he applied to be declared an insolvent, and on the 15th of April, 1915, Chunnoo Lal was appointed receiver. On the 24th of September, 1915, Bhawani Shankar was declared an insolvent.

Chunnoo Lal receiver applied to the insolvency court to annul the deed of transfer of the 11th of November, 1914, executed by Bhawani Shankar in favour of Lachman Sonar. The application was rejected, and the receiver thereupon appealed to the High Court.

* First Appeal No. 165 of 1916, from an order of B. J. Dalal, District Judge of Benares, dated the 6th of May, 1916.

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CHUNNOO LAL

v.

LACHMAN
SONAR.

Mr. A. E. Ryves, for appellant.

Pandit Krishna Rao Narain Laghate for the respondent.

RICHARDS, C. J., and MUHAMMAD RAFIQ, J. :—This appeal arises out of an application which was made to the District Judge, before whom an insolvency matter was pending, to annul a deed of transfer made by the insolvent on the 11th of November, 1914, in favour of Lachman Sonar. We may mention a few dates. There was a mortgage in favour of Lachman Sonar, dated the 22nd of May, 1912. On the 16th of January, 1914, Bhawani Shankar, the insolvent, executed a promissory note in favour of Chunnoo Lal for Rs. 1,500. On the 9th of November, 1914, Chunnoo Lal commenced a suit on foot of his promissory note. On the 11th of November, 1914, Bhawani Shankar executed the sale-deed which is challenged in the present proceeding, the consideration purporting to be the discharge of the mortgage already mentioned; the property sold was part of the mortgaged property, that is to say, a fixed rate tenancy, the house which belonged to the debtor being exempted. On the 14th of December, 1914, Chunnoo Lal obtained a decree on foot of his promissory note, and on the 22nd of March, 1915, Bhawani Shankar was arrested in execution of the simple money decree. On the same day he applied to be declared an insolvent, and on the 15th of April, 1915, Chunnoo Lal was appointed receiver. On the 24th of September, 1915, Bhawani Shankar was declared an insolvent. There were other transfers made by the insolvent in or about the same time—one on the 17th of November, 1914, in favour of his own brother. We are not in the present application called upon to express any opinion as to whether or not these transfers were valid, but the fact that another transfer was made about the same time in favour of the insolvent's own brother and others is not without some relevancy when we are considering the *bona fides* of the present transfer.

[After discussing the evidence their Lordships observed :—]

It seems to us that on the evidence on the record one must hold that possession was never given to Lachman Sonar. The result is that we find a man who owes money and against whom a suit has been brought shortly before he presents his petition

for insolvency making this transfer in favour of Lachman Sonar and another transfer in favour of his brother.

[After further discussing the evidence their Lordships observed:]

We think, taking all these facts into consideration, we are bound to hold that the transfer was not *bond fide*, that it was without consideration and therefore void having regard to the provisions of section 36 of the Provincial Insolvency Act. We allow the appeal, set aside the order of the learned District Judge, and declare that the sale-deed in favour of Lachman Sonar is not *bond fide* and was made without consideration. The receiver will have his costs as part of the receiver's cost in the insolvency matter.

We would like to make a suggestion to learned Judges before whom a proceeding like the present may come in insolvency matters. We think that the receiver should file a written statement (similar to a plaint in ordinary suits) setting forth the grounds on which the transfer is challenged, that the transferee should put in a written reply and that then the proceeding should continue very much as in a suit. The matters should not and cannot properly be disposed of in a summary manner.

Appeal allowed.

REVISIONAL CIVIL.

Before Justice Sir Pramada Charan Banerji.

RIFAQAT HUSAIN (PLAINTIFF) v. BIBI TAWAIF (DEFENDANT) *

Civil Procedure Code (1908), section 2—"Decree"—Decree ex parte—Appeal—Dismissal of appeal for default—Application to court of first instance for re-hearing of case—Merger.

An order dismissing an appeal for default does not amount to a decree within the meaning of section 2 of the Code of Civil Procedure, and consequently the decree of the lower court does not merge in the decree of the appellate court. Where a decree is passed *ex parte* and an appeal against the decree is dismissed for default it is still open to the judgement-debtor to apply to the court which passed the decree to set it aside. *Gajrajmati Tiwari v. Swami Nath Rai* (1) and *Abdul Majid v. Jawahir Lal* (2) referred to.

THE facts of this case were as follows :—

The plaintiff applicant brought a suit against Musammat Bibi Tawaif and two other persons for restitution of conjugal rights.

* Civil Revision No. 185 of 1916.

(1) (1916) I.L.R., 39 All., 18.

(2) (1914) I.L.R., 36 All., 350.

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