

APPELLATE CIVIL.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir
Pramada Charan Banerji.

1917
January, 26.

HUKUMAT RAI AND ANOTHER (DEFENDANTS) v. PADAM NARAIN
(PLAINTIFF) *

Act No. III of 1907 (Provincial Insolvency Act), section 22—Attachment of property as that of an insolvent—Decision of insolvency court as between rival claimants to property attached that the property belonged to one of the claimants—Suit by the other to recover possession—Res judicata.

Held that the decision of an insolvency court, as between two rival claimants to property attached by a receiver as the property of the insolvent, that the property belongs to one or the other claimant does not operate as res judicata in respect of a suit on title by one claimant against the other for the recovery of such property.

THE facts of this case were as follows :—

One Nand Kishore was adjudicated an insolvent and a receiver was appointed. The receiver proceeded to attach certain timber as being the property of the insolvent. Two parties thereupon came into court, Padam Narain and Hukumat Rai and son, each claiming the timber as his and both asking for the attachment to be set aside. The insolvency court decided that the timber did not belong to the insolvent, and incidentally that it did belong to Hukumat Rai and son. That court accordingly set aside the attachment. Padam Narain appealed against this order to the High Court, which dismissed the appeal. He then filed the present suit, which was a suit on title to recover possession of the timber, as against Hukumat Rai and son. The court of first instance dismissed the suit, holding that the previous proceedings were a bar to its maintenance. On appeal the lower appellate court reversed the decree and remanded the suit for trial on the merits. Against this order of remand the defendants appealed to the High Court.

The Hon'ble Pandit *Moti Lal Nehru*, and Mr. *J. Nehru*, for the appellants.

The Hon'ble Dr. *Tej Bahadur Sapru*, for the respondent.

RICHARDS, C.J., and BANERJI, J.:—The facts connected with this appeal are shortly as follows. One Nand Kishore was adjudicated

* First Appeal No. 101 of 1916, from an order of Abdul Ali, Subordinate Judge of Agra, dated the 24th of March, 1916.

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an insolvent. The receiver in the insolvency matter attached certain timber alleging it to be the property of the insolvent. Two parties claimed the timber, viz., the plaintiff in the present suit and the principal defendants Hukumat Rai and son. The plaintiff in the present suit as well as Hukumat Rai and son objecting to the attachment applied under section 22 of the Provincial Insolvency Act, to set aside the attachment. The Judge in the insolvency matter decided that the property did not belong to the insolvent, and incidentally decided that it belonged to Hukumat Rai and son. The plaintiff appealed to the High Court, which dismissed the appeal. Meanwhile the plaintiff brought the present suit claiming the timber as against Hukumat Rai and son. The Munsif dismissed the suit on the preliminary point that the previous proceedings were a bar and that the suit was not maintainable. In appeal the Subordinate Judge has set aside the order of the Munsif and remanded the case, holding that the suit was maintainable. We think that the decision of the learned Subordinate Judge was correct. All that the court having seisin of the insolvency matter was called upon to decide was whether or not the attachment should be maintained. The attachment could only be maintained if the property belonged to the insolvent. It was quite immaterial to which of the claimants the property belonged. It is therefore clear that if the matter had rested with the decision of the Judge in the insolvency matter the present suit could certainly have been maintained as a suit between the rival claimants. It is contended that the decision on appeal operates as *res judicata*. We do not think that this contention is valid. The decision which was affirmed was that of the insolvency Judge, who certainly had no jurisdiction to hear the present suit. We dismiss the appeal with costs of this Court: other costs will follow the event.

Appeal dismissed.