

APPELLATE CIVIL.

1916.
December, 4.*Before Mr. Justice Piggott and Mr. Justice Walsh.*

SHEONANDAN (DEFENDANT) v. KASHI AND OTHERS (PLAINTIFFS).*

*Act No. III of 1907 (Provincial Insolvency Act), sections 16, 41, 42, 45—
Insolvent—Assets declared by receiver not realizable—Discharge
of insolvent—Subsequent sale by insolvent of assets so declared
unrealizable*

Part of the apparent assets of an insolvent consisted of mortgagee rights in certain property. These rights were not dealt with by the receiver because he considered that it would be impossible to realize anything on them. The insolvent was accordingly discharged. Thereafter the insolvent managed to sell the mortgagee rights which has been declared unsaleable by the receiver. *Held* that in the circumstances the sale was good and passed whatever rights the discharged insolvent had to the purchaser.

THE facts of this case were as follows:—

A certain house was mortgaged with possession to one Bipat in 1907. He executed a simple mortgage of his mortgagee rights in favour of Sita Ram in 1909. Sita Ram's rights were purchased by the plaintiff in March, 1913. On 1st October, 1910, Bipat was adjudicated an insolvent. His rights in the house were entered in the schedule of assets. The receiver appointed by the Insolvency Court made a report on the 15th of February, 1913, to the effect that no realizable assets were left; that there was the house, but it was so heavily encumbered that nothing was realizable from it. Accordingly, Bipat was discharged on 24th June, 1913. Afterwards, on the 28th of October, 1914, Bipat sold to the plaintiff, for Rs. 500, his mortgagee rights together with arrears of rent which had accrued due to him. In January, 1915, the plaintiff brought a suit for a declaration that he was the mortgagee of the house, for possession thereof as mortgagee and for recovery of arrears of rent. The representative in interest of the original mortgagors pleaded *inter alia* that the plaintiff purchased nothing by the sale-deed of the 28th of October, 1914, as at that date Bipat's interest in the property had ceased by virtue of his insolvency and discharge. The court of first instance gave effect to this plea and dismissed the suit without trying the other issues. The lower appellate court reversed the decision and remanded the suit for

* First Appeal No. 63 of 1916, from an order of E. M. Nanavutty, District Judge of Benares, dated the 23rd of December, 1915.

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trial on the merits. The aforesaid representative of the original mortgagors appealed against the order of remand.

Pandit *Baldeo Ram Dave*, for the appellant :—

After Bipat's adjudication and discharge he had no right left in the property which he could sell to the plaintiff. Consequent on the passing of the order of adjudication the whole of Bipat's property, including all his rights in the property in question, vested, under section 16 of the Provincial Insolvency Act in the receiver; and the only way in which any of the property could go back to the insolvent would be by an order of the Court to that effect. If the creditors had been paid in full, then in accordance with section 41 the insolvent would be entitled to the surplus, if any. This is amplified in section 42. Even where the adjudication is annulled, the property does not necessarily go back to the insolvent, but remains vested in the person appointed by the court. So far as the reversion of the property is concerned, an order of annulment of adjudication and an order of discharge stand on the same footing. Except in the case of full payment of the creditors, the property continues to be vested in the receiver or the court, unless the court orders that the remaining property which has not been disposed of by the receiver may go back to the insolvent. To hold otherwise would be to render the words "after payment in full" in section 41 of no meaning. The order of discharge did not automatically revest the property in Bipat; and consequently he had no power to deal with it as he professed to do.

Munshi *Harmandan Prasad*, for the respondent, was not called upon.

PIGGOTT and WALSH JJ. :—The facts of the litigation out of which this appeal arises are complicated; but the appeal before us raises a single and a simple point. One Bipat was declared insolvent on the 1st of October, 1910. In his schedule he appears to have recorded among his assets his mortgagee rights under a certain mortgage of the year 1907. The receiver, however, considered those rights worthless, and after making such efforts as he thought proper to realize the insolvent's assets for the benefit of his creditors, the said receiver reported to the District Judge that there were no other assets of the insolvent which in his

opinion were capable of realization. Upon this Bipat was discharged by an order of the 24th of June, 1913. Since that date, that is to say, on the 20th of October, 1914, Bipat has found one Kashi who was willing to pay him Rs. 500 for his rights under the mortgage of 1907. The present suit was by Kashi to enforce the rights, if any, acquired by him under this transfer. The court of first instance, although it framed a number of issues, dismissed the suit on the single finding that Bipat after his order of discharge had no rights left under the mortgage in question. The point taken was that Bipat's rights had vested in the Court, or the receiver, under section 16 of the Provincial Insolvency Act, III of 1907, and that the order of discharge does not operate so as to re-vest those rights in Bipat. The learned District Judge in appeal has reversed this finding and has remanded the case to the first court for trial on the merits. We do not know at present whether the plaintiff Kashi has got value for his money or not; that question depends upon the determination of the issues not hitherto tried. We think the District Judge was right. The receiver having abandoned this particular item of property as worthless, Bipat became entitled to deal with it after the order of discharge, and if he succeeded in getting anyone to pay something for his rights, the circumstance that he was declared insolvent in 1910, and got an order of discharge in 1913, would not in itself make the transfer in favour of Kashi bad. We, accordingly, dismiss this appeal with costs.

Appeal dismissed.

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

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AMIR AND ANOTHER (PLAINTIFFS) v. MAHADEO PRASAD (DEFENDANT).

December, 5.

Civil Procedure Code (1908), section 145—Execution of decree—Security for performance of decree, hypothecating immovable property—Mode of enforcing security.

While a security bond given to a court under section 145 of the Code of Civil Procedure, can be enforced so far as the personal liability of the surety is concerned by means of executing the original decree against him, if the surety

* Second Appeal No. 1019 of 1915, from a decree of H. Bennet, officiating District Judge of Allahabad, dated the 2nd of June, 1915, reversing a decree of Gokul Prasad, Subordinate Judge of Allahabad, dated the 23rd of June, 1914.