

according to law. Costs here and hitherto incurred will abide the result.

*Appeal allowed and cause remanded.*

## REVISIONAL CIVIL.

*Before Justice Sir George Knox.*

EMPEROR v. ASHARFI LAL (PETITIONER).\*

*Criminal Procedure Code, section 476—Civil Procedure Code (1908), section 70—Prosecution ordered by a revenue officer in charge of a sale of immovable property in respect of statements made to him in that capacity—Revision—Jurisdiction.*

*Held that a gazetted subordinate to whom the Collector had delegated his powers and who had before him proceedings for sale of immovable ancestral property was a Revenue Court acting in pursuance of the powers conferred by section 70 of the Civil Procedure Code and that the High Court had no jurisdiction to revise an order passed by such officer in the course of those proceedings under section 476 of the Code of Criminal Procedure, Emperor v. Bhajan Tewari (1) distinguished. In the matter of the petition of Bhup Kunwar (2) Emperor v. Muhammad Khan (3) referred to.*

THIS was an application in revision praying that the High Court should exercise its revisional jurisdiction with reference to an order passed by Mr. Anthony, an Assistant Collector of the first class, of Bareilly. The order was passed on the 20th of December, 1915. Under that order Mr. Anthony directed that one Asharfi Lal be prosecuted for perjury under section 193 of the Indian Penal Code, in respect of certain statements. The statements on account of which this order was passed against Asharfi Lal were statements made on the 17th of September, 1915. On that date Mr. Anthony had before him proceedings for sale of "ancestral" immovable property. The sale was in pursuance of a decree of a Civil Court. As the sale was a sale of immovable property it had been transmitted from the Civil Court to the Collector, and the Collector, instead of executing the decree himself, directed his gazetted subordinate Mr. Anthony to carry out the sale. The date of the sale had not been reached when the judgment-debtor, on the 4th of September, 1915, asked Mr. Anthony to adjourn the sale on the ground that the decree had

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(1) (1915) I. L. R., 37 All., 334. (2) (1908) I. L. R., 26 All., 249.

(3) Weekly Notes, 1902, page 202.

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been satisfied by the execution of a mortgage in favour of the decree-holder's brother, and he wanted time to produce the necessary papers before him. Mr. Anthony, on the 17th of September, 1915, asked the Collector to postpone the sale. On that date the decree-holder was examined before Mr. Anthony and stated that he never got a mortgage executed by Than Singh, the judgement-debtor, nor did he know whether such a mortgage had been executed on the 4th August; that he was not in Bareilly on that date, and that he had no talk about a mortgage and could not write '*ragams*' in Urdu. The Collector replied on the 18th of September, 1915, saying that the matter in no way concerned the Revenue Court, and that no notice could be taken of this, unless the satisfaction of the decree had been properly and in a legal way certified by the Civil Court. On the 20th of September, 1915, the Civil Court asked the Collector to return the record, and the record was returned on the 24th of September, 1915. On the 29th of October, 1915, the judgement-debtor presented an application to Mr. Anthony asking for sanction to prosecute the decree-holder for statements made by the decree-holder on the 17th of September, 1915. This application was made to Mr. Anthony as sale officer, or, in other words, as a Revenue Court entrusted by the Collector to carry out the sale in pursuance of the decree of a Civil Court. The decree-holder was called upon to show cause. He did show cause, and eventually, on the 20th of December, 1915, Mr. Anthony passed the order under section 476 of the Code of Criminal Procedure.

Mr. *Nihal Chand*, for the applicant.

Mr. *A. H. C. Hamilton*, for the opposite party.

KNOX, J.—This Court is asked to exercise its revisional jurisdiction with reference to an order passed by Mr. Anthony, an Assistant Collector of the first class of Bareilly. The order was passed on the 20th of December, 1915. Under that order Mr. Anthony directed that one Asharfi Lal be prosecuted for perjury under section 193 of the Indian Penal Code in respect of certain statements. Nowhere in the order is it stated under which section of what Act Mr. Anthony was proceeding; but the whole tenour of the proceedings and of the judgement and order

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shows it to be an order passed under section 476 of the Code of Criminal Procedure. The statements on account of which this order was passed against Asharfi Lal were statements made on the 17th of September, 1915. On that date Mr. Anthony had before him proceedings for sale of immovable property. The sale was in pursuance of a decree of a Civil Court. As the sale was a sale of immovable property, it had been transmitted from the Civil Court to the Collector, and the Collector, instead of executing the decree himself, directed his gazetted subordinate Mr. Anthony to carry out the sale. The date of the sale had not been reached when the judgement-debtor, on the 4th of September, 1915, asked Mr. Anthony to adjourn the sale on the ground that the decree had been satisfied by the execution of a mortgage in favour of the decree-holder's brother, and he wanted time to produce the necessary papers before him. Mr. Anthony, on the 17th of September, 1915, asked the Collector to postpone the sale. Why he did this does not appear, but the fact remains that he did so. The Collector replied on the 18th of September, 1915, saying that the matter in no way concerned the Revenue Court, and that no notice could be taken of this, unless the satisfaction of the decree had been properly and in a legal way certified by the Civil Court. On the 20th of September, 1915, the Civil Court asked the Collector to return the record, and the record was returned on the 24th of September, 1915. On the 29th of October, 1915, the judgement-debtor presented an application to Mr. Anthony asking for sanction to prosecute the decree-holder for statements made by the decree-holder on the 17th of September, 1915. This application was made to Mr. Anthony as sale officer, or, in other words, as a Revenue Court entrusted by the Collector to carry out the sale in pursuance of the decree of a Civil Court. The decree-holder was called upon to show cause. He did show cause, and eventually, on the 20th of December, 1915, Mr. Anthony passed the order under section 476 of the Code of Criminal Procedure. The decree-holder has come to this Court in revision on two grounds. The first is that Mr. Anthony as sale officer had no jurisdiction to order the prosecution of the applicant for perjury, inasmuch as he had no power of a Civil Court, and secondly,

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because the statements before Mr. Anthony were not made in the course of a judicial proceeding. At the hearing at the very first moment a preliminary objection was raised by counsel on behalf of Than Singh to the effect that this Court has no jurisdiction to hear these proceedings. It appears to me that this preliminary objection ought to prevail. The order, though signed by Mr. Anthony as a Magistrate, was in effect an order passed by him as a gazetted subordinate to the Collector acting as the Revenue Court under the special powers given in section 70 of the Code of Civil Procedure. It is true that by the 24th of September, 1915, the record had been sent back to the Civil Court; but the statements were made before him on the 17th of September, 1915, when he was still acting in pursuance of the powers conferred upon him by section 70 of the Code of Civil Procedure. He was then a Revenue Court. As a Revenue Court he has, under section 476 of the Code of Criminal Procedure, the power to pass the order he did. The question arises whether this Court can send for the record of Mr. Anthony and satisfy itself as to the legality or propriety of his order and as to the regularity of the proceedings before me. The learned counsel for the applicant drew my attention to the case of *Emperor v. Bhajan Tewari* (1) as an authority in his favour. That case is not on all fours with the present case and is distinguishable from it. My learned brother there held that the Assistant Collector to whom the execution of decree for sale of immovable property had been transferred and before whom a petition had been put in praying that the sale might be set aside, and a further petition stating that the applicant had been compelled to put his thumb-impression on a blank paper, had no power to order prosecution, as he was not at the time a Civil, Criminal or a Revenue Court. It was held that the application was not made to him as a Revenue Court. In the present case I hold that the statements were made and the application for sanction was also made before a Revenue Court. This being so, and following the principle laid down in *In the matter of the petition of Bhup Kunwar* (2), I hold that this Court has no revisional jurisdiction over the order passed by Mr. Anthony on the

(1) (1915) I. L. R., 37 All., 334. (2) (1903) I. L. R., 26 All., 249.

20th of December, 1915. I would also refer to *Emperor v. Muhammad Khan* (1). The application is dismissed.

*Application dismissed.*

## APPELLATE CIVIL.

*Before Mr. Justice Walsh and Mr. Justice Sundar Lal.*

MUHAMMAD HABIB-ULLAH (APPLICANT) v. MUSHTAQ HUSAIN  
AND OTHERS (OPPOSITE PARTIES).\*

*Act No. III of 1917 (Provincial Insolvency Act), section 36—Insolvent Transfer of property by insolvent—Validity of such transfer.*

Section 36 of the Provincial Insolvency Act is wider in its scope than section 58 of the Transfer of Property Act. Under the former Act it is not necessary to show that the transfer was made with intent to defeat or delay a creditor. All that it is necessary to show is that the transfer was made within two years of the adjudication of the insolvency of the debtor, unless it is a transfer made before and in consideration of marriage.

In order to determine the validity of a transfer by a debtor of all his property in lieu of a debt it is a matter for consideration whether a real transfer was intended by the transferor, or whether it was merely fictitious, and whether it was made in good faith, the onus of proving good faith being upon the transferee.

THE facts of this case are fully set forth in the judgement of the court.

Dr. S. M. Sulaiman, Dr. Surendra Nath Sen, and Munshi Benode Behari, for the appellant.

The Hon'ble Dr. Tej Bahadur Sapru, Mr. Yusuf Hasan, and Munshi Satya Narain for the respondents.

WALSH and SUNDAR LAL, JJ :—This appeal arises out of proceedings instituted under Act No. III of 1907. One Mushtaq Husain, who is a resident of mauza Kara in the district of Allahabad, used to carry on business as a contractor and dealer in timber. He entered into a contract for the supply of a certain number of sleepers to one Habib-ullah, a merchant of Agra. He was not able to perform his part of the contract, and Habib-ullah consequently brought a suit against him on the 15th April, 1913, for the recovery of a sum of Rs. 2,468 for the breach of the contract. The exact date on which the suit was filed is not

\* First Appeal No. 172 of 1915, from an order of S. R. Daniels, District Judge of Allahabad, dated the 24th of July, 1915.

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