

APPELLATE CIVIL.

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

MOHNI (PLAINTIFF) v. BAIJ NATH AND OTHERS (DEPENDANTS).^{*}
Act No. III of 1907 (Provincial Insolvency Act), section 22—Insolvency—Execution of decree—Attachment—Objection of claimant to attached property disallowed—Judgment-debtors declared insolvent—Suit by claimant for declaration of title.

Certain property was attached in execution of a decree. M, claiming that the property attached belonged to her and not to the judgment-debtors, filed an objection to the attachment. Her objection was disallowed. She then filed a suit for a declaration of her title, and, as the judgment-debtors had meanwhile been adjudicated insolvents, joined as a defendant the receiver of their property. *Held*, that the suit was maintainable and was not barred by section 22 of the Provincial Insolvency Act, 1907. *Mul Chand v. Murari Lal* (1) distinguished. *Jhunku Lal v. Piari Lal* (2) referred to.

THE facts of this case were as follows :—

A certain house was attached by one Baij Nath in execution of a decree against Salig Ram and Sagar Mal. Salig Ram and Sagar Mal were adjudged insolvents and their property vested in a receiver. One Musammat Mohni, claiming the house as her own, filed an objection to the attachment. Her objection having been disallowed, she instituted the present suit, and impleaded, amongst other defendants, the receiver in insolvency. The court of first instance dismissed the suit, holding it to be barred by the provisions of section 22 of the Provincial Insolvency Act, 1907, and this decree was upheld on appeal. The plaintiff thereupon appealed to the High Court.

The Hon'ble Munshi *Narayan Prasad Ashthana*, for the appellant.

Mr. B. E. O'Connor (with him Babu *Piari Lal Banerji* and Munshi *Panna Lal*), for the respondent.

RICHARDS, C. J., and BANERJI J.:—This appeal arises out of a suit for a declaration of right. The plaintiff claimed a certain house as being her property. The house had been attached by one Baij Nath in execution of a decree against Salig Ram and

^{*} Second Appeal No. 1135 of 1916, from a decree of Durga Dat Joshi, First Additional Judge of Aligarh, dated the 1st of April, 1916, confirming a decree of Sudershan Dayal, Second Additional Subordinate Judge of Aligarh, dated the 25th of December, 1915.

(1) (1915) I. L. R., 36 All., 8. (2) (1916) I. L. R., 39 All., 204.

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Sagar Mal. Salig Ram and Sagar Mal were declared insolvents and any property they had vested in the receiver. The Musamat, as already stated, claimed the property as being hers and said that it did not belong to Salig Ram or to Sagar Mal. Her objection having been disallowed, she was clearly entitled to bring a suit for a declaration of her title and a necessary party to that suit would be the receiver in insolvency who represented the claims (if any) of Salig Ram and Sagar Mal and their creditors. Both the courts below have dismissed the suit as being barred by the provisions of section 22 of the Provincial Insolvency Act. That section is as follows :—“ If the insolvent, or any of the creditors or any other person is aggrieved by any act or decision of the receiver, he may apply to the court, and the court may confirm, reverse or modify the act or decision complained of and make such order as it thinks just”. The plaintiff in the present case was not complaining of any act or decision of the receiver in the insolvency. She was complaining that the court which was executing the decree of Baij Nath had disallowed her objection and decided that the property was the property of the insolvents. It seems to us that section 22 does not apply under the circumstances of the present case [see *Jhunku Lal v. Piari Lal* (1)]. The lower appellate court has relied upon the case of *Mul Chand v. Murari Lal* (2). The facts there were quite different. The property had not been attached in execution of a decree, but had been taken possession of by the receiver as being property belonging to the bankrupt.

We allow the appeal, set aside the decree of the lower appellate court and remand the case to that court, with directions to re-admit the appeal and deal with it according to law. Costs here and heretofore will be costs in the cause.

Appeal decreed and cause remanded.

(1) (1916) I. L. R., 39 All., 204.

(2) (1919) I. L. R., 36 All., 8.