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RUP NARAIN v. SHEO PRAKASH

1906. The plaintiff, although his claim had been decreed in full, appealed to the High Court by reason of certain remarks which the trial court had made in its judgment when passing the final decree. This Court held that no appeal lay under the circumstances, i.e., that it was not competent to the plaintiff to appeal against the decree in order to obtain a reconsideration of matters referred to in the judgment but not embodied in the decree. The appeal was dismissed on the 29th of June, 1908, and the question before us for determination is whether twelve years' period of limitation, referred to in section 48 of the Code of Civil Procedure, began to run from this latter date or from the 26th of November, 1906, the date of the final decree in the court of first instance. On the wording of article 182 of the schedule to the Indian Limitation Act, the decision of the court below, which held that twelve years' period of limitation must be reckoned from the later of these two dates, appears correct. There is also authority on the same side, *Akshoy Kumar* v. *Chunder Mohun* (1) and *Fazl-ur-Rahman* v. *Shah Muhammad Khan* (2). An appeal had been preferred, although this Court decided that the plaintiff had no right under the circumstances to maintain the appeal. Moreover, in this particular case, execution was actually taken out in the first instance some five years after the date of the decree of the first court, although it was on an application presented within three years of the date of this Court's final decree. The question of the *terminus a quo* of limitation was really raised by the very first application for execution and seems to have been decided in favour of the decree-holder then. We dismiss this appeal with costs.

Appeal dismissed.

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January, 11.

Before Mr. Justice Piggott and Mr. Justice Walsh.

IN THE MATTER OF QASIM ALI, AN INSOLVENT. *

Act No. V of 1920 (*Provincial Insolvency Act*), *section* 69 (*c*) (*ii*)—*Insolvent fraudulently making away with or concealing property—Not using means of ascertainment tantamount to active concealment.*

A man in the position of an insolvent who has the means of ascertaining where property of his has been disposed of, even if he has not been actually a

* First Appeal No. 122 of 1920 from an order of H. J. Collister, District Judge of Saharanpur, dated the 28th of June, 1920.

(1) (1888) I. L. R., 16 Calc., 250. (2) (1908) I. L. R., 30 All., 385.

party to the making away with it, and who does not use the means, is just as guilty of concealment, within the meaning of section 69 (c) (ii) of the Provincial Insolvency Act, as if he actively conceals the locality in which the property actually is.

THE facts of the case appear from the following judgment of the District Judge:—

"On the 30th of April my predecessor declared that the insolvent's transfer of 35 bighas of land in favour of his sons and nephews was null and void. On the 13th of May the receiver reported that he had gone with the insolvent to his village to take possession of 40 maunds of wheat which the insolvent admitted to be the produce of the land which he had made over to his relations. When they got to the village, however, the insolvent after consulting with his sons said there was no produce. A charge was framed on the strength of this report of the receiver and evidence has been heard on both sides. The receiver has examined three witnesses, who state that Qasim Ali and his sons cultivated the land and harvested about 100 maunds of grain, consisting of wheat, gram and "ganji." On the day on which the receiver went to the village the gram and "ganji" had been stored, but the wheat was still on the threshing floor.

Qasim Ali says he told the receiver that he himself had no produce, but that there was some belonging to his sons and nephews, and he denies that there was any wheat at the threshing floor when he went there with the receiver. The witnesses who have testified against him are his enemies. In his defence he has produced three witnesses. Genda Mal patwari says that the insolvent has not cultivated since 1325 Fasli. Two other witnesses depose to the same effect, and state that the witnesses put in by the receiver bear him enmity. They also swear that the grain had all been removed before the receiver went to the village.

I can understand that it would not be easy to get persons to give evidence against an insolvent in a case like this, and probably the only ones willing to do so would be persons having a grudge against him. The enmity in the present case is not very satisfactorily proved, but there is enough evidence on the subject to suggest that the witnesses do not love Qasim Ali, and I will, therefore, discard their evidence altogether. The receiver Babu

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IN THE MATTER OF QASIM ALI.

Moti Ram, Pleader, has verified his report on oath. His evidence is unimpeachable and the case must be decided on the basis of that evidence. The transfer was declared void on the 30th of April. On the 11th of May the receiver met Qasim Ali in the court compound, and Qasim Ali told him that he had about 40 maunds of wheat which he could put at the disposal of the receiver. He accompanied the receiver to the village and took him to the fields. Near these fields were a number of grain dumps belonging to various persons. Two of these dumps consisting of threshed wheat and chaff were pointed out to the receiver as belonging to the insolvent. Qasim Ali then sent for his sons and after consulting for a few minutes with them told the receiver there was no produce. When the receiver called upon them to sign their statements they refused to do so.

Qasim Ali's bad faith is abundantly clear. His initial act of bad faith was to transfer his land to his relations and it cannot be doubted that in the present instance he has deliberately withheld the produce of the land. At Saharanpur he told the receiver that there were 40 maunds of wheat. At the village after holding counsel with his sons, he and they declared that there was nothing, and they all refused to sign this statement. It is not possible that Qasim's sons could have sold the grain without the knowledge and connivance of Qasim, and the probability is that there was very much more than 40 maunds of produce. Their bad faith is clearly demonstrated by their refusal to sign their statements. The only conclusion, therefore, to which I can come is that Qasim has concealed his property in order to defraud his creditors of their just dues.

I convict Qasim Ali under section 69 (*c*) (ii) of Act V of 1920 and sentence him to undergo one month's simple imprisonment."

Against this order Qasim Ali appealed to the High Court.

Mr. *Nihal Chand*, for the appellant.

Mr. *W. Wallach*, for the respondent.

PIGGOTT and WALSH, JJ. :—This appeal fails. We entirely agree with the finding of the learned District Judge. Indeed we cannot see how any other conclusion could have been arrived at. We agree with the reasons which he has given and we have nothing to add to them. We would merely say that a man

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in the position of an insolvent who has the means of ascertaining where property of his has been disposed of, even if he has not been actually a party to the making away with it, and who does not use the means, is just as guilty of concealment within the meaning of the section as if he actively concealed the locality in which the property actually is. It is by no means clear from the conduct of the insolvent and his sons that the grain was not still in the dump at the time of the receiver's visit, and had not been made away with at all. These proceedings ought not to deter the receiver from taking such steps as are still open to him under the Act to recover the property from whomever it may be who has received it, either by way of sale, or for custody on behalf of the insolvent and of his sons. Unfortunately there seems to be no provision in the Provincial Insolvency Act, as there is in the English Act, enabling the receiver to call the sons before him and to compel them to answer questions on oath as to the disposition of their father's property. Under these circumstances, and having regard to the undoubted frauds which are committed against the Bankruptcy Law by joint Hindu families, although the insolvent here is a Muhammadan, we think that the sentence passed in this case was an extremely lenient one. He certainly would not have got off so lightly if he had come before one of us. It is a very serious offence and District Judges must realize that it ought to be visited with severity when discovered. The appeal is dismissed with costs.

Appeal dismissed.

REVISIONAL CIVIL.

1921
January, 14.

Before Mr. Justice Gokul Prasad.

RAM CHARAN AND ANOTHER (APPLICANTS) *v.* MEWA RAM (OPPOSITE PARTY).*

Criminal Procedure Code, section 195, *clauses* (6) *and* (7)—*Sanction to prosecute—Sanction granted by Munsif—Jurisdiction of Additional District Judge to revoke sanction where an appeal in the suit has been assigned to him by the District Judge.*

An Additional District Judge, having all the powers of the District Judge in respect of cases assigned to him by the District Judge, is competent to revoke a sanction to prosecute granted by a Munsif in a case which is before him in appeal. *Mutsaddi Lal* v. *Mula Mal* (1) referred to.

* Civil Revision No. 6 of 1920.

(1) (1912) 9 A.L.J., 95.