

In our opinion the receiver was entitled to ask for declaratory relief and to obtain it. Under the provisions of the Provincial Insolvency Act (No. III of 1907) which were in force at the time the inheritance opened, all property such as may be acquired by or devolved on the insolvent after the passing of an order of adjudication and before his discharge, forthwith vests in the court or receiver and becomes divisible among the creditors in accordance with the provisions of subsection (2), clause (a) of section 16. In these circumstances we are satisfied that the plaintiff as receiver was entitled to the relief which he claimed in paragraph 8, clause (a) of the plaint. We do not think that it can reasonably be argued that the receiver was under an obligation to bring a suit for physical possession of the insolvent's property. The result is that the appeal fails and is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Ryles and Mr. Justice Stuart.

SHAMBHU (DEFENDANT) v. KANHAYA (PLAINTIFF) AND KANHA (DEFENDANT).*

Minor—Guardian ad litem—Duration of appointment—Authority of guardian not confined to original suit.

Where a guardian *ad litem* to a minor defendant has once been appointed, such appointment continues for the whole of the *lis* or until it is revoked by court, and the guardian so appointed is the only person who can file an appeal on behalf of the minor. *Jwala Dei v. Pirbhu*, (1) followed.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. A. P. Dube, for the appellant.

Munshi Narain Prasad Ashthana, for the respondent.

RYLES and STUART, JJ:—The point that arises in this appeal is fully covered by authority. The suit was brought by a mortgagee on the foot of a mortgage to recover the loan. It was instituted against the mortgagor who executed the mortgage and his minor son. After attempts had been made by the plaintiff to get various persons appointed guardian *ad litem* to the minor, the Nazir of the court was ultimately appointed. The suit was heard, evidence was given and it was ultimately decreed in favour of the plaintiff against both the father and the son. Thereafter an appeal

* Second Appeal No. 1513 of 1920, from a decree of T. K. Johnston, District Judge of Agra, dated the 27th of May, 1920, confirming a decree of Bans Gopal, Subordinate Judge of Muttra, dated the 13th of January, 1919.

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was presented to the District Judge by one Bhagwanji on behalf of the minor. He was not the guardian *ad litem* and had never applied to be made guardian. On the appeal coming before him, the learned District Judge refused to hear it on the ground that there was no valid appeal before him. He held that the Nazir having been appointed guardian *ad litem*, his authority must be held to continue as long as the *lis* continued and that until he had been removed from the guardianship by the court, he and he only was competent to file an appeal. He, therefore, dismissed the appeal. It is from this decree dismissing the appeal that this second appeal was brought, and it is urged that the authority of the Nazir ended with the decree of the first court and that thereafter it was open to the minor defendant to appeal through his next friend. In *Jwala Devi v. Pirbhu* (1), a Bench of this Court decided that where a guardian *ad litem* has once been appointed, his appointment enures for the whole of the *lis* in the course of which it was made, unless and until it was revoked by the court. In *Venkata Chandrasekhara Raz v. Alakarajamba Maharani* (2), the same proposition was laid down. That case was followed by a Divisional Bench of this Court in *Bawan Das v. Bishnath* (3). These three cases were referred to and followed by a single Judge of this Court in *In the matter of the application of Sukhdco Rai* (4). We see no reason to differ from this consistent authority. Our attention has been called to *Bhagwan Dayal v. Param Sukh Das* (5). In that case, however, this point did not arise and was not considered. The result is that the appeal fails and is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Gokul Prasad and Mr. Justice Stuart.

KUNDAN LAL (DEFENDANT) v. KHEM CHAND AND OTHERS (PLAINTIFFS)*

Act No. III of 1907 (Provincial Insolvency Act), section 22—Insolvency—Claim to property advertised for sale by the receiver as property of an insolvent—Suit—Application under section 22.

Held that a person claiming as his own property which has been advertised by the receiver as the property of an insolvent is not precluded

* Second Appeal No. 28 of 1921, from a decree of Raghunath Prasad, Subordinate Judge of Mainpuri, dated the 11th of May, 1920, reversing a decree of Ganga Nath, Munsif of Mainpuri, dated the 24th of January, 1919.

- (1) (1891) I. L. R., 14 All., 35.
- (2) (1898) I. L. R., 22 Mad., 187.
- (3) Weekly Notes, 1899, p. 203.
- (4) (1905) 2 A. L. J., 489.
- (5) (1916) I. L. R., 39 All., 8.

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