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SHEO NARAIN v. BALA RAO.

The first court came to the conclusion that the parties were divided in status, and decreed the claim of the plaintiff in part for the periods in suit.

On appeal the learned Judge has come to the conclusion that the parties were joint in the year 1323 Fasli and has dismissed the claim for profits for that year. The names of the parties to the suit are entered on a moiety share in each of the two mahals and having regard to the view taken of section 201 (3) of the Tenancy Act by this Court, the claim of the plaintiff, whose name was entered on a moiety of the property, ought to have been decreed. All that the learned Judge says about this aspect of the case is that "the irrebutable presumption of section 201(3) of the Tenancy Act ordinarily applicable under the decision of I. L. R., 32 All., 779, does not apply"; or, in other words, he seems to think that such a presumption is not to be applied in the case of a joint Hindu family. But he forgets that all that this presumption results in is to prevent persons from pleading that the family is a joint Hindu family as against the entries in the khewat. So far as the Revenue Courts are concerned these entries are deemed to be true records for the purposes of suits under Chapter 11 of the said Act.

In our opinion the decree of the lower appellate court is based on a misapprehension of the effect of section 201 of the Tenancy Act. In our view the decree of the first court was correct and has been wrongly interfered with. We therefore allow the appeal, set aside the decree of the lower appellate court and restore that of the court of first instance with costs in all courts.

Appeal allowed.

Before Mr. Justice Lindsay and Mr. Justice Gokul Prasad.

MUHAMMAD FATIMA (DEFENDANT) *v.* MUHAMMAD MASHUQ ALI AND ANOTHER (PLAINTIFFS).*

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May, 4.

Act No. III of 1907 (Provincial Insolvency Act), section 16 (2)—Insolvency —Vesting of property in receiver—Suit by receiver for declaration of title.

All property such as may be acquired by or have devolved on the insolvent after passing of an order of adjudication and before his discharge, forthwith vests in the court or receiver and becomes divisible amongst the creditors in accordance with the provisions of sub-section (2), clause (*a*), of section 16 of the Provincial Insolvency Act. The receiver is entitled to sue for a declaration of title simply and need not claim actual possession.

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* Second Appeal No. 1624 of 1920, from a decree of V. E. G. Hussey, District Judge of Moradabad, dated the 19th of May, 1920, confirming a decree of Lalta Prasad Johri, Subordinate Judge of Moradabad, dated the 19th of January, 1920.

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MUHAMMAD FATIMA v. MUHAMMAD MASHUQ ALI.

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

Mr. *S. A. Haidar*, for the appellant.

Maulvi *Iqbal Ahmad*, for the respondents.

LINDSAY and GOKUL PRASAD, JJ. :—Although we do not agree with the reasons given by both the courts below in support of their judgments, we are nevertheless of opinion that the decree in favour of the plaintiff is substantially correct. The plaintiff is receiver in insolvency of one Abdur Rauf who was declared insolvent on the 13th of July, 1915. More than two years after the adjudication order, a sister of the insolvent, Musammat Musharraf-un-nissa, died and Abdur Rauf, as one of her legal heirs, became entitled to a two-ninths share of her estate.

It appears that after the death of Musharraf-un-nissa, the appellant before us managed in some way or other to have a mutation order made in her favour. It seems that she put forward a will which she said had been executed in her favour by Musharraf-un-nissa who was her aunt.

The receiver brought this suit asking for a declaration that a two-ninths share of the estate of Musharraf-un-nissa became the property of the insolvent, Abdur Rauf, on the lady's death and that it was saleable in satisfaction of the amount due to Abdur Rauf's creditors. It was, therefore, prayed that it might be declared that the name of Muhammad Fatima had been entered in the revenue papers wrongly and contrary to facts.

Both the courts have found that the story of the will in favour of Muhammad Fatima is untrue.

A legal plea was raised in both the courts below, namely that the plaintiff was under an obligation to sue for possession and could not seek mere declaratory relief under the provisions of section 42 of the Specific Relief Act. Both the courts below overruled this contention. The learned Judge of the first court seems to have thought that because the property of an insolvent vests in the receiver, that is the same thing as the receiver's actually being in possession of the property. This view, of course, has not been supported. The learned Judge of the court below held, however, that a declaratory decree was permissible inasmuch as the declaration which was sought for would enable the receiver to sell or mortgage the property for the benefit of the creditors

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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 sub-section (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 Ryves and Mr. Justice Stuart.

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

1922
May, 4.

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.

RYVES 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.

(1) (1891) I. L. R., 14 All., 35.