1922
January, 6.

Before Mr. Justice Piggott and Mr. Justice Walsh.

PARBATI AND ANOTHER (DEFENDANTS) *v.* RAJA SHIAM RIKH AND OTHERS (PLAINTIFFS).*

Act No. III of 1907 *(Provincial Insolvency Act), section* 60(2)—*Insolvent—Proceedings against insolvent arising out of execution of Revenue Court decrees.*

A judgment-debtor, against whom were outstanding decrees of a revenue court for rent, became insolvent. The decree-holder seeking to execute his decrees was met by an objection that the property against which execution was sought had been transferred by the insolvent judgment-debtor to his wife and minor son. The decree-holder, thereupon, with the leave of the Insolvency Court, brought a suit for a declaration that the transfers made by the Insolvent were collusive and sham transactions, and that the properties should be declared to have vested in the Receiver. *Held* that, inasmuch as the Provincial Insolvency Act did not apply to proceedings in the Revenue Courts, the suit was misconceived and was not maintainable. *Kalka Das* v. *Gajju Singh* (1) followed.

THE facts of this case are fully stated in the judgment of PIGGOTT, J.

Dr. *Kailas Nath Katju*, Pandit *Radha Kant Malaviya* and Munshi *Baleshwari Prasad*, for the appellants.

Mr. *B. E. O'Conor*, for the respondents.

PIGGOTT, J. :—This is a second appeal by the defendants in a suit for a declaration. These defendants are the wife and the minor son of one Chatar Singh who has been adjudicated an insolvent. The principal respondent, the plaintiff in the suit, is a land-holder who on various dates between the 7th of March and the 29th of March, 1911, had obtained from a Revenue Court decrees for arrears of rent against the aforesaid Chatar Singh. After the latter had been adjudicated an insolvent, this decree holder applied to the Insolvency Court, ostensibly under the provisions of section 60 (2) of the Provincial Insolvency Act, No. III of 1907, for the leave of the Court to institute the present suit. The object of this suit is to challenge the validity of two deeds of transfer, dated the 10th of July, 1908, and the 16th of May, 1910, respectively, whereby Chatar Singh, more than two years prior to his insolvency, had purported to transfer immov-

* Second Appeal No. 1160 of 1919, from a decree of Murari Lal, Addl. Judge of Moradabad, dated the 19th of December, 1918, confirming a decree of Ram Chandra Saksena, Additional Subordinate Judge of Moradabad, dated the 30th of June, 1916.

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able property in favour of his wife and his minor son. The suit was resisted upon various grounds, but the particular point which has been principally argued before us was not taken in either of the courts below, and the reason for this becomes obvious enough as we consider that point in detail. There were objections taken to the form of the suit and a plea of limitation was raised, but both the courts below have decided in favour of the plaintiff in respect of legal objections, as well as on the merits, and have granted him the decree for which he sought. Now, the decision of the lower appellate court in this case is dated the 19th of December, 1918. On the 4th of March, 1921, a Full Bench of this Court pronounced its decision in the case of *Kalka Das* v. *Gajju Singh* (1) in which the whole question of the relations between the jurisdiction of the Revenue Courts constituted under the Local Tenancy Act, No. II of 1901, on the one hand, and the courts acting under the Provincial Insolvency Act, No. III of 1907, was re-considered and determined. There had been a previous decision of this Court, *Raghubir Singh* v. *Ram Chandar* (2), according to which a land-holder could not institute a suit for arrears of rent under the provisions of the Tenancy Act against a tenant who had been adjudicated an insolvent. This was the precise point dealt with by the Judges of this Court in the Full Bench case. They overruled the older decision and held that the Provincial Insolvency Act did not apply at all so as to govern or affect the rights of a land-holder against his tenant, enforceable by means of any suit or proceeding under the Local Tenancy Act.

In the second appeal now before us the main argument addressed to us on behalf of the appellants has been based upon the principles laid down in this Full Bench decision. It seemed to us obviously necessary to allow the point to be raised and argued. The question is one of jurisdiction, and it could not well have been raised in the courts below in view of the state of the law as declared by this Court prior to the Full Bench decision of the 4th of March, 1921. We are not prepared to dissent from or to criticize the decision of the Full Bench in

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Kalka Das v. *Gajju Singh* (1). Accepting the law to be what is therein stated, it becomes beyond question that if the Provincial Insolvency Act would not bar a suit by a land-holder against his tenant brought before a Revenue Court under the provisions of the Tenancy Act, neither could it bar a proceeding in execution of a decree before such court. The whole of the present action, therefore, has been misconceived. The proper remedy of the plaintiff respondent was, in the first place, to take out execution of his decrees in the Revenue Court as against any property which he alleged to be the property of his judgment-debtor. If the present appellants, or either of them, had resisted the seizure of any such property on the ground that it belonged to them in virtue of a transfer made prior to the insolvency, a question would have been raised which the Execution Court could deal with, in the first instance, and in respect of which either party aggrieved by the decision of the Execution Court would have a right to seek a determination by means of a regular suit. The suit out of which the present appeal arises was brought with the leave of the court for the benefit, not of the plaintiff respondent alone, but of the Receiver and of the entire body of creditors. For the reasons stated it seems clear to us that the suit was entirely misconceived and not maintainable at all in its present form. We must, therefore, allow this appeal, set aside the decrees of both the courts below and direct that the suit be dismissed in its entirety. We order accordingly, but under the circumstances of the case we think it only just to direct that both parties bear their own costs in all three courts.

WALSH, J. :—I entirely agree, but having regard to the exceptional circumstances of the case and the miscarriage which appears to have resulted up to the present moment, I propose to say a few words with reference to the course which it seems to me is still open in law to remedy the mischief, and which,—on the materials before us one can of course say no more,—I should be prepared to take if I were a Revenue Officer approached by the plaintiff for the appropriate remedy in spite of the serious lapse of time. Section 14 (2) of the Limitation Act provides that in computing the period of limitation prescribed for

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any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or in a court of appeal, against the same party for the same relief, shall be excluded where such proceeding is prosecuted in good faith in a court which from defect of jurisdiction or other cause of a like nature is unable to entertain it. On the facts as found in the lower courts, the wife and the son in this case are in truth the same party as the insolvent and this Court is unable to entertain the suit by reason of jurisdiction. As the law stands, it is quite clear that the jurisdiction of the Civil Courts, strictly so called, and of the Insolvency Court respectively, on the one hand, and of the Revenue Court on the other, are mutually exclusive. A decree-holder, who is the landlord of an agricultural tenancy to which the Agra Tenancy Act applies, is not a creditor under the Provincial Insolvency Act in respect of his rent or decree. His decree is not a provable debt. Those statements are the corollaries of the Full Bench decision referred to by my brother which was passed in March, 1921.

But in this case the insolvent, who is the father of the minor transferee and the husband of the female transferee whose interests are attacked by this suit, was adjudicated insolvent in May, 1913. On that date the decision which has been overruled, namely, *Raghubir Singh* v. *Ram Chandar* (1) which had been decided in October, 1911, stared the plaintiff in the face, and any member of the legal profession who had been consulted by the plaintiff,—having regard to the plaint in this suit and the difficulties of procedure one may fairly assume that the plaintiff was carefully advised,—calling himself a lawyer and paying any respect to the decisions of this Court, was bound to treat the law as set forth by that decision. The decision was as clear and emphatic upon the point as it was possible for a decision to be. It pointed out, erroneously as it now appears, that the Provincial Insolvency Act prohibited any suit being brought against a person who is declared an insolvent. It went on to declare that a landlord was not a secured creditor, and that he was in exactly the same position as any other creditor and that

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he could only seek his remedy from the Insolvency Court, subject to any possible existing remedy by way of distress which the Insolvency Court might permit. Under those circumstances an attempt by the present plaintiff to execute his decrees, or to have applied to the Revenue Court to act in the face of that decision, would have looked very much like an abuse of the process of the court. He took, and in my opinion rightly took, the only step open to him under the circumstances. He applied to the Insolvency Court, which this Court had told him was the only court which could entertain his claim, and obtained the leave of the Insolvency Court to bring the very suit which we are now compelled to hold was misconceived. He framed a plaint with scrupulous care and accuracy and claimed reliefs carefully prepared according to the then judge-made law, and for myself I do not hesitate to say that if the decision in 1911 of this Court had not been overruled, that suit would have been, if established in fact, clearly maintainable. The result of the suit, so far as it went, was to establish a gross fraud in fact committed by the insolvent and his family upon the plaintiff and the other creditors, and to obtain from two courts a decision in the plaintiff's favour which, it cannot be too often repeated, was justified by the then existing state of the decisions. It was only after the appeal which we are now disposing of was filed, that the Full Bench decision declared the law afresh and destroyed the whole foundation upon which the plaintiff's suit had been based. It seems to me not only consonant with justice, but appropriate to the intention of section 14, sub-section (2), of the Limitation Act, if ever a case was appropriate to the terms of that section, that the Revenue Court should consider whether under these circumstances the plaintiff should not be allowed to seek a remedy of which he had been deprived by the decision of this Court.

Appeal allowed.