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carry out the arrangement he must establish that fact so as to render the defendant liable in spite of the arrangement settled between the two. The learned District Judge has not noticed the distinction between the reported cases and the class of cases illustrated by the one before us.

A learned single Judge of this Court seems to have taken a similar view in *Durga Narain Singh v. Shanker Singh* (1). We have carefully read the judgment and find that the essential characteristics of *Jagmohan Lal v. Ganga Prasad* (2), followed in that case, was overlooked by the learned Judge. With due deference we are unable to follow that case.

For the reasons already explained we think that this appeal ought to succeed. It is accordingly allowed. The decrees of the two courts below are set aside and the plaintiff's suit is decreed with costs throughout.

REVISIONAL CIVIL

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Before Mr. Justice Iqbal Ahmad and Mr. Justice Yorke
KAMLA BAI (DEBTOR) v. CHITRA PRASAD AND OTHERS
(PETITIONING CREDITORS)*

Provincial Insolvency Act (V of 1920), section 6(e)—Act of insolvency—Sale of property in execution of decree—Decree against judgment-debtor in the capacity of legal representative of deceased debtor—No personal liability—Sale in execution of such decree is not an “act of insolvency”—Interpretation of statutes—Words—Same phrase in different parts of same section has the same meaning—Provincial Insolvency Act, section 75—Revision—Scope—Error of law.

The sale of property in execution of a decree passed against the judgment-debtor in his capacity as legal representative of the deceased original debtor and not imposing any personal liability on the judgment-debtor does not amount to an act of insolvency within the meaning of section 6(e) of the Provincial Insolvency Act. The phrase “decree for the payment of money” in section 6(e) means a decree for money such that the judgment-debtor is personally liable for the decretal amount.

*Civil Revision No. 259 of 1936.

(1) A.I.R. 1934 All. 813.

(2) [1931] A.L.J. 60.

It is one of the recognized canons of construction of a statute that the same word or the same phrase used in different places in a section must be given the same meaning unless such an interpretation leads to obvious anomalies or absurdities.

The scope of revision under section 75 of the Provincial Insolvency Act is wider than that under section 115 of the Civil Procedure Code and the High Court can interfere if the order of the lower court is not in accordance with law.

Mr. *Sheo Charan Lal*, for the applicant.

Mr. *S. B. L. Gaur*, for the opposite parties

IQBAL AHMAD and YORKE, JJ.:—The question that arises for consideration in the present application in revision is whether the sale of property in execution of a decree passed against a person in his capacity as the legal representative of a deceased person amounts to an act of insolvency within the meaning of section 6(e) of the Insolvency Act, Act V of 1920. The question was answered in the negative by the Madras High Court in *Nagasubrahmaniam Mudaliar v. Krishnamachariar* (1). It was held in that case that until there is a personal decree under section 52 of the Civil Procedure Code a decree against a person as the legal representative of another does not make him liable to adjudication under the Provincial Insolvency Act. There are also certain observations in the case of *Baij Nath v. Gajadhar Prasad* (2) that are in consonance with the view taken by the Madras High Court. It is provided by section 6(e) of the Insolvency Act that "A debtor commits an act of insolvency, (e) if any of his property has been sold in execution of the decree of any court for the payment of money." It is contended in the present case on behalf of the petitioning creditor, who is the opposite party before us, that as the words of clause (e) of section 6 are general in terms, the clause must be taken to cover even those cases in which a decree for the payment of money has been passed or is outstanding against a person in his capacity as the legal representative of a deceased debtor. In this connection it is urged that there are no words

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(1) (1927) I.L.R. 50 Mad. 981.

(2) A.I.R. 1935 Oudh 406.

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of limitation in clause (e) that can warrant the interpretation put upon that clause by the Madras High Court. In our judgment the contention advanced on behalf of the opposite party is without substance.

A perusal of section 6 of the Insolvency Act puts it beyond doubt that the acts of insolvency referred to in clauses (a), (b), (c), (d), (f) and (g) of that section refer to voluntary acts by the debtor and those voluntary acts amount to the commission of an act of insolvency by him. The only other sub-clauses of that section that remain for consideration are clauses (e) and (h). Sub-clause (e) has already been quoted above. Clause (h) runs as follows: "If he is imprisoned in execution of the decree of any court for the payment of money." Clause (e) and clause (h) do not refer to acts done by the debtor of his own volition but have reference to enforcement of processes in execution of decrees by execution courts. It is however apparent that both the said clauses have application only to decrees "for the payment of money". As the phrase "for the payment of money" has been used in both clauses (e) and (h) the phrase must be given a similar meaning in both the clauses. It is manifest that a debtor can be imprisoned in execution of a decree for payment of money only if he is personally liable for the decretal amount and not in execution of a decree which he is liable to pay in his capacity as the legal representative of a deceased debtor. In clause (h) the words "for the payment of money" must therefore be interpreted as meaning "decrees that are personally enforceable against the judgment-debtor". That being so, the same interpretation must be put on that phrase in clause (e). It is one of the recognized canons of construction that the words used in a statute must be given similar meanings unless such an interpretation leads to obvious anomalies or absurdities. We may note in passing that in construing the words "for the payment of money" in clause (e) in the way that we are doing we are not only interpreting that phrase in consonance with the

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interpretation that that phrase bears in clause (h) but are also avoiding an interpretation that would lead to manifest injustice and hardship. To hold that the decree "for the payment of money" referred to in clause (e) embraces decrees passed against a debtor in his capacity as the legal representative of a deceased person would be to put a lever in the hand of a dishonest decree-holder for bringing undue pressure on a person who is liable to satisfy a decree only in his capacity as the legal representative of some person whose property has devolved on him. Cases may be conceived in which a debtor may die indebted in a large amount and leaving property of comparatively small value. The property must devolve on his heir and that heir will, in accordance with the provisions of section 52 of the Civil Procedure Code, be liable to satisfy the decrees passed for those debts from the property that he has inherited from the deceased debtor. But if we were to accept the interpretation sought to be put on clause (e) by the learned counsel for the opposite party we would have to hold that the decree-holder, on selling the property that has devolved on the legal representative, would be entitled to apply for the insolvency of the legal representative. This, as already observed, would be manifestly unjust.

In the case before us one Chitra Prasad applied for the adjudication of Kamla Bai and certain other persons as insolvents. During the pendency of the petition two other creditors named Brij Behari Lal and Buchi Mal also filed a similar petition and their petitions were consolidated with the petition of Chitra Prasad. Both the courts below adjudicated all the persons impleaded in the application of Chitra Prasad as insolvents. Kamla Bai alone appealed in the lower appellate court and that court affirmed the decision of the insolvency court. Kamla Bai alone has come up in revision to this Court. The other persons who were adjudicated insolvents have not assailed the decisions of the courts below.

The facts that led to the application are as follows: By an award the property of a joint Hindu family was

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divided between certain members of the family and a portion of the property was allotted to Kamla Bai who was a widow. The award also cast liability on Kamla Bai for payment of a certain proportion of the debt due from the family. One Hardatt obtained a decree for the debt due to him from the family and in execution of that decree proceeded to sell certain properties covered by the award. It is a matter of controversy between the parties as to whether the properties sold by Hardatt in execution of his decree were or were not the property allotted to Kamla Bai, but for the purposes of the decision of this application we shall assume that the property sold was the property that was given to Kamla Bai by the award. Nevertheless the fact remains that the property was sold in enforcement of a decree which did not cast any personal liability on Kamla Bai. It was a decree which Kamla Bai in her capacity as the legal representative of the original debtors was bound to pay. The decretal amount could therefore be realised only from the properties that had come to Kamla Bai by the award, and the decree could not be enforced by attachment and sale of the properties belonging to Kamla Bai in her own right. The decree of Hardatt was therefore not a decree of the nature contemplated by clause (e) of section 6 of the Insolvency Act, and the sale of the property in execution of that decree could not amount to the commission of an act of insolvency by Kamla Bai. We may state that no other act of insolvency was alleged by either of the three petitioners to have been committed by Kamla Bai. In the view that we take we must hold that no act of insolvency was committed by Kamla Bai within the meaning of section 6 of the Insolvency Act. It follows that the decisions of the courts below are erroneous and must be reversed.

We are alive to the fact that the matter has come before us, not by means of an appeal, but by an application in revision, but we note that in exercising our revisional jurisdiction under the Insolvency Act we have got wider

powers than the powers vested in this Court by section 115 of the Civil Procedure Code. It is provided in section 75 of the Act that the High Court, "for the purpose of satisfying itself that an order made in any appeal decided by a district court was according to law, may call for the case and pass such order with respect thereto as it thinks fit." It is apparent that in considering the matter before us all that we have to decide is whether or not the order sought to be revised is in accordance with law. We have given our reasons for holding that the decision of the court below is contrary to law. We accordingly allow this application and set aside the order of the insolvency court adjudicating Kamla Bai as an insolvent. The order of that court as regards the other persons who were arrayed as opposite parties by Chitra Prasad will stand. Kamla Bai is entitled to her costs of this application.

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APPELLATE CIVIL

Before Mr. Justice Niamat-ullah and Mr. Justice Allsop

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BHAGAT RAJ (PLAINTIFF) v. GARAI DULAIYA AND ANOTHER
(DEFENDANTS)*

Limitation Act (IX of 1908), article 23—Suit for compensation for malicious prosecution—Limitation, terminus à quo—"Acquittal" in security proceedings—Revision before Sessions Judge—Termination of proceedings.

A suit for compensation for malicious prosecution arose out of proceedings under section 107 of the Criminal Procedure Code which had been launched by the defendant against the plaintiff, who was "acquitted" by the Magistrate. The defendant filed a revision to the Sessions Judge, but it was dismissed. The suit was filed more than a year after the "acquittal" by the Magistrate, but within a year of the dismissal of the revision: *Held* that the suit was not barred by limitation. The use of the term "acquitted" was quite inappropriate to a proceeding under section 107 of the Criminal Procedure Code; accordingly, under

*Second Appeal No. 1447 of 1934, from a decree of A. H. Gurney, District Judge of Jhansi, dated the 7th of August, 1934, confirming a decree of Nava Ratan Kumar, Munsif of Lalitpur, dated the 12th of April, 1934.