

MISCELLANEOUS CIVIL.

*Before Sir Louis Stuart, Knight, Chief Judge and
Mr. Justice Muhammad Raza.*

SHAHZADA BEGAM (PLAINTIFF-APPELLANT) v. GOKUL
CHAND RAI AND OTHERS (DEFENDANTS-RESPONDENTS).^{*} 1927
Aug. st. 9.

*Provincial Insolvency Act (V of 1920), sections 4 and 53—Suit
by transferee to have his transfer declared valid—Juris-
diction of courts to maintain the suit—Insolvency court's
exclusive jurisdiction to annul transfers.*

A receiver in insolvency has a right to go to the insolvency court to ask that court to annul the transfer under the provisions of section 53 of Act V of 1920 if he could satisfy the insolvency court that the transfer was not a transfer in favour of a purchaser in good faith and for valuable consideration. The insolvency court has exclusive jurisdiction to grant that relief and for the purpose of granting of that relief the insolvency court has further jurisdiction under the provisions of section 4 of the same Act to decide questions of title and other questions necessary for the determination of the dispute. When the insolvency court has exclusive jurisdiction to determine those questions under sections 4 and 53 the jurisdiction of other courts is impliedly ousted. [*Maharana Kunwar v. E. V. David* (1), distinguished.]

Mr. Aditya Prasad, for the appellant.

Messrs. Niamatullah and P. D. Rastogi, for the respondents.

STUART, C. J. and RAZA, J. :—The facts of the suit out of which this appeal arises are as follows :—

On the 17th of December, 1924, a certain Baqar Ali Khan executed a sale-deed in favour of Shahzada Begam, whom he described as his wife, under which he transferred three properties to her in consideration of an amount which he alleged to be due to her as a portion of her dower, the amount being called Rs. 8,000. No consideration passed. Subsequently a simple money decree was

^{*}Miscellaneous Appeal No. 29 of 1927, against the order of Sheo Narain Tewari, First Additional Subordinate Judge of Lucknow, dated the 2nd of April, 1927, returning the plaint for presentation to the proper court.

(1) (1924) I.L.R., 46 All., 16.

1927

SHAHZADA
BEGAM
v.
GOKUL
CHAND
RAI.

Stuart,
C. J., and
Raza, J.

passed against Baqar Ali Khan in favour of certain Babboo Lal and another simple money decree was passed against Baqar Ali Khan in favour of Giridhari Lal and others. The decree-holders under these two decrees attached the three properties in question in execution. Shahzada Begam objected to the attachment, but her objections were not decided. On the 27th of July, 1925, Babboo Lal and other creditors applied to have Baqar Ali Khan declared insolvent and on the 21st of December, 1925, Baqar Ali Khan was declared insolvent by the District Judge of Lucknow under the provisions of Act V of 1920. On the 4th of March, 1926, Shahzada Begam instituted a suit in the Court of the Subordinate Judge of Lucknow against Baqar Ali Khan, his creditors and the receiver in insolvency for a declaration that the deed of the 17th of December, 1924, was a good and valid document which conferred on her absolute title over the three properties in question. On the 10th of March, 1926, the receiver applied to the insolvency court to annul that transfer on the ground that it was a dishonest transfer the properties being worth considerably more than 8,000 and Shahzada Begum not being the wife of Baqar Ali Khan. It is clear that the transfer was made less than two years before the order of adjudication. When the suit filed by Shahzada Begam in the Court of the Subordinate Judge came on for hearing the receiver took exception to the jurisdiction of the court and the Subordinate Judge, deciding in favour of that objection, returned the plaint to Shahzada Begam. She has filed the present appeal. In our opinion the Subordinate Judge's court would have jurisdiction to try the suit unless it can be shown that the cognizance of the suit is impliedly barred. It is certainly not expressly barred, but it has been argued with force by the learned Counsel for the receiver that a bar must be implied in view of the provisions of Act V of 1920. It is clear that the receiver had a right

to go to the insolvency court and to ask the insolvency court to annul the transfer under the provisions of section 53 of Act V of 1920 if he could satisfy the insolvency court that the transfer was not a transfer in favour of a purchaser in good faith and for valuable consideration. The insolvency court had exclusive jurisdiction to grant that relief and towards the granting of that relief the insolvency court had further jurisdiction under the provisions of section 4 of the same Act to decide questions of title and other questions necessary for the determination of the dispute. When the insolvency court had exclusive jurisdiction to determine those questions under sections 4 and 53 we can only hold that the jurisdiction of other courts is impliedly ousted. The learned Counsel for the appellant has laid great stress upon the decision of a Bench of the Honourable High Court of Allahabad in *Maharana Kunwar v. E. V. David* (1) but the decision of the learned Judges in that appeal has no bearing upon the present case for there was no question of setting aside a transfer under the provisions of section 53. The insolvent had made no transfer in the case in question. We, therefore, are of opinion that the learned Subordinate Judge arrived at a correct conclusion and dismiss this appeal with costs.

Appeal dismissed.

1927

SHAHZADA
BEAM
v.
GOKUL
CHAND
RAI.

Stuart,
C. J., and
Kaza, J.