

REVISIONAL CIVIL

*Before Sir Syed Wazir Hasan, Knight, Chief Judge
and Mr. Justice B. S. Kisch.*

1932
March, 9.

ABDUL HAFIZ AND OTHERS, OBJECTORS-APPELLANTS ?.
MOOL CHAND, APPLICANT AND OTHERS, CREDITORS AND
ANOTHER INSOLVENT, RESPONDENTS.*

Provincial Insolvency Act (V of 1920), section 53—Amendment made by Act (X of 1930) to section 53, whether has retrospective effect—Amendment, if introduces a new period of limitation—Gift made before the amendment, if covered by the amendment.

The amendment made by Act (X of 1930) in section 53 of the Provincial Insolvency Act (V of 1920) has retrospective effect and applies to proceedings pending at the time when the Act came into force. The amendment in question has not introduced a new period of limitation, but has only clarified the meaning of the old section and so must be taken to apply to the case of a gift made before the said amendment was made. *Pichamma v. Official Receiver, Cuddapah* (1), relied on. *Hinga Lal v. Jawahir Prashad* (2), and *Amjad Ali v. Nand Lal Tandon* (3), referred to.

Mr. *H. D. Chandra* for the appellant.

Mr. *K. N. Tandon*, for the respondents.

HASAN, C. J. and KISCH, J. :—This is an appeal against the order of our learned brother SRIVASTAVA, J. affirming the order of the District Judge of Hardoi by which he annulled a deed of gift under section 53 of the Provincial Insolvency Act, 1920. This deed of gift was executed by one Abdur Rashid in favour of his sons on the 17th of December, 1927. On the 21st of November, 1928 Abdur Rashid presented a petition to be adjudged insolvent. He was adjudged insolvent on this petition by an order of the Court dated the 8th

*Application under section 12(2) Oudh Courts Act No. 6 of 1931, against the order of Hon'ble Mr. Justice Bisheshwar Nath Srivastava, Judge of the Chief Court of Oudh, Lucknow, dated the 15th of October, 1931, upholding the order of Saied Asghar Hasan, District Judge of Hardoi, dated the 11th of April, 1931.

(1) (1930) I.L.R., 54, Mad., 12 (2) (1928) 5 O.W.N., 964.

(3) (1930) 7 O.W.N., 377.

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of March, 1930. On the 5th of September, 1930 the Receiver of his estate made an application under section 53 of the Provincial Insolvency Act, 1920 to have the deed of gift annulled.

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Prior to the execution of the deed of gift the relevant portion of section 53 of the Provincial Insolvency Act was as follows:—

“Any transfer of property . . shall, if the transferor is adjudged insolvent within two years after the date of the transfer, be voidable as against the receiver and may be annulled by the Court.”

By the amending Act X of 1930, which received the assent of the Governor General on the 20th of March, 1930, section 53 was amended so as to read:—

“Any transfer of property . . . shall, if the transferor is adjudged insolvent on a *petition presented* within two years after the date of the transfer, be voidable as against the receiver and may be annulled by the Court.”

The only contention that was urged before the learned single Judge of this Court, and which has been urged before us in this appeal, is that the amendment of section 53 of the Provincial Insolvency Act, 1920 made by Act X of 1930 does not apply to the gift in question inasmuch as the gift has been made long before the amendment and the amending Act has not been given retrospective effect. Our learned brother was of opinion that the amendment made by Act X of 1930 has retrospective effect and applies to proceedings pending at the time when the Act came into force. We find ourselves in full agreement with him.

Previous to the amendment of the Act there was a sharp conflict of judicial opinion on the subject whether section 53 as it stood before the amendment, was controlled by sub-clause (7) of section 28 of the Act which provides that an order of adjudication shall relate back

to, and take effect from, the date of the presentation of the petition on which it is made, or whether the words were to be interpreted literally as they stood in the section so as to make a transfer of property voidable under section 53 only if made within two years of the order of adjudication. The former was the view taken by the Calcutta, Madras and Allahabad High Courts and the latter was the view taken by the Bombay and Lahore High Courts. It was to set at rest this controversy and make clear the intention of the legislature that the words "on a petition presented" were inserted in section 53 by Act X of 1930. In our opinion it is clear that the amendment in question has not introduced a new period of limitation, but has only clarified the meaning of the old section and on this view there can be no doubt that the amendment must be taken to apply to the present case. This view has the support of a decision of a Full Bench of the Madras High Court in *Pichamma v. Official Receiver, Cuddapah* (1) to which a reference has been made in the judgment under appeal.

It has been argued by the learned counsel for the appellant that such interpretation of the amendment impairs the vested rights of persons who have taken transfers within two years of their transferor presenting an insolvency petition but more than two years before the date of the adjudication. In our opinion there is no substance in this argument. That section 53 as it stood before the amendment was open to both interpretations is clear from the conflict of judicial opinion on the subject to which reference has already been made. It has been contended with reference to *Hinga Lal v. Jawahir Prashad* (2) and *Amjad Ali v. Nand Lal Tandon* (3) that this Court at any rate has hitherto adopted the interpretation of section 53 favourable to the appellants' case and that therefore as far as Oudh is concerned vested rights have been created. A refer-

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ence to the above two cases will, however, show that the question whether sub-clause (7) of section 28 of the Provincial Insolvency Act did or did not govern section 53 was not even considered and no case of this Court has been pointed out to us in which this Court has given an opinion on the point. In our opinion the question of impairment of vested rights does not arise.

Hasan, C.J.
and Kisch,
J.

The appeal accordingly fails and is dismissed with costs.

Appeal dismissed.

FULL BENCH.

*Before Sir Syed Wazir Hasan, Knight, Chief Judge,
Mr. Justice Muhammad Raza and Mr. Justice
Bisheshwar Nath Srivastava.*

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BAJRANG BAHADUR SINGH, RAI, AND ANOTHER.
PLAINTIFFS-APPELLANTS v. BENI MADHO BAKHSH
SINGH, RAI AND OTHERS, (DEFENDANTS) AND OTHERS
(PLAINTIFFS-RESPONDENTS).*

*Land Revenue Act (III of 1901), sections 111, 112 and 233(k)
—"Partition" of mohals—suit for declaration that a person
is a superior proprietor, if a suit with respect to partition—
Section 233(k), if bars the suit—Civil Procedure Code (Act
V of 1908), section 9—Res judicata—Partition proceedings
held prior to the suit for declaration—Question of superior
proprietary rights not raised in previous partition proceed-
ings—Suit for declaration if barred by res judicata—Land
Revenue Act, sections 111 and 112—Jurisdiction of Revenue
Courts to try questions of proprietary title.*

Where the plaintiffs alleged that their ancestors had obtained a decree for proprietary possession of the lands in suit from the settlement court but in a subsequent perfect partition held at the instance of the defendants those lands were thrown in the mohals of the defendants and were recorded as the rent free under-proprietary tenure of the plaintiffs and later on the lambardars of those mohals obtained decrees for assessment of rent on those lands and the plaintiffs then brought the present suit in the civil court for a declaration

*First Civil Appeal No. 29 of 1931, against the decree of Babu Gopendra Bhushan Chatterji, Subordinate Judge of Rae Bareilly, dated the 15th of November, 1930.