

## MISCELLANEOUS CIVIL.

*Before Sir Louis Stuart, Knight, Chief Judge, and  
Mr. Justice A. G. P. Pullan.*

RAM LAL (APPELLANT) *v.* MAHADEO AND OTHERS (RESPONDENTS).\*

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*Provincial Insolvency Act (V of 1920), section 53—Transfer of money decree by insolvent before adjudication—Annulment of adjudication, court's power to—Court's power to consider whether transfer is voidable against receiver.*

Where an insolvent transfers a money decree held by him to another person before the order of adjudication is passed the court has no authority to annul the adjudication for that reason unless it is shown that he had fraudulently concealed his assets at the time of adjudication. It is undoubtedly open to the court to consider whether the transfer of the decree is voidable as against the receiver under the provisions of section 53 of the Provincial Insolvency Act.

Mr. *M. L. Saksena*, for the appellant.

Mr. *Kedar Nath Tandon*, for the respondents.

STUART, C. J., and PULLAN, J. :—This is an appeal against the order of the learned District Judge annulling the adjudication of the 15th of August, 1925, under which Ram Lal was declared an insolvent. This order was upon an application under section 53, Act V of 1920, in which the learned District Judge was apparently asked to declare two transfers made by the insolvent on the 16th of June, 1923, voidable as against the receiver. There was an additional application asking that Ram Lal, the insolvent, should be punished under the provisions of section 69 for fraudulently concealing his assets at the time of his original application. The learned District Judge did not in his order declare the transfers

\*Miscellaneous Appeal No. 18 of 1927, against the order of W. Ameer Ali, District Judge of Gonda, dated the 5th of February, 1927, cancelling the adjudication of insolvency.

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of the 16th of June, 1923, voidable, nor did he consider that the insolvent was liable to punishment under section 69 in respect of these transfers. On the date of hearing, which was the 5th of April, 1927, the contesting creditors stated for the first time that the insolvent held a decree against a certain Bijdesbri for Rs. 700, and that he had sold that decree to a certain Sangam Lal. We have to notice the nature of this allegation. It was not an allegation that the insolvent had really retained the decree and had fictitiously transferred it to Sangam Lal. It was an allegation that he had actually transferred it to Sangam Lal. The insolvent, when questioned, stated that it was true that he had held such a decree, and that he had transferred it to Sangam Lal. The learned District Judge, in view of the matter of this decree only, has annulled the adjudication. We do not think that he had authority to do this. He undoubtedly had authority to annul the adjudication if it had been established before him that the insolvent had fraudulently concealed his assets at the time of the adjudication, but it was not suggested in respect of this decree that he had fraudulently concealed the fact that he had a decree. The objecting creditors admitted themselves that he did not possess that decree at the time of the adjudication but had transferred it to Sangam Lal. In these circumstances, although it was undoubtedly open to the court to consider whether the transfer of the decree was voidable as against the receiver under the provisions of section 53, it was not open to the court to annul the adjudication in respect of the matter alleged in reference to the decree. The learned Counsel for Ram Lal has, in this Court, stated that the decree in question was transferred by a registered deed on the 18th of November, 1922, whereas the adjudication was dated the 15th of August, 1925. If this be the case, the provisions of

section 53 would have no application. But in any circumstances the insolvency could not be annulled for the reasons given by the learned District Judge. We, therefore, allow this appeal and set aside the order of the learned District Judge. Bachhu Lal, respondent, will pay his own costs and those of Ram Lal in this appeal. We have, however, to add that this order will not prevent Bachhu Lal or any other creditor reopening the question of the *bonâ fides* of the insolvent in respect of matters not covered by their petition of the 23rd of November, 1926.

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*Appeal allowed.*