

APPELLATE CIVIL.

Before Sir Shadi Lal, Chief Justice and Mr. Justice Wilberforce.

RAM PIYARA AND OTHERS—(PLAINTIFFS)—

Appellants,

versus

BHANA MAL AND ANOTHER—(DEFENDANTS)—

Respondents.

Civil Appeal No. 3033 of 1916.

Insolvency—person who claims title to property attached by the Insolvency Court as belonging to the insolvent—whether competent to bring a regular suit to establish his rights after the Insolvency Court has rejected his application to have the property released—Provincial Insolvency Act, III of 1907—Punjab Laws Act, IV of 1872.

Held, that the plaintiffs who claimed title to certain property attached by the Insolvency Court as belonging to an insolvent were competent to bring a regular suit to establish their rights and that the order of the Insolvency Court rejecting their application for the removal of the attachment was no bar to such suit, whether the case was governed by the provisions of the Provincial Insolvency Act or of the Punjab Laws Act.

Duni Chand v Muhammad Hussain (1), Naginlal Chuni Lal v. Official Assignee (2), Barlow v. Cochrane (3), Satya Kumar v. Manager Benares Bank, Ltd. (4) and Irshad Hussain v. Gopi Nath (5), referred to

Aldul Latheef v. Official Assignee of Madras (6), Official Assignee of Madras v. Mangayar Karasu (7) and Pita Ram v. Jujhar Singh (8), dissented from

Second appeal from the decree of S. S. Harris, Esquire, District Judge, Amritsar, dated the 5th August 1916, confirming that of Pandit Devi Dayal, Joshi, Subordinate Judge, 2nd Class, Amritsar, dated the 30th November 1915, dismissing the claim.

SHAM LAL, for Appellants.

TEK CHAND, for Respondents.

(1) 22 P. R. 1917.

(2) (1911) I. L. R. 35 Bom. 473.

(3) (1868) 2 Beng. L. R. O. C. 56.

(4) (1917) 22 Cal. W. N. 700, 702, 704.

(5) (1919) I. L. R. 41 All. 378.

(6) (1917) I. L. R. 40 Mad. 1173.

(7) (1917) 47 Indian Cases 298.

(8) (1917) I. L. R. 39 All. 626.

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The judgment of the Court was delivered by—

SIR SHADI LAL, C. J.—The circumstances, which have given rise to this appeal, are briefly as follows :— On the 2nd November 1906 three creditors of the firm of Shambhu Das Ragh Nath Das presented an application under section 23 of the Punjab Laws Act, IV of 1872, to the Judge of the Insolvency Court, praying that the debtors might be adjudicated insolvents. On the same day the Court issued a notice calling upon the debtors to make a statement of their assets and liabilities, and under clause 3 of section 24 made an order attaching all the debtors' property, moveable as well as immoveable. The plaintiffs thereupon made an application that a moiety of a house attached by the Court belonged to them and should be released from attachment. This application was dismissed in default on the 20th October 1910. It appears that the debtors and the majority of the creditors thereafter made an application under section 28 requesting the Court to give effect to a composition arrived at between the parties, and that this matter was not settled until 1913. On the 6th April 1915 the plaintiffs again applied to the Court to release their share in the house, but this application also was rejected on the ground that the previous application had already been dismissed.

The plaintiffs have now brought a regular action to establish their title to the property, and the question for determination is whether they are entitled to bring a regular suit or whether the order of the Insolvency Court dismissing their application operates as a bar.

Now, it is common ground that under the Punjab Laws Act there was no provision giving a right of appeal against the order dismissing the plaintiffs' application, and if the proceedings, which commenced under the provisions of that Act, be taken as having been continued under that Act after the commencement of the Provincial Insolvency Act, the plaintiffs would certainly be entitled to institute the suit and ask the Court to adjudicate upon their claim. Whether the provisions of the Provincial Insolvency Act or those

of the Punjab Laws Act operate upon the order passed in 1910 is a matter which is not free from difficulty ; but it is unnecessary to pronounce any final opinion thereupon, because we consider that even under the Provincial Insolvency Act there is no provision which expressly or impliedly precludes an unsuccessful claimant from bringing a regular action to establish his title to the property seized by the Insolvency Court or the Receiver. This rule is enunciated in a Division Bench judgment of the Punjab Chief Court in *Duni Chand v. Muhammad Hussain and others* (1), and to the same effect is a judgment of the Bombay High Court in *Naginal Chunital v. Official Assignee* (2), which is a case decided under the Presidency Towns Insolvency Act, III of 1909, which Act appears to be in *pari materia* with the Provincial Insolvency Act so far as the issue before us is concerned. We observe that in a case under the Indian Insolvents Act, which Act has now been replaced by the Presidency Towns, Insolvency Act, a Division Bench of the Calcutta High Court held that an order passed by the Insolvency Court did not prevent the owner of the property, which was the subject of the order, from suing the Assignee to establish his right thereto,—*vide Barlow v. Cochrane* (3). Indeed, the Calcutta High Court has gone even further and laid down the law that where a question of principle or a difficult question of title is involved or the amount in dispute is considerable, the Insolvency Court should direct the Official Assignee to bring a regular suit in order to obtain an adjudication on the point in dispute between him and the claimant, *vide Satya Kumar v. Manager, Benares Bank, Ltd.* (4).

The Madras High Court has, however, adopted the contrary view in *Abdul Latheef v. Official Assignee of Madras* (5). But the judgment delivered by the Court is a short one and does not contain any discussion on the subject. This judgment was implicitly followed in another Madras case, *vide Official Assignee of*

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(1) 22 P. R. 1917.

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Madras v. Mangayar Karasu (1). A Division Bench of the Allahabad High Court has in *Pita Ram v. Jujhar Singh* (2) adopted the same view as the Madras High Court, but a later judgment of that Court in *Irshad Hussain v. Gopi Nath* (3) shows that the judges were doubtful as to the correctness of the previous judgment but did not consider it necessary to refer the matter to a Full Bench.

The question is undoubtedly one upon which there is a considerable divergence of judicial opinion, but in view of the judgments cited above it is clear that the balance of judicial authority is in favour of the view that a regular suit is competent. We accordingly see no adequate ground for dissenting from the conclusion reached in *Duni Chand v. Muhammad Hussain* (4) and hold that the plaintiffs are not precluded from bringing the present action and asking the Court to adjudicate upon their claim. We observe that in the new Provincial Insolvency Act, V of 1920, the Legislature has expressly laid down in section 4 that the Insolvency Court shall have full power to decide all questions, whether of title or of any nature whatsoever, and that any decision arrived at by it shall be final and binding for all purposes. In view of this clear provision the matter does not now possess any practical importance.

On the question whether the suit was properly brought against the 'trustees' appointed by the debtors and the creditors to carry out the provisions of the composition deed the District Judge has recorded his opinion in favour of the plaintiffs, and after hearing the learned Vakil for the defendants we are not prepared to dissent from that conclusion and to hold that the creditors too should have been impleaded as defendants in the suit. It appears that the property claimed by the plaintiffs is in the possession of the 'trustees,' and that they are empowered to dispose of the entire property in their possession in any manner they think fit. In these circumstances we are of

(1) (1917) 47 Indian Cases 298.

(3) (1919) I. L. R. 41 All. 378.

(2) (1917) I. L. E. 39 All. 626.

(4) 22 F. R. 1917.

opinion that the 'trustees' represent the estate, and that the plaintiffs were not bound to implead the creditors along with the 'trustees.'

The result of the above discussion is that we accept the appeal and remit the case to the District Judge for decision on the remaining issues. The Court fee on the memorandum of appeal shall be refunded and other costs shall abide the event.

Appeal accepted ; case remanded.

APPELLATE CIVIL.

Before Mr. Justice Chevis and Mr. Justice Scott-Smith.

TARA SINGH AND ANOTHER—(PLAINTIFFS)—
Appellants.

versus

GANDA SINGH AND OTHERS—(DEFENDANTS)—
Respondents.

Civil Appeal No. 2917 of 1917.

Court of Wards Act, II of 1903, sections 8 and 19—Court of Wards assuming superintendence of property in which the ward has no interest—action ultra vires—Notice to Deputy Commissioner not necessary before filing a suit regarding such property.

Held, that if the Court of Wards purporting to act under section 8 of Punjab Act II of 1903 wrongly assumes superintendence of the property of other persons in which the ward has no share, its action is ultra vires, and it cannot be said that it has assumed superintendence under the powers conferred upon it by the Act, though it may have purported to act in accordance therewith.

If the Deputy Commissioner acts ultra vires any person affected thereby can object. It is not necessary in such a case to give this officer notice under section 19 of the Act before filing a suit.

First Appeal from the order of G. H. Harris, Esquire, Senior Subordinate Judge, Montgomery, dated the 20th August 1917, rejecting the plaint.

TEK CHAND, for Appellants.

JAI LAL, for Respondents.

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