For these reasons we must allow the appeal and dismiss the suit of the plaintiff which was brought for possession as owner, but we direct the parties to bear their own costs throughout.

Appeal accepted.

APPELLATE CIVIL.

Before Mr. Justice LeRossignol and Mr. Justice Wilberforce.

KISHAN CHAND (DEFENDANT)—*Appellant*,

versus

SOHAN LAL AND OTHERS (PLAINTIFFS)—*Respondents.*

1920

Dec. 14.

Civil Appeal No. 926 of 1917.

Provincial Insolvency Act, III of 1907, section 16 (2)—whether bar to the passing of a decree in a pending suit—meaning of the words "remedy" and "commence any suit or legal proceeding" in the section, explained.

K. C. was adjudicated insolvent in January 1911. At that time he was defending a case for recovery of Rs. 69,346 on a mortgage deed. In spite of his adjudication he continued the defence of the suit and the first Court decreed it against him. On appeal to the Chief Court the decree was modified to this extent that a preliminary decree for the sale of the mortgaged property was passed, but plaintiff was left at liberty to apply subsequently for a personal decree against K. C. in the event of the sale-proceeds proving insufficient, to meet the mortgage debt. The sale-proceeds did prove insufficient, and the plaintiff moved the Court of first instance to take action under Order XXXIV, Rule 6, Civil Procedure Code, and a personal decree for the balance due issued against K. C., the defendant, who appealed against that decree.

Held, that the application by the plaintiff under Order XXXIV, Rule 6, was not a new proceeding, but a continuation of the original suit, and the decree passed thereon was not a "remedy" against the person of the insolvent and did not therefore contravene the provisions of section 16 (2) of the Provincial Insolvency Act, 1907.

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KISHEN CHAND v. SOHAN LAL.

Held further, that a decree is not a remedy for a civil wrong, but merely a step towards the remedy. The remedy is the benefit accruing to the creditor through the execution of his decree and that remedy he can secure only through the Insolvency Court by proving his debt.

Mamraj v. *Brij Lal* (1), dissented from.

Miscellaneous first appeal from the order of Lala *Murari Lal* Khosla, *Senior Subordinate Judge, 1st Class, Delhi, dated the 5th February 1917, passing a personal decree against Kishan Chand.*

MANOHAR LAL, for Appellant.

M. S. BHAGAT, for Respondents.

The judgment of the Court was delivered by—

LEROSSIGNOL, J.—The facts out of which this appeal arises are as follows :—

The appellant was adjudicated insolvent in January 1911. At that time he was defending a case for recovery of Rs. 69,346-8-0 on a mortgage deed; in spite of his adjudication he continued the defence of the suit and the first Court decreed it against him.

He then came to this Court in appeal and was successful in obtaining a modification of the original decree, in that a preliminary decree for the sale of the mortgaged property was passed but plaintiff was left at liberty to apply subsequently for a personal decree against appellant in the event of the sale-proceeds proving insufficient to meet the principal and interest due on the mortgage and the costs of the case.

On the happening of this contingency the plaintiff moved the Court of first instance to take action under Order XXXIV, Rule 6, Civil Procedure Code, and a personal decree for the balance due issued against defendant.

In appeal it is contended that the defendant's insolvency was a bar to the grant of the decree and section 16 of the Provincial Insolvency Act of 1907 as well as *Mamraj* v. *Brij Lal* (1), are referred to.

Section 16 of the Act provides that no creditor in respect of any debt provable under the Act

(1) (1911) I. L. R. 34 All. 106.

shall during the pendency of insolvency proceedings have any remedy against the insolvent, nor shall he commence any suit or legal proceeding without the leave of the Court.

The Act is silent with regard to the continuation of a suit, but the continuation of a suit or defence by the Receiver is contemplated by section 20 (*d*) of the Act.

Now the application by the plaintiff under Order XXXIV, Rule 6, Civil Procedure Code, was clearly not a new proceeding, but a continuation of the original suit, and such was held to be its nature in *Mamraj* v. *Brij Lal* (1) so that it does not come under the bar of section 16 of the Provincial Insolvency Act as a new proceeding.

We hold further that the issue of the personal decree was not the grant to the plaintiff of a remedy against the appellant within the meaning of the section.

A decree is not a remedy for a Civil wrong but merely a step towards the remedy. The remedy is the benefit accruing to the creditor through the execution of his decree, *i.e.*, the compensation secured to him in execution. That remedy he can secure (when the judgment-debtor is an adjudicated insolvent) only through the Insolvency Court, by proving his debt.

The Allahabad ruling above cited, with all deference we are unable to accept both because we do not regard a decree as a remedy and also because all the provisions of the English Act have not been reproduced in the Indian Act. Section 10 (2) of the English Bankruptcy Act empowers a Court to stay any action, execution or other legal process against the debtor or to continue them, if it sees fit, but there is no similar provision in the Indian Act ; consequently the decisions of the English Courts on questions of stay of action, owing to insolvency, are not sure guides for the Courts of this country.

Moreover, if the words shall ' have any remedy ' are a bar to the continuation of a suit, they are irreconcilable with the provision that a suit may be continued on terms.

(1) (1911) I. L. R. 34 All. 106.

On grounds of expediency, it is obviously desirable that the Court which has fully considered all the evidence and has studied all the aspects of the case should decide on the merits and then leave the Decree-holder to seek his remedy in the Insolvency Court.

We accordingly dismiss the appeal with costs.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice LeRossignol and Mr. Justice Wilberforce.

1920

DEC. 20.

Mussammat FATIMA BIBI AND ANOTHER (PLAINTIFFS)—*Appellants*

versus

SHAH NAWAZ, ETC., (DEFENDANTS)—*Respondents.*

Civil Appeal No. 2610 of 1916.

Custom—Succession—acquired property—sisters or collaterals in 9th degree—Jats—Jhelum District—Riwaj-i-am—where custom is not established, whether Courts can fall back on the personal law of the parties—Punjab Laws Act, IV of 1872, section 5.

The parties to the suit out of which the present appeal has arisen were *Jats* of the Jhelum District. The plaintiffs were the sisters of the last male-holder, while the defendants were collaterals in the ninth degree. Plaintiffs relied upon custom but neither they nor defendants succeeded in proving a custom. The entry in the *Riwaj-i-am* was against succession of sisters. The property was non-ancestral. The lower Courts dismissed the suit holding that plaintiffs had failed to prove their right to succession by custom.

Held, that no custom having been ascertained as to the rights of sisters as against collaterals of the 9th degree in the case of acquired property, the Courts should have fallen back on the personal law of the parties, for the decision of the case and that the suit must consequently be decreed in favour of the sisters.

Mussammat *Sardar Bibi* v. *Sayad Ali Shah* (1) *Khanan* v. Mst *Jatti* (2), and *Kauda Bakhsh* v. Mst. *Fateh Khatun* (3), followed.

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(1) 4 P. R. 1888. (2) 116 P. R. 1882.
(3) 13 P. R. 1919.