

## APPELLATE CIVIL.

*Before Sir Shakti Lal, Chief Justice, and Mr. Justice  
Wilberforce.*

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Feb. 2.

MANJI AND HARDU—APPELLANTS,

*versus*

GIRDHARI LAL ETC.—RESPONDENTS.

Civil Appeal No. 736 of 1919.

*Insolvency—of a member of an agricultural tribe—whether Insolvency Court can proceed against the land of the insolvent by making a temporary alienation without the intervention of the Collector—Provincial Insolvency Act, III of 1907, sections 16 (2) (a) and 21 (2)—Punjab Alienation of Land Act XIII of 1900, section 16—Civil Procedure Code, Act V of 1908, sections 60, 68 and 72.*

*Held*, that an Insolvency Court is competent to proceed against the land of an insolvent, who is a member of an agricultural tribe and effect a temporary alienation, and it is not necessary that the receiver or the Court should proceed through the Collector.

*Badar Din v. Burti Mal* (1), referred to, also Punjab Alienation of Land Act, section 16 and Provincial Insolvency Act, sections 16 (2) (a) and 21.

Provisions which trench on the usual jurisdiction of a Civil Court to execute its decrees or orders must be strictly construed.

*Sardarni Dattar Kaur v. Ram Rattan* (2), followed.

*Held also*, that a Court or receiver proceeding under the Insolvency Act should proceed as far as possible on the same lines as a Court acting in execution of a decree, *vide* section 21 (2) of the Provincial Insolvency Act, and that consequently a farm or mortgage made of the insolvent's land should not be for a term exceeding 20 years and should be automatically redeemed by the profits, the debt being in either case extinguished.

The facts are given in the judgment of this Court.

JAGAN NATH for the Appellants—The land of an insolvent who is a member of an agricultural tribe does not vest in the receiver, section 16 (2) (a), Provincial Insolvency Act, and section 16, Punjab Alienation of

(1) 4 P. R. 1903.

(2) (1920) I. L. R. 1 Lahore 192 (F. B.).

Land Act. The words "attachment and sale" have the same meaning as the words "attachment or sale." In section 69 of the Civil Procedure Code sometimes one phrase is used and sometimes the other in the same sense. The receiver or the Insolvency Court has no power to enter into a mortgage transaction. A mortgage could only be effected through the Collector, Code of Civil Procedure, section 72 and section 21 (a) of the Provincial Insolvency Act. In any case the Court should not have effected a mortgage in which the income and interest counterbalance each other and the debt is never extinguished.

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TEK CHAND for the Respondents—*Sardarni Datar Kaur v. Ram Rattan* (1). clearly contemplates that the property can be attached and a temporary alienation of such property allowed, though the property may be exempt from sale. Section 13 of Punjab Alienation of Land Act does not help the appellants. The Collector is merely a ministerial officer. The Court and the receiver have ample power to enter into a mortgage, section 20 (g), Provincial Insolvency Act. The Punjab Alienation of Land Act is not applicable as the mortgage is in favour of a member of an agricultural tribe.

*Jagan Nath*, replied.

Miscellaneous first appeal from the order of *Khan Bahadur Khwaja Tassadduq Hussain*, District Judge, Hissar, dated the 11th March 1919, holding that the land vests in the Official Receiver and can be mortgaged to a member of an agricultural tribe of the same district.

The judgment of the Court was delivered by—

WILBERFORCE, J.—The insolvent-appellants are members of an agricultural tribe. They own a considerable area of land and the District Judge has held that this land vests in the Official Receiver and can be mortgaged to a member of an agricultural tribe of the same district. In compliance with his order three applicants were produced and eventually an offer has been made to one of the applicants that he shall take

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on mortgage  $\frac{3}{4}$ ths share of the land of the insolvents, on condition that the income will balance the interest and that the applicant mortgagee will pay Rs. 2,000 as consideration for the mortgage. Against this order the insolvents have preferred an appeal which on account of the difficulty involved has been referred to a Division Bench.

For the appellants insolvents it is urged in the first place that the land of the insolvents does not vest in the Court or the Official Receiver owing to the provisions of section 16 (2) (a) of the Provincial Insolvency Act of 1907. The relevant portion of this clause is to the following effect :—

“ The whole of the property of the insolvent, save in so far as it includes such particulars as are exempted by the Code of Civil Procedure, or by any other enactment for the time being in force, from liability to attachment and sale in the execution of a decree, shall vest in the Court or in a Receiver.”

Counsel next refers to section 16 of the Punjab Alienation of Land Act which exempts the land of members of agricultural tribes from liability to sale in execution of any decree or order of any civil or revenue Court. He urges that under the provisions of that enactment read with the abovementioned clause of the Provincial Insolvency Act the land of members of agricultural tribes does not vest in the Court or in the Receiver. He would have us read the words “ attachment and sale ” as “ attachment or sale ” or in the alternative he contends that under the correct interpretation of section 16 of the Punjab Alienation of Land Act, land is exempted from both attachment and sale inasmuch as attachment is a mere formal preliminary to a sale. We are unable to agree with Mr. Jagan Nath's contention and consider that there is no justification for not attaching the plain grammatical meaning to the words “ attachment and sale.” An enactment with a similar provision is the Civil Procedure Code (section 60). In that section after laying down that certain properties are liable to both attachment and sale; other particulars are exempted from liability to such attachment or sale, and it is clear to our minds that the Legislature does not recognise attachment as a pure formality preceding other

measures in execution. It has also been held by the Chief Court in *Badar Din v. Bura Mal* (1), that in spite of the provisions of the Punjab Alienation of Land Act, land of members of agricultural tribes is liable to attachment. Finally we would remark that provisions which trench on the usual jurisdiction of a Civil Court to execute its decrees or orders must be very strictly construed as is laid down in the Full Bench judgment reported as *Sardarni Datar Kaur v. Ram Rattan* (2). That judgment also has a bearing on the present case, as there, in spite of the provisions of section 16 of the Punjab Alienation of Land Act, it was held that there is nothing to prevent a Civil Court executing its decree by means of a temporary alienation of land. We hold, therefore, that the Insolvency Court was competent to proceed against the insolvent's land by means of a temporary alienation.

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Counsel next argued that in any case the Court or the Receiver could not itself proceed to effect a mortgage of the land but must proceed through the Collector. He referred to section 21 of the Insolvency Act. The first clause of that section is not, however, applicable to the Punjab, as no declaration under section 320 of the Code of Civil Procedure (section 63 of the present Code) is in force. As for the second clause of that section, it does not, in our opinion, require that the Receiver or the Court should proceed through the Collector.

Mr. Jagan Nath's last objection to the order under appeal is that as a result thereof his clients' land will probably remain permanently under mortgage and that the effect of this arrangement will be to substitute a probably permanent secured debt for unsecured debts. We think that there is force in this objection, as the underlying principle of the law of insolvency is that an insolvent shall be freed from his indebtedness and shall obtain a discharge within a reasonable period. It is also clear to us that a Court or a Receiver proceeding under the Insolvency Act should proceed as far as possible on the same lines as a Court acting in execution of a decree. That this is the intention of

(1) 4 P. R. 1903.

(2) (1920) I. L. R. 1 Lahore 192 (F.B.)

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the Legislature is indicated by the provisions of section 21 (2) of the Provincial Insolvency Act. Now in execution of decrees against the land of indebted members of an agricultural tribe, who are often actually or practically insolvent, it has always been the practice sanctioned by this Court, that the debt should be liquidated by a farm terminable after a reasonable period, and the maximum period for which a farm has been permitted is 20 years. By the arrangement of such a farm or a mortgage, which is automatically redeemed by the profits, the debt is automatically extinguished. We do not think that ordinarily different or harsher measures should be taken against a person who becomes an insolvent under the provisions of the law.

We therefore accept the appeal to this extent that we direct the District Judge to make the best arrangement possible for a temporary farm of the insolvent's land or for a mortgage which will redeem itself after a suitable period, not exceeding 20 years. We pass no order as to costs.

A. R.

*Appeal accepted in part.*