

APPELLATE CIVIL.

Before Addison and Bhide JJ.

DULI CHAND AND OTHERS (PLAINTIFFS)

Appellants

versus

KALYAN SINGH, OFFICIAL RECEIVER,

AND OTHERS (DEFENANTS) Respondents.

Civil Appeal No. 1445 of 1929.

Civil Procedure Code, Act V of 1908, section 80—Suit against Official Receiver—whether competent—without notice.

Held, that a suit brought against an Official Receiver for a declaration that certain property in his hands could not be sold by him in the course of insolvency proceedings is not competent without a notice under section 80 of the Code of Civil Procedure, and it is immaterial whether the property has been sold by the Official Receiver or is merely threatened to be sold.

Bhagchand-Dagadusa v. Secretary of State (1), followed.

First appeal from the decree of Mirza Abdul Rab, Senior Subordinate Judge, Rohtak, dated the 4th June 1929, dismissing the plaintiffs' suit.

SHAMAIR CHAND, for Appellants.

J. G. SETHI, for Respondents.

The judgment of the Court was delivered by—

ADDISON J.—The father and uncle of the plaintiffs were adjudicated insolvents and the Official Receiver commenced to sell their property. The plaintiffs brought the present suit for a declaration that they constituted a joint Hindu family with their father and uncle and the joint family property could not, therefore, be sold by the Official Receiver in the

insolvency proceedings mentioned. The suit was dismissed on the ground of want of notice as required by section 80 of the Civil Procedure Code. Against this decision the plaintiffs have appealed in part. It was admitted that so far as the houses and property already sold were concerned the suit could not proceed without notice under section 80, but it was contended that as regards the two houses, Nos. 2 and 3, which had not been sold by the Official Receiver when the suit was brought, the suit could proceed without notice.

It seems to us that the suit was properly dismissed as a whole and that notice under section 80 was necessary whether the property had been sold by the Official Receiver or was merely threatened to be sold. This follows from the recent decision of the Privy Council reported as *Bhagchand-Dagadusa v. Secretary of State* (1). This ruling disapproved of *Jaginlal-Chunilal v. The Official Assignee, Bombay* (2), *Secretary of State v. Gajanan Krisharao* (3). A Single Judge of the Bombay Court had in fact doubted *Jaginlal-Chunilal v. The Official Assignee, Bombay* (2), though he followed it (see in this respect *Muradally Shamji v. B. N. Long* (4)).

The suit was properly decided and we dismiss the appeal.

A. N. C.

Appeal dismissed.

(1) (1927) I.L.R. 51 Bom. 725 (P.C.). (3) (1916) I.L.R. 40 Bom. 392.

(2) (1913) I.L.R. 37 Bom. 243. (4) (1920) I.L.R. 44 Bom. 555.

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