

FULL BENCH.

Before Young C. J., Bhide and Din Mohammad JJ.

GURBAKHSI SINGH AND ANOTHER (PLAINTIFFS)

Appellants

versus

SARDAR SINGH AND ANOTHER (DEFENDANTS)

Respondents.

1934

Oct. 19.

Civil Appeal No. 1919 of 1932.

Provincial Insolvency Act, V of 1920, Sections 28 (2), 68 : Sale by Receiver—whether subject to right of pre-emption—Punjab Pre-emption Act, I of 1913, Section 3 (5) (a).

Held, that the act of an Official Receiver in selling the property of an insolvent is not an act in execution of the order of a Court, and is, therefore, subject to the right of pre-emption.

Sheobaran Singh v. Kulsum-un-Nisa (1), Basava Sankaran v. Garapati Anjaneyulu (2) and M. T. T. K. M. M. N. Venkatchelan Chettyar v. M. T. T. K. M. M. S. M. A. R. Murugesan (3), relied upon.

Second Appeal from the decree of Bhagat Jagan Nath, District Judge, Sialkot, dated 8th May 1932, reversing that of Mian Mohammad Aslam, Subordinate Judge, 2nd Class, Sialkot, dated 19th November 1931, and dismissing the plaintiffs' suit.

M. L. PURI and MEHR CHAND SUD, for Appellants.

NAWAL KISHORE, for Respondents.

The judgment of the Full Bench was delivered by—

YOUNG C. J.—This appeal arises out of a suit for pre-emption of certain land instituted by one Gurbakhsh Singh. The vendor was a Receiver ap

(1) (1927) I.L.R. 49 All. 867 (P.C.). (2) (1927) I.L.R. 50 Mad. 135 (F.B.)

(3) (1931) I. L. R. 9 Rang. 231 (F.B.).

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pointed in the insolvency of the owner of the land. The vendee disputed the right of the plaintiff to claim pre-emption on the ground that the sale by the Receiver was a sale in execution of an order of a Civil Court within the meaning of section 3, sub-section (5) (a) of the Punjab Pre-emption Act of 1913. Eventually the point came before two of us sitting in Division Bench. The matter appearing to be of importance and not concluded by the authority of any judgment of this Court, we requested the Chief Justice to appoint a Full Bench.

Mr. Nawal Kishore argues on behalf of the respondents that a sale by the Receiver is a sale in execution of an order of a Civil Court and, therefore, free from pre-emption. We have, therefore, to decide whether such a sale is a sale in execution of an order of a Court or not.

The Receiver is, under section 56 of the Provincial Insolvency Act, appointed by the Court. By the same section the property of the insolvent vests in the Receiver. Section 59 of the same Act gives certain powers to the Receiver. One of these is the power to sell any part of the property of the insolvent. That he may do without leave of the Court. The same section gives him authority to do other things only by leave of the Court. By section 68 any person aggrieved by the action of the Receiver has a right to apply to the Court and the Court may affirm, reverse or modify the act or decision complained of. It appears to us, therefore, that the act of the Receiver in selling the property of an insolvent cannot be said to be an act in execution of an order of the Court. If it were such an act, there would then appear to be a right of appeal to the Court from its own order. It is argued, however,

that the act of an officer appointed by the Court is the act of the Court itself; that indeed the Receiver is the agent and the Court is the principal in any transaction by the Receiver. We cannot agree. It is not true to say that the act of every person appointed by a superior authority is the act of that superior authority. It depends upon the terms of the appointment and the authority given to the person appointed. The Receiver is appointed by the Court, but the power of sale is conferred upon him by the statute and not by the Court. Further, under section 28 (2) of the Provincial Insolvency Act the whole of the property of the insolvent vests 'in the Court or in a Receiver as hereinafter provided.' The property vests in the Court if the Court does not appoint a Receiver, but, if a Receiver is appointed, it vests in him. It appears to us, therefore, that the proper construction of all the relevant sections in the Act makes it clear that the Act does not make the sale of the property of an insolvent by the Receiver, a sale in execution of an order of the Court within the meaning of section 3, sub-section (5) (a) of the Punjab Pre-emption Act of 1913.

We are confirmed in our opinion on this point by a consideration of the judgment of the Privy Council in *Sheobaran Singh v. Kulsum-un-Nisa* (1). The High Court at Allahabad decided that the sale by an official assignee was an involuntary sale carried out against the wishes of the true owner by a Court and that therefore the right of pre-emption did not apply. Their Lordships of the Privy Council, however, took the opposite view, holding that the official assignee took the property of the bankrupt exactly as

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it stood when in possession of the insolvent with all its advantages and burdens. Their Lordships were not considering the Punjab Pre-emption Act; but they did decide that a sale by an official assignee was not a sale by the Court.

The same point arose in *Basava Sankaran v. Garapati Anjaneyulu* (1). A Full Bench of five Judges of the Madras High Court decided (one learned Judge dissenting) that a sale by an Official Receiver in insolvency was not a transfer by operation of law or by, or in execution of, a decree or order of a Court.

In the case of *M. T. T. K. M. M. N. Venkatachelan Chettyar v. M. T. T. K. M. M. S. M. A. R. Murugesan* (2) a Full Bench of the Rangoon High Court decided that a sale of property by a Receiver was an act of the Receiver within section 68 of the Provincial Insolvency Act.

We, therefore, answer the question referred to us as follows:—The act of an Official Receiver in selling the property of an insolvent is not an act in execution of the order of a Court, and is, therefore, subject to the right of pre-emption. The case will now go back to the Division Bench for disposal according to law.

A. N. C.

Reference answered in the negative.

(1) (1927) I. L. R. 50 Mad. 135 (F. B.).

(2) (1931) I. L. R. 9 Rang. 231 (F. B.).