

relief prayed for. We are consequently constrained to answer this question too in the negative.

We answer the three questions referred to us accordingly and order the assessee to pay the costs of the Commissioner

P. S.

Reference answered.

APPELLATE CIVIL.

Before Addison and Din Mohammad JJ.

LAL KHAN AND ANOTHER (INSOLVENTS) Appellants.

versus

OFFICIAL RECEIVER, FEROZ- } Respondents.
 PORE, AND OTHERS (CREDITORS) }

Civil Appeal No. 280 of 1936.

Punjab Debtors' Protection Act (II of 1936), S. 4 (1) — Official Receiver — whether precluded from selling Insolvents' land — Provincial Insolvency Act (V of 1920), SS. 28, 59.

In the case of the appellants (Insolvents) the Official Receiver was conducting proceedings in relation to the temporary alienation of their land and it was contended on their behalf that he had no jurisdiction to do so, in view of the provisions of S. 4 (1) of the Punjab Debtors' Protection Act, 1936. The High Court having allowed the appeal to be heard as a Revision under the proviso to S. 75 (1) of the Provincial Insolvency Act—

Held, (overruling the contention) that a sale by an Official Receiver of the property of an insolvent is not a sale in execution of an order of a Civil Court and therefore the provisions of law contained in sub-s. (1) of S. 4 of the Punjab Debtors' Protection Act are not applicable. The "Court," though it includes an Insolvency Court, does not include a Receiver in Insolvency.

Sheobaran Singh v. Kulsum-un-Nissa (1), *Basava Sankaran v. Garapati Anjaneyulu* (2), *M. T. T. K. M. M. N.*

(1) I.L.R. (1927) 49 All. 367 (P.C.). (2) I.L.R. (1927) 50 Mad. 135 (F.B.).

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IN THE
 MATTER OF
 AMRITSAR
 PRODUCE
 EXCHANGE,
 LIMITED
 INCOME-TAX.

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Venkatachelan Chettyar v. M. T. T. K. M. M. S. M. A. R. Murugesan (1), and *Gurbakhsh Singh v. Sardar Singh* (2), referred to.

First appeal from the order of Mr. S. S. Dulat, Additional District Judge, Ferozepore, dated 16th October, 1936, directing that the Official Receiver should proceed to auction the lease of the land.

J. L. KAPUR, for Appellants.

JAGAN NATH AGGARWAL, for Respondents.

The judgment of the Court was delivered by—

DIN MOHAMMAD J.—A preliminary objection has been raised by the respondents that no appeal lies to this Court. It is urged that the order of the Additional District Judge complained of was passed on appeal under section 68 of the Provincial Insolvency Act, 1920, and that from such an order no appeal is provided for by section 75 of the same Act. Counsel for the appellants concedes this proposition but, relying on the *proviso* to sub-section (1) of section 75 of the Provincial Insolvency Act, has asked us to treat his petition of appeal as a petition for revision. That *proviso* reads as follows:—

“ Provided that the High Court, for the purpose of satisfying itself that an order made in any appeal decided by the District Court was according to law, may call for the case and pass such order with respect thereto as it thinks fit.”

We consider that the point involved in this case is an important point of law, and we have, therefore, decided to hear this petition as a petition for revision.

The question involved in this petition turns upon the true interpretation to be placed on sub-section (1)

(1) I.L.R. (1931) 9 Rang. 231 (F.B.). (2) I.L.R. (1935) 16 Lah. 173 (F.B.).

of section 4 of Act II of 1936. That sub-section is couched in the following terms :—

“ Notwithstanding anything contained in any other enactment for the time being in force, whenever a civil court orders that land be attached and alienated temporarily in the execution of a decree for the payment of money, the proceedings of such attachment and alienation shall be transferred to the Collector.”

In the case of the appellants who were adjudicated insolvents the Official Receiver is conducting proceedings in relation to the temporary alienation of their land and the appellants contend that he has no jurisdiction to do so in view of the provision of law reproduced above. They further refer to clause (4) of section 2, where ‘ Court ’ is defined to include a Court acting in the exercise of insolvency jurisdiction.

After hearing counsel on both sides we have come to the conclusion that the contention of the appellants must fail.

Under section 28 of the Provincial Insolvency Act, as soon as an order of adjudication is made, the property of an insolvent vests in the Receiver, and to all intents and purposes he takes the place of the insolvent. Under section 59 of the Provincial Insolvency Act, the Receiver is enjoined to realize the property of the debtor and distribute dividends among the creditors entitled thereto, and for that purpose he is empowered to sell all or any part of the property of the insolvent. This he is entitled to do without the leave of the Court, which under the same section is necessary in certain other matters. It is on this ground that it has been invariably held that a sale by a Receiver of the property of an insolvent is not a sale “ in execution or an order of a civil Court.” If any authority

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be needed for this proposition, reference may be made to *Sheobaran Singh v. Kulsum-un-Nissa* (1), *Basava Sankaran v. Garapati Anjaneyulu* (2), *M. T. T. K. M. M. N. Venkatachelan Chettyar v. M. T. T. K. M. M. S. M. A. R. Murugesan* (3), and *Gurbakhsh Singh v. Sardar Singh* (4).

In *Sheobaran Singh v. Kulsum-un-Nissa* (1), a Division Bench of the Allahabad High Court had observed as follows:—

“ We find it impossible to hold the view that a village custom which refers only to a voluntary sale by one co-sharer of his property can in any way apply to the case of an involuntary sale carried out against his wishes by a Court through a Collector or an Official Assignee, or anybody else.”

Their Lordships of the Privy Council in animadverting upon these remarks of the learned Judges said :

“ With deference to the learned Judges, it seems to their Lordships that this over-looks one of the fundamental principles of all arrangements for the realization and distribution of a bankrupt's property. In every system of law the term may vary, but in all there is an official, be he called an assignee or trustee or any other name, and that official is by force of the statute invested in the bankrupt's property. But the property he takes is the property of the bankrupt exactly as it stood in his person, with all its advantages and all its burdens. * * * Just, therefore, as if the conveyance had been made to an individual, that individual would have had at once the disadvantage and the privilege of the custom of pre-emption,

(1) I.L.R. (1927) 49 All. 367 (P.C.). (3) I.L.R. (1931) 9 Rang. 231 (F.B.).
(2) I.L.R. (1927) 50 Mad. 135 (F.B.). (4) I.L.R. (1935) 16 Lah. 173 (F.B.).

so the Official Assignee was in the same position and could only sell what he got.”

In *Basava Sankaran v. Garapati Anjaneyulu* (1), it was held by the majority of the Court 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 Court. The same principle was affirmed in *M. T. T. K. M. M. N. Venkatachelan Chettyar v. M. T. T. K. M. M. S. M. A. R. Murugesan* (2), and in *Gurbakhsh Singh v. Sardar Singh* (3), which is based on the three judgments mentioned above.

These decisions do not directly touch the point at issue, but they go a long way in establishing that the sale of an insolvent's property is an act of the Receiver and not that of the Court. This being so, the provision of law as contained in sub-section (1) of section 4 does not help the appellants. The attachment and alienation of land must emanate from a civil Court before that sub-section comes into play; and although 'Court' includes an Insolvency Court, it does not include a Receiver in insolvency.

Counsel for the appellants has urged that the intention of the Legislature was to protect the debtors both in ordinary, and in insolvency cases and that consequently the wording of section 4 should be taken to include sales by Receivers. We, however, consider that we are not justified in so straining the language of an enactment as to import into it words which do not exist there. To do so would be repugnant to the recognised principles governing the interpretation of statutes. If anybody considers that the language of the law is defective, his remedy lies in appealing to

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(1) I.L.R. (1927) 50 Mad. 135 (F.B.). (2) I.L.R. (1931) 9 Rang. 231 (F.B.).
(3) I. L. R. (1935) 16 Lah. 173 (F. B.).

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the Legislature to amend the law and not in moving the Courts to stretch it.

We accordingly hold that the order of the Additional District Judge dismissing the appeal against the Official Receiver's action in proceeding to farm out the insolvent's land and affirming that action is not open to any legal objection. With these remarks we dismiss the petition, but in view of the peculiar circumstances of the case we leave the parties to bear their own costs before us.

A. N. C.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Addison and Din Mohammad JJ.

GHULAM SARWAR—APPELLANT

versus

THE CROWN—RESPONDENT.

Criminal Appeal No. 32 of 1937.

Indian Evidence Act (I of 1872), S. 105, illus. (b) — Murder — Allegation by accused — of grave and sudden provocation — Onus probandi.

Held, that where an accused is charged with murder and alleges that by grave and sudden provocation he was deprived of self-control the burden of proof lies on him, *vide* S. 105 of the Indian Evidence Act, *illus. (b)*.

Appeal from the order of Mr. C. M. Ormerod, Sessions Judge, Rawalpindi, dated 17th December, 1936, convicting the appellant.

ABDUL HAYE, for ABDUL AZIZ, for Appellant.

ANANT RAM KHOSLA, for GOVERNMENT ADVOCATE, for Respondent.

The judgment of the Court was delivered by—

ADDISON J.—The appellant Ghulam Sarwar, aged about 19 years, has been sentenced to transportation

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