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tilling the soil and who derives his livelihood from that occupation and cannot or does not maintain himself from other sources. I do not mean thereby that the sole source of his income or the main source of his income must be this occupation of tilling the soil. No doubt in most cases a rough and ready test would be afforded by considering the main source of income or the sole source of income, but that in my opinion is not an absolutely correct test. The true test is whether a man personally engages in tilling and whether this occupation is essential to his maintenance. I would, therefore, hold in this case that the appellant is not an agriculturist and would uphold the decision of the trial Court and dismiss this appeal with costs.

MONROE J.

MONROE J.—I agree.

RAM LALL J.

RAM LALL J.—I also agree.

A. N. K.

APPELLATE CIVIL.

Before Bhide J.

1939
 April 3.

RAM RATTAN AND OTHERS—Appellants.

versus

FAZAL HAQ AND OTHERS—Respondents.

Second Appeal from Order No. 23 of 1938.

Provincial Insolvency Act (V of 1920), SS. 28 (5), (7) and 60 (2) — Punjab Alienation of Land Act (XIII of 1900), S. 16 — Land belonging to an Insolvent vesting in Receiver after adjudication — Insolvent acquiring, before date of sale, status of a member of agricultural tribe under Punjab Alienation of Land Act — Land whether can be sold by Receiver.

Held, that the land belonging to an insolvent which has vested in a Receiver after his adjudication, cannot be sold by the Receiver, if the insolvent acquires the status of a member

of an agricultural tribe, notified under the Punjab Alienation of Land Act, at any time before the date of the sale as s. 16 of that Act would be a bar to such a sale in view of the provisions of s. 60 (2) of the Provincial Insolvency Act.

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Case-law discussed.

Second appeal from order of Lala Munshi Ram, District Judge, Gurdaspur, dated 7th May, 1938, modifying that of Pandit Vidya Sagar Vasisht, Insolvency Judge, Gurdaspur, dated 14th June, 1937, accepting the appeal of the creditors in part so as to declare that the house is not exempt from sale.

S. L. PURI, for Appellants.

DWARKA NATH AGGARWAL, for Respondent.

BHIDE J.—S. A. O. Nos. 23 and 40 of 1938 are two appeals which arise out of different insolvency proceedings, but the main point for decision in both being the same question of law, these can be disposed of together.

BHIDE J.

I doubt if second appeals are really competent in these cases as no question falling under section 4 of the Provincial Insolvency Act seems to have been decided; but the point has not been raised and in any case petitions for revision would be competent in view of the question of law involved.

The material facts bearing on the question of law in the two cases may be briefly stated as follows:—

(i) In S. A. O. No. 23 of 1938 one Sheikh Fazal Haq, a Kakkezai Sheikh, was adjudicated an insolvent on the 19th March, 1931, and his property vested in the Receiver. Before the sale of his property, however, the Kakkezai tribe was declared an agricultural tribe under the Punjab Alienation of Land Act by a notification of the Punjab Government, dated 30th August, 1935. An objection was then raised that his

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land could not be sold in view of the provisions of section 16 of the Punjab Alienation of Land Act and this objection has been upheld by the Courts below. From this decision the creditors have preferred an appeal.

(ii) In S. A. O. No.40 of 1938, on a petition filed by a creditor on 27th April, 1935, Lal Chand, respondent, a pleader of Lyallpur, was adjudicated insolvent on the 17th October, 1936. Lal Chand claimed to have become a Christian on the 12th October, 1936, *i.e.*, five days before the adjudication and contended that as Christians were notified as an agricultural tribe under the Punjab Alienation of Land Act in the Lyallpur District, his land could not be sold in the insolvency proceedings. The allegation that Lal Chand had become a Christian was disputed and this question of fact should have been decided first. But the Courts below have proceeded to decide the question of law first,—assuming that Lal Chand had become a Christian on the 12th October, 1936, as alleged by him. The contention of Lal Chand that his land could not be sold has been upheld by the Courts below and from this decision one of the creditors has preferred this appeal.

The facts in this second case are practically on a par with those in S. A. O. No.23 of 1938, so far as the point of law is concerned, except this that the insolvent in the second case became a member of an agricultural tribe after the presentation of the petition for insolvency, but before the date of adjudication. In the second case the insolvent became a member of agricultural tribe by a voluntary conversion to Christianity and not by any notification as in the first case; but this will not make any difference, if it is

found that as a matter of fact he did become a Christian on 12th October, 1936, as alleged.

Shortly stated the point of law arising in the two cases thus is whether the land belonging to an insolvent, which has vested in a Receiver after his adjudication can be sold by the Receiver, if the insolvent acquires the status of a member of an agricultural tribe notified under the Punjab Alienation of Land Act, at any time before the date of the sale—or is section 16 of that Act a bar to such a sale?

The learned counsel for the appellants relied mainly on two points. It was urged firstly that

when a person is adjudged insolvent, his property vests in the Receiver under section 28 of the Provincial Insolvency Act and the Receiver becomes legally the owner of the property as a result. The fact that the insolvent has become a member of an agricultural tribe thereafter is immaterial as the property in question belongs to the Receiver and not the insolvent at the date of the sale; and secondly that

the sale of property in the insolvency proceedings is effected by the Receiver and is therefore not a sale in execution of a decree or order of the Court within the meaning of section 16 of the Punjab Alienation of Land Act.

As regards the first point, reliance was placed on *Official Assignee, Bombay v. Registrar, Small Cause Court, Amritsar* (1) and the commentary in Mulla's *Law of Insolvency* at pages 167—169. There can be, I think, no doubt that the property of an insolvent vests completely in the Receiver after the adjudication order is passed; for otherwise the Receiver could not

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dispose of the property and convey valid title to the alienees.

It is true that the insolvent gets any surplus after the distribution of the sale proceeds of the assets amongst the creditors but that appears to be due to the statutory provision contained in section 67 of the Provincial Insolvency Act. After considering the relevant provisions of the Act, as regards the vesting of the property in the Receiver, it seems to me that the contention of the learned counsel for the appellants that legally the Receiver and not the insolvent is the owner of the property, which vests in the Receiver on the order of adjudication being passed is correct.

But the property of the insolvent is vested in the Receiver for the purposes of the Provincial Insolvency Act and its administration by the Receiver is subject to the provisions of that Act. Part III of the Act deals with the administration of the insolvents' property after adjudication and subsection (2) of section 60, which is strongly relied upon by the respondents, runs as follows :—

“ Nothing in this Act shall be deemed to affect any provisions of any enactment for the time being in force prohibiting or restricting the execution of decrees or orders against immoveable property; and any such provisions shall be deemed to apply to the enforcement of an order of adjudication made under this Act as if it were such a decree or order.”

This subsection is evidently intended to protect the interests of the insolvent by saving the application of enactments prohibiting or restricting the execution of decrees or orders against the immoveable property of the insolvent in the hands of the Receiver. If it were held that enactments prohibiting or restricting the

execution of decrees or orders against the immoveable property of the insolvent will not apply to sale of property which has vested in the Receiver because the insolvent is no longer the owner of the property, section 60 (2) will be practically rendered nugatory. In view of the scheme of the Act and its place in Part III of the Act, which deals with the administration of property, there seems little room for doubt that section 60 must be held to apply to sale of the insolvent's property which has vested in the Receiver. It is noteworthy in this connection that subsection (5) of section 28 lays down that the property of an insolvent which is exempted from attachment and sale in execution of a decree by the Civil Procedure Code or any other enactment will not vest in the Receiver at all. Subsection (2) of section 60 seems to be intended to supplement section 28 and to achieve the same object by saving the operation of similar enactments even after the property has vested in the Receiver. Section 60 lays down that an enforcement of an order of adjudication is to be deemed to be tantamount to an enforcement of a decree or order of a Court. Now a sale by a Receiver is certainly made in enforcement of an order of adjudication. Consequently, the provisions of section 16 of the Punjab Alienation Act which apply to execution of decrees and orders of Courts against land belonging to members of a notified agricultural tribe must, I think, be held to apply to a sale by the Receiver of land belonging to an insolvent who is a member of such a tribe.

The above view receives support from *Mirza v. Jhanda Ram* (1), in which it was held that although the land belonging to an insolvent who is member of an agricultural tribe vests in the Receiver, it could not

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be sold in view of the provisions of subsection (2) of section 60 of the Provincial Insolvency Act.

In the present instance, one of the insolvents (Sh. Fazal Haq) became a member of an agricultural tribe after adjudication. The other (Lal Chand) became so a few days before adjudication; but that would not make any difference as the order of adjudication relates back to the date of the petition by virtue of the provisions of subsection (7) of section 28 of the Act. It must therefore be held that both the insolvents acquired the status of a member of an agricultural tribe after the adjudication, *i.e.*, after their property had vested in the Receiver. But this fact would not I think prevent the operation of subsection (2) of section 60 at the time of sale of the property. Section 60 appears to be intended (as stated above) to save the application of enactments like the Punjab Alienation Act in the course of the enforcement of the order of adjudication as if it were tantamount to execution of a decree or order of a Court and will therefore apply to sales by the Receiver. The status of the insolvent at the time of the sale of the property must therefore I think be taken into consideration, in the same way as it is in execution of decrees. There is ample authority for the proposition that the status of the judgment-debtor at the time of the sale of his property in execution of decrees has to be taken into consideration in considering the application of section 16 of the Punjab Alienation Act or similar enactments to the sale, and the same principle will, I think, apply to a sale in enforcement of an adjudication order [*cf.* *Mahabir Prasad v. Mahesh Prasad* (1), *Ram Prasad v. Gore Lal* (2), *Ghulam Qadir Khan v. Bawa Gur Bakhsh Singh* (3)].

(1) 1930 A. I. R. (All.) 856.

(2) I. L. R. (1927) 49 All. 887.

(3) 45 P. R. 1902.

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The facts in *Mahabir Prasad v. Mahesh Prasad* (1) were practically on all fours with those in the present case except that the sale in that case was to be made in execution of a decree. The judgment-debtors in that case were notified as members of an agricultural tribe after the passing of the preliminary decree in a mortgage suit. It was held that land could not be sold in execution of the final decree in view of the provisions of the Bundelkhand Land Alienation Act, which correspond to those of the Punjab Alienation of Land Act. In *Ram Prasad v. Gore Lal* (2), it was held that so long as the land is not sold, the judgment-debtors are entitled to claim the privilege to which they are entitled under the same Bundelkhand Act. To the same effect is the view taken in *Thakar Das v. Roshan Din* (3) and *Chhaju Ram v. Muzaffar Ahmad* (4). In *Ghulam Qadir Khan v. Bawa Gur Bakhsh Singh* (5), land belonging to a person who was notified as a member of an agricultural tribe was sold in execution of a decree. The Punjab Alienation of Land Act, however, came into force before its confirmation and it was held that the sale could not be confirmed. If a sale made in enforcement of an order of adjudication stands on the same footing as a sale in execution of a decree, I do not see why the principle followed in the above rulings should not apply to the sales in the present case.

In insolvency proceedings, the creditors get the benefit of any property acquired by or devolving upon the insolvent after adjudication. In the same way there seems to be no reason why the insolvent should not get the benefit of any exemption to which he becomes entitled after adjudication.

(1) 1939 A. I. R. (All.) 856- (3) 1933 A. I. R. (Lah.) 397.

(2) I. L. R. (1927) 49 All. 387. (4) 1935 A. I. R. (Lah.) 845.

(5) 45 P. R. 1902.

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The answer to the second argument of the learned counsel for the appellants, *viz.*, that section 16 of the Punjab Alienation of Land Act does not apply because the sale by the Receiver is not a sale in execution of a decree or order of a Court has also no force in view of section 60 (2) referred to above, which places a sale in enforcement of an order of adjudication on the same footing as a sale in execution of a decree or order of a Court. *Gurbakhsh Singh v. Sardar Singh* (1) was a case under the Pre-emption Act and the question of the effect of section 60 (2) of the Provincial Insolvency Act did not arise and was not considered in that case.

The learned counsel for the appellants have further relied upon *Jnanendra Kumar v. Akash Chandra* (2) and *Mohammad Sharif v. Mrs. Boughton* (3) and urged that once a property has vested in the Receiver he cannot be divested of it by any status acquired by the insolvent subsequently. But in these rulings also, the effect of section 60 (2) does not appear to have been taken into consideration. In the present instance, moreover there is really no question of divesting the Receiver of any property. Section 16 of the Punjab Alienation Act only prohibits the sale of the land belonging to a member of an agricultural tribe. It has been, however, held in *Sardarni Datar Kaur v. Ram Rattan* (4) that the section does not prohibit the temporary alienation of such land, and this view has been consistently followed in this Court. It will be, therefore, open to the Receiver to arrange for the temporary alienation of the land of the insolvents according to law.

(1) I. L. R. (1935) 16 Lah. 173 (F. B.).

(3) 1938 A. I. R. (Lah.) 458.

(2) 1938 A. I. R. (Cal.) 325.

(4) I. L. R. (1920) 1 Lah. 192 (F. B.).

In view of the above findings it is unnecessary to discuss a preliminary objection which was raised in S. A. O. No. 40 of 1938, *viz.*, that the appeal was incompetent as the Receiver was not impleaded as a party within the period of limitation. But I may mention that the Receiver in this case was throughout supporting the case of the appellant in the Courts below and being interested in the result of the appeal, he could be impleaded as a proper party under Order 41, rule 20, Civil Procedure Code, even after the period of limitation had expired [*cf. Swaminatha Odayar v. Gopalaswami Odayar* (1)]. The real contesting respondent in this case was the insolvent himself and he had been duly impleaded. In view of all the circumstances, I have allowed the Receiver to be impleaded under Order 41, rule 20, Civil Procedure Code.

I dismiss both these appeals but in view of all the circumstances I leave the parties to bear their costs in this Court.

A. K. C.

Appeals dismissed.

(1) (1937) 2 Mad. L. J. 100

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