

Before Sir Norman Macleod, Kt., Chief Justice.

IN RE ABUBAKER HAJI ABDULLA *.

1924.

March 20.

Rent (War Restrictions) Act (Bom. Act II of 1918)—Statutory tenancy—Insolvency of tenant—Disclaimer by Official Assignee—Effect—Presidency Towns Insolvency Act (III of 1909), sections 62 and 66.

A monthly tenant of certain premises remained in possession thereof after being adjudicated insolvent. The Official Assignee having disclaimed interest, the landlord applied to the Insolvency Court, by motion, for an order for possession.

Held, that the statutory tenancy created by the Rent (War Restrictions) Act was the property of the insolvent within the meaning of section 62 of the Presidency Towns Insolvency Act, and, the disclaimer of the Official Assignee having put an end to the interest of the insolvent therein, the property reverted to the landlord and the latter was entitled to an order for possession under section 66 of the Act.

Parkinson v Noel⁽¹⁾, followed.

In re Finley. Ex Parte Clothworkers' Company⁽²⁾, applied.

ABUBAKER Haji Abdulla occupied certain premises as a tenant on a monthly rental of Rs. 50. On October 20, 1923, he was adjudicated insolvent. Since July 1, 1923, the rent had been in arrears but the insolvent remained in possession of the premises.

On March 17, 1924, the landlord wrote to the Official Assignee inquiring whether he claimed any interest in the tenancy. On March 27, 1924, the Official Assignee replied disclaiming any interest therein. On May 13, 1924, the landlord applied by notice of motion to the Insolvency Court for an order for possession of the premises in question.

M. V. Desai, for claimant.

The insolvent appeared in person.

* Insolvency Application No. 1073 of 1923.

⁽¹⁾ [1923] 1 K. B. 117.

⁽²⁾ (1888) 21 Q. B. D. 475.

MACLEOD, C. J. :—One Abubaker Haji Abdulla was adjudicated insolvent on or about October 20, 1923. At that time he was a monthly tenant of certain premises belonging to one Bai Rehmabai at a monthly rent of Rs. 50. At the date of adjudication the insolvent was in arrears of rent, and since the adjudication he has remained in possession of the premises without paying rent. The present applicant, the owner of the premises, called upon the Official Assignee to declare whether he claimed any interest in the tenancy of the portion of her premises let to the insolvent which in consequence of the insolvency had vested in the Official Assignee. The Official Assignee sent a notice disclaiming his interest in the tenancy. The applicant now asks for an order directing the insolvent to put her in possession of the portion of the premises in his occupation, contending that the order can be made under section 66 of the Presidency Towns Insolvency Act.

In the ordinary course a monthly tenancy could be put an end to by the landlord by giving notice, and there would be no necessity to call upon the Official Assignee to decide whether he should claim any interest in the tenancy. But the Bombay Rent (War Restrictions) Act, No. II of 1918, has made this difference, that the monthly tenant becomes a statutory tenant who cannot be ejected so long as he pays the standard rent. The questions, therefore, are whether the statutory tenancy, to which the insolvent became entitled, is his property within the meaning of section 62 of the Insolvency Act, and is vested by the adjudication order in the Official Assignee, and, if it is so vested, whether, on the Official Assignee disclaiming any interest in that property, the owner of the premises is entitled to an order for delivery against the insolvent. The question whether a statutory tenancy is property within the meaning of section 167 of the Bankruptcy Act, 1914, arose in

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Parkinson v. Noel⁽¹⁾. The plaintiffs having let to the defendant a dwelling house to which the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, applied, the defendant retained possession of it after the expiration of the term under the provisions of that Act, and when the defendant was adjudicated bankrupt, the trustee in bankruptcy disclaimed any interest in the house. The plaintiff then brought an action against the defendant for possession. It was held that the statutory tenancy was property within the meaning of section 167 of the Bankruptcy Act and passed under section 53 to the trustee in bankruptcy, that, on disclaimer thereof by the trustee, the bankrupt's interest in the premises ceased to exist and was no longer available for his benefit: consequently the plaintiffs were entitled to judgment. It is quite clear that the applicant would be entitled to file a suit for possession, because, apart from the disclaimer of the Official Assignee, the insolvent has excluded himself from the benefit of the Rent Act by not having paid the rent. The applicant, however, contends that by a motion before this Court he can obtain an order for possession which would have the same effect as an order for possession in an ejectment suit. In *In re Finley. Ex parte Clothworkers' Company*⁽²⁾, this point was not directly in issue, but the operation of section 55 of the Bankruptcy Act of 1883, which corresponds to section 66 of the Presidency Towns Insolvency Act, was considered. At p. 485 of the judgment there is the following passage:—

“Now the operation of those clauses, [sub-section 6 and sub-section 4 of section 55] in the simple case of a lease is not very difficult to ascertain. If there is nothing more than a lease, and the lessee becomes bankrupt, the disclaimer determines his interest in the lease under sub-section 2. He gets rid of all his liabilities, and he loses all his rights by virtue of the disclaimer. There is no need of any provision for vesting the property in the landlord,

⁽¹⁾ [1923] 1 K. B. 117.

⁽²⁾ (1888) 21-Q. B. D. 475.

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but the natural and legal effect of sub section 2 is that the reversion will become accelerated. There is nothing that I can see to be vested in the landlord. But he may require delivery of possession, and, if so, he can get it under sub-section 6."

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In re.

The disclaimer of the Official Assignee having put an end to the interest of the insolvent in his statutory tenancy of the premises, I think the landlord under section 66 is entitled to the order which he asks for. There will be an order directing the insolvent to deliver over possession of the premises in his occupation to the applicant.

Attorneys for claimant : Messrs. *Thakordas & Daru.*

Motion allowed.

O. H. B. •

ORIGINAL CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice.

A. ROZARIO (PLAINTIFF) v. MAHOMED EBRAHIM SARANG (DEFENDANT)*.

1924.

Decree—Suit to set aside on ground of fraud—Principle applicable—Decree obtained by insolvent in concealment of adjudication.

May 30.

Where an insolvent, without the knowledge of the Official Assignee and without bringing the fact of his adjudication to the notice of the Court, sued and obtained a decree in respect of a debt due to him prior to his insolvency, the decree was, in the circumstances of the case, set aside on the ground of fraud, in a suit filed by the judgment-debtor for that purpose.

Discussion of authorities, and consideration of the difficulty of laying down any definite principle on which to distinguish between fraud the proof of which will support a suit to set aside a decree, and fraud the proof of which will be ineffectual for that purpose.

ONE Mahomed Ebrahim Sarang was adjudicated insolvent on his own petition on November 30, 1922. Beyond, however, submitting to the Official Assignee a rough statement of his liabilities and outstandings, he failed to take any further step to prosecute his

* O. C. J. Suit No. 1050 of 1924.