

APPELLATE CIVIL,

*Before Sir Francis W. Maclean, K. C. I. E., Chief Justice,
and Mr. Justice Banerjee.*

A. B. MILLER, OFFICIAL ASSIGNEE OF BENGAL AND ASSIGNEE TO THE
ESTATE OF AMBICA CHARAN DUTT, INSOLVENT (JUDGMENT-DEBTOR)
v. LUKHIMANI DEBI (DECREE-HOLDER).^{*}

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*Insolvency Act (11 and 12 Vic. c. 21)—Decree, attachment in execution of
—Vesting order—Official Assignee—Priority of claim—Civil Procedure
Code (Act XIV of 1882), s. 244—Whether Official Assignee is the
representative of the judgment-debtor.*

A vesting order made under the Insolvency Act (11 and 12 Vic. c. 21) has not the effect of giving the Official Assignee priority over the claim of a judgment-creditor in respect of property attached, at his instance, previous to the passing of such order.

Anund Chunder Pal v. Panchoo Lall Soobalah (1) followed.

Seemle: The Official Assignee is the representative of an insolvent judgment-debtor within the meaning of s. 244 of the Civil Procedure Code.

THIS appeal arose out of an application for execution of a mortgage-decree. A decree was made on the 7th July 1885 under a mortgage bond in favour of one Nobin Kristo Roy Chowdhry and on the 11th June 1895, Lakshimoni Debi, as administratrix to the estate of Nobin Kristo, attached certain immoveable properties of the judgment-debtors. In 1898 one of the judgment-debtors Ambika Churn Dutt was declared an insolvent; and on the 6th May 1898 a vesting order was made. Subsequently an order for sale of the properties attached was made. On the 3rd October 1898 the Official Assignee made an application to the First Subordinate Judge of 24-Pergannahs and objected to the sale of the properties on the ground that, inasmuch as a share of the said properties had vested in him, the sale could not take place. The learned Subordinate Judge overruled the objection and allowed execution to proceed. Against this decision the Official Assignee appealed to the High Court.

^{*} Appeal from Order No. 102 of 1899, against the order of Babu Karuna Dass Bose, Subordinate Judge of 24-Pergannahs, dated the 18th of February 1899.

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1901, MARCH 21. *Babu Saroda Churn Miller* (with him *Babu Baidya Nath Dutt* and *Babu Nalini Nath Sen*) for the appellant.
Babu Karuna Sindhu Mookerjee for the respondent.

1901, MARCH 28. MACLEAN, C. J.—Two points arise upon this appeal. The facts stated shortly, are these : In 1895 the decree-holder, in a suit to enforce his mortgage, attached certain immoveable property. In 1898, one of the judgment-debtors was declared an insolvent. On the 6th of May 1898 a vesting order was duly made in the insolvency proceedings. Subsequently an order for sale of the property attached was made, and on the 3rd of October, 1898, the Official Assignee intervened, and on the 18th of February 1899, the First Subordinate Judge of 24-Pergunnahs passed the order, which is the subject of the present appeal. By that order he held that the decree-holder had priority in respect of the attached property over the Official Assignee. The latter has appealed. A preliminary objection is taken that no appeal lies in this case, on the ground that the appellant, the Official Assignee, is not the “representative” of the judgment-debtor within the meaning of clause (c) of s. 244 of the Code of Civil Procedure. The point is not free from difficulty. There are authorities in the Allahabad and Bombay High Courts ; the first is the case of *Kashi Prasad v. Miller* (1) and the second, where, however, the point is only incidentally touched upon, is the case of *Sardarmal Jagonath v. Aravayal Sahghapathy Moodliar* (2), which are against the view of the Official Assignee being the “representative” within the meaning of the section. If these authorities be well founded, no appeal lies to this Court.

It is not necessary for the purposes of to-day to decide the point, but the inclination of my opinion is against the above view. It seems to be a somewhat narrow construction to place on the term “representative,” looking at the position in which the Assignee stands to the insolvent. The Official Assignee no doubt represents in one sense, the interests of the judgment-debtor’s creditors generally, but can it be justly said that he does not also represent the interests of the judgment-debtor himself? For instance to the extent of any surplus remaining after paying the

(1) (1885) I. L. R. 7 All. 752.

(2) (1896) I. L. R. 21 Bom. 205 (219).

creditors, the Official Assignee represents the debtor in respect of that surplus.

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Upon the merits it looks, at first sight, as if there were a conflict between two Full Bench decisions, *viz.*, the one *Anund Chunder Pal v. Panchoo Lall Soobalah* (1), in which it was distinctly held that the Official Assignee can only take the interest, which the judgment-debtor had, which in this case would be an interest subject to the rights of the attaching creditor, and the other *Shib Kristo Shaha Chowdhry v. A. B. Miller* (2). But there is this distinction between the last mentioned case and the present one; in the former the attachment was before judgment; here it is after decree. But apart from this distinction, which, perhaps, in principle is not very material, my view is that the law, as propounded in the earlier case, ought to be followed on the short ground that the Official Assignee stands in the shoes of the insolvent, and that he takes the property subject to any equities, which are good as against the latter. In other words the Official Assignee cannot be in a better position than the insolvent.

The appeal, therefore, fails and must be dismissed with costs. The record may be sent down as early as possible.

BANERJEE, J.—I am of the same opinion. There are two questions arising for determination in this case: *First*, whether the Official Assignee is the representative of the insolvent judgment-debtor within the meaning of s. 244 of the Code of Civil Procedure, and the point determined in this case is, consequently, one under clause (e) of that section, so as to make the order of the Court below appealable; and, *second*, whether a vesting order made under the Insolvency Act 11 and 12 Vic. c. 21, has the effect of giving the Official Assignee priority over the claim of a judgment-creditor in respect of property attached at his instance previous to the passing of such order.

Upon the first question I may say that the matter is not free from doubt and difficulty. The question whether the point in this case comes under clause (e) of s. 244 of the Code of Civil Procedure has to be determined with reference to the nature

(1) (1876) 14 W. R. (F. B.) 33.

(2) (1883) I. L. R. 10 Calc. 150.

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of the objection raised by the Official Assignee. His objection here was that the property in dispute, though belonging to the judgment-debtor, was not liable to be sold in execution of the decree obtained by the respondents against him, by reason of the order passed in the insolvency proceedings. So far as that objection goes the Official Assignee represents not so much the judgment-debtor as the creditors taken as a body. But though that is so, it must be borne in mind that, if the Official Assignee succeeds in defeating the present application for execution of the decree, the property released from attachment will go to augment the assets of the insolvent for distribution among his creditors, and may help to secure the final discharge of the insolvent under s. 59 of the Act.

And I may add that the Official Assignee so far represents the judgment-debtor that all the property that the judgment-debtor may have, is vested in him. He may also, under s. 29 of the Statute, institute and defend actions and suits on behalf of the insolvent. On the whole, therefore, I agree with the learned Chief Justice in holding that the Official Assignee is a representative of the insolvent judgment-debtor within the meaning of s. 244 of the Code, and that the order appealed against is, therefore, appealable.

On the second point raised in this case, I need only say that it is governed by the decision of the Full Bench in the case of *Anund Chander Pal v. Panchoo Lall* (1) and that the case of *Shib Kristo Shaha Chowdhry v. A. B. Miller* (2) is distinguishable from the present, as the attachment in that case was one before judgment and not in execution of a decree, as it was in this case.

S. C. G.

Appeal dismissed.

(1) (1870) 14 W. R. (F. B.) 33.

(2) (1883) I. L. R. 10 Cal. 150.