LETTERS PATENT APPEAL

Before D. Falshaw, C.J., and Harbans Singh, J.

RATTAN CHAND,—*Petitioner*

versus

HANS RAJ AND OTHERS,—*Respondents*

Letters Patent Appeal No. 212 of 1961

1962

Nov., 28th

Provincial Insolvency Act (V of 1920)—S. 68—Application by stranger to establish his title—Whether necessary to be made in Insolvency Court—Application barred by time—Whether can be entertained by Insolvency Judge.

Held, that it is not obligatory on the stranger to apply to the Insolvency Court at all to establish his title; he can go to the ordinary Court to establish his title within the ordinary period of limitation. If, however, he does want a relief to be given to him against, what he considers to be an improper act of the Receiver, he must comply with the provisions of section 68 of the Provincial Insolvency Act, 1920 and take the consequences that follow with regard to the finality of the orders, as provided under sections 4 and 75 of the Act. If the application is filed beyond 21 days as provided in Proviso to section 68 of the Act, the Insolvency Judge has no jurisdiction to entertain it.

Appeal under Clause X of the Letters Patent against the judgment, dated 26th May, 1961, passed by the Hon'ble Mr. Justice Mehar Singh in S.A.O. No. 27 of 1957 reversing that of Shri B. L. Goswami, District Judge, Barnala, dated 25th June, 1957, who reversed that of Shri Kartar Singh, Sub-Judge, 1st Class, Barnala, exercising powers under the Provincial Insolvency Act, dated 29th May, 1956, and dismissed the objections of Hans Raj.

J. N. KAUSHAL AND MANGAT RAI AGNIHOTRI, ADVOCATES, for the Petitioner.

H. L. SIBBAL, D. N. AGGARWAL, R. N. AGGARWAL, D. C. GUPTA AND J. V. GUPTA, ADVOCATES, for the Respondents.

JUDGMENT

Harbans Singh, J.

HARBANS SINGH, J.—This Letters Patent Appeal against the order of a learned Single Judge has arisen in the following circumstances : Brij Lal and Hans Raj were two brothers being the sons of Jangiri Mal. In the year 1949 an application was made by the creditors of Brij Lal and the Insolvency Judge, Barnala, adjudicated him as insolvent. Shri Mohinder Lal was appointed as the Receiver by the order of the Court dated 25th of November, 1954, of the property of Brij Lal at Ahmedgarh (then in Pepsu) and was directed to take possession of his property. On 26th and 27th of November the Receiver took possession of and attached the property, including some Urban property and agricultural land, which is the subject-matter of these proceedings. Hans Raj filed an objection application on 21st of December, 1954, purporting to be under section 4 of the Provincial Insolvency Act (hereinafter referred to as the Act) alleging that the property, detailed in the application, belonged to him, that the same was in his exclusive possession; that the insolvent had nothing to do with it and that the Receiver had taken possession of the property knowing full well that the same belonged to the objector. He prayed that the property be released from attachment and possession restored to him and that the Receiver be ordered not to realise any rent of the property which he was doing. He also prayed for the refund of the rent that he may have already realised. The Receiver, while admitting that he had taken possession of the property, pleaded that he had taken possession of it at the instance of B. Rattan Chand and Kishori Lal, sons of Kabli Mal, creditors. The issue originally settled, in addition to the issue of relief, was as follows:—

Is the objector owner of the suit property

and in possession thereof and is it accordingly not liable to be attached by the Receiver ?

Later another issue was added as No. 3 as follows:—

Whether the objection petition is time-barred ?

Evidence was led by the objector in order to establish that during the lifetime of their father Jangiri Mal, the parties had partitioned the family property and that he was in exclusive possession of the urban and agricultural property claimed by him. After considering the evidence the learned Insolvency Judge came to the conclusion that there had been partition between the parties and that Hans Raj was in exclusive possession of the property in dispute. In view of this, he held that the same was not liable to be taken possession of by the Receiver. On issue No. 3 the Court held that the application had not been filed under section 68 of the Act and, therefore, need not have been filed within 21 days and that the same being under section 4 of the Act, was within time. The Receiver went up in appeal against this order. The learned District Judge differed from both these findings. In paragraph 9 he observed as follows :—

"* * * I am not convinced that the properties in dispute are held exclusively either by Hans Raj or Brij Lal."

He then went on to discuss the evidence of the Bank of Patiala who was admittedly a tenant in one of the houses in dispute and also the evidence of the officials of the post office, a tenant in another part of the building. He also referred to a number of entries in the *bahis* of the so-called tenants but inasmuch as Hans Raj had not produced his own books of account and there was no

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evidence that firm Jangiri Mal Hans Raj, on whose behalf he was receiving the rent, was his exclusive firm in which his brother was not a partner, the learned District Judge came to the conclusion that there was no severance in the status of the joint Hindu family and no partition of the entire property of the joint Hindu family came about. On the question of limitation, he found against Hans Raj objector and, consequently, accepted the appeal and dismissed the objection petition of Hans Raj. Hans Raj came up in second appeal from order (No. 27 of 1957) and the learned Single Judge confirmed the finding of the Court below that there has been no complete partition between the two brothers but that there had been partial partition between the brothers. The learned Judge went through the documentary and oral evidence and came to the conclusion that the lower appellate Court was justified in discarding all this evidence which was led to show the exclusive possession of Hans Raj. The learned Judge then went on to say as follows:—

> "Now what remains then is the finding of the learned Insolvency Judge that the urban properties and half of the agricultural land, properties in question, have been in possession of Hans Raj appellant since long, a finding which has not been questioned by the receiver in appeal to the first appellate Court and a finding which has not been reversed by the appellate Court."

Partial partition having been admitted, relying on the statement of law, as given in paragraph 328 of Mulla's Hindu Law (12th edition), that if partial partition is proved, the burden is on the person alleging that a particular piece of property which was in exclusive possession of

one of the brothers after partition, was still joint, the learned Judge held that in the present case the property in dispute must be deemed to be the separate property of Hans Raj. On the question of limitation, he set aside the conclusions of the learned lower appellate Court, and held the application to be within time. He, consequently, set aside the order of the lower appellate Court and restored that of the trial Court. Rattan Lal, who replaced the original Receiver on the latter's death, filed this Letters Patent Appeal.

The first point urged by the learned counsel for the appellant is that the objection application was barred by time. Section 68 of the Provincial Insolvency Act runs as follows:—

> "If the insolvent or any of the creditors or any other person is aggrieved by any act or decision of the receiver, he may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just:
>
> Provided that no application under this section shall be entertained after the expiration of twenty-one days from the date of the act or decision complained of."

Section 4 is to the following effect:—

> "4(1) Subject to the provisions of this Act, the court shall have full power to decide all questions whether of title or priority, or of any nature whatsoever, and whether involving matters of law or of fact, which may arise in any case of insolvency * * * *."

Section 75 relates to appeals. According to sub-section (1), any person aggrieved by an order

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of Insolvency Judge can file an appeal to a District Court, whose decision shall be final, the power of revision being reserved with the High Court. The second proviso to sub-section (1), however, runs as follows :—

> "Provided further, that any such person aggrieved by a decision of the District Court on appeal from a decision of a subordinate Court under section 4 may appeal to the High Court on any of the grounds mentioned in sub-section (1) of section 100 of the Code of Civil Procedure, 1908."

The sole point for consideration in this case is whether an application of the type made by the objector, irrespective of the fact whether the same has to be decided by the Court by virtue of the provisions of section 4, has to be filed within 21 days because of the proviso to section 68 of the Act. This question is dependent on the fact whether the objector was aggrieved and was seeking relief from the Court against "an act or decision of the Receiver". The view taken by the learned Single Judge is that inasmuch as, according to the order of adjudication, on appointment of the Receiver, the latter was directed to take possession of all the property of the insolvent, the act of the Receiver was not an independent act but one which he carried out in obedience to the orders of the Court. It would, however, appear that the order of the learned Insolvency Judge is of a general nature which flows automatically from the order of adjudication, under sub-section (2) of section 28 of the Act. There is no specific order of the Court to the Receiver to take possession of the particular property which is now in dispute. This distinction has been clearly brought out in a Division Bench judgment of the

Allahabad High Court, *Nathu Ram* v. *Madan Gopal* (1), which has also been noticed by the learned Single Judge and the Courts below. In this case it was on an application made by a creditor that the Insolvency Court ordered the Receiver to take possession of certain property and in pursuance of that order the Receiver attached that property. An application was filed by the son of the insolvent more than 21 days after the attachment. Sulaiman, J. (as he then was), while delivering the judgment of the Division Bench, observed as follows:—

> "The house was attached under an order of the insolvency Court, and not by any independent decision of the official receiver. The actual attachment was a mere ministerial act done in pursuance of the order of the Court. The objector was not challenging the act of the receiver, who had no voice in the matter, but the order of attachment passed by the Court *ex-parte*. It seems to us that it was not an act or decision of the receiver within the meaning of section 68. On the other hand, it was a claim put forward by a stranger to the insolvency proceedings setting up his own independent title and it fell within the scope of section 4, Provincial Insolvency Act."

An earlier case of the same Court, *Bhairon Prasad* v. *S. P. C. Dass* (2), and a decision of Oudh Court were distinguished by making the following observations:—

> "* * in those cases there was not any order of the Court directing attachment,

(1) A.I.R. 1932 All. 408.
(2) A.I.R. 1919 All. 274.

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but the act complained against was an act of the receiver himself. Those cases are, therefore, distinguishable."

In *Bhairon Prasad's case* (2), also a Division Bench judgment, the head-note runs as follows:—

> "Where in proceedings in insolvency a trespass is committed, whether by the official receiver or by anybody else, upon the property of a stranger to the proceedings, he has the ordinary right to seek redress in the ordinary civil Court, and is not bound to apply to the insolvency Court. If, however, he does so apply under section 22 (provisions of this section being similar to those of the present section 68) he must comply with the terms of that section."

In that case, the application was made after 21 days and the Court held the same to be barred by time and it was further held that the Insolvency Judge had no jurisdiction to entertain the same. In *Jai Kishan Dass* v. *Chiragh Din* (3), a Division Bench of the Court held that even an application under section 4 must be made within 21 days, if it is one to set aside an order of the official receiver. No decision to the contrary was brought to our notice.

The learned counsel for the respondent urged that if it were to be held that a stranger must go to the Court of the Insolvency Judge to establish his title within 21 days of the attachment, that would work great hardship. As has been observed in the decisions noted above, it is not obligatory on the stranger to apply to the Insolvency Court at all to establish his title; he can go to the ordinary Court to establish his title within the ordinary period of limitation. If, however, he does want

(3) A.I.R. 1935 Lah. 60.

a relief to be given to him against, what he considers to be an improper act of the Receiver, he must comply with the provisions of section 68 and take the consequences that follow with regard to the finality of the orders, as provided under sections 4 and 75 of the Act. It was not disputed that in the present case, the application was made more than 21 days after the attachment. The application, therefore, was barred by time and, consequently, the Insolvency Judge had no jurisdiction to entertain the application.

In view of our above finding, it is hardly necessary to go into the question whether a second appeal lay to this Court or not and whether the learned Single Judge was justified in interfering with the finding of fact arrived at by the learned lower appellate Court. However, even if a second appeal lay, it is now well-settled and was not disputed that it could be only on a point of law and the learned Single Judge could not interfere with a finding of fact arrived at by the lower appellate Court after consideration of the evidence on the record even if such a finding be grossly erroneous. The learned Single Judge in the passage, which has been reproduced above, felt that the learned lower appellate Court had not categorically set aside the finding of the Court below that Hans Raj was in exclusive possession of the property in dispute and that this finding was not even challenged in appeal. With great respect, I feel that this is not quite correct. The trial Court came to a definite conclusion that Hans Raj was in exclusive possession, and after considering the evidence the learned lower appellate Court clearly observed that he was not convinced that the property in dispute was held exclusively by Hans Raj or by Brij Lal. Thus the finding of the trial Court that the property was exclusively held by

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Hans Raj was definitely dissented from though the learned lower appellate Court had further stated that it could not be held that the property was exclusively held by Hans Raj either. The latter part of the finding, however, in no way showed that the learned lower appellate Court did not set aside the finding of the learned trial Court. No doubt, the learned Single Judge gave reasons for preferring the finding of the trial Judge to that arrived at by the learned lower appellate Court but this he could not do because he did not come to the conclusion that this finding was vitiated in any manner.

In view of my finding with regard to the question of limitation, this appeal must be accepted and the objection petition dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs throughout.

Falshaw, C.J.

D. FALSHAW, C.J.—I agree.

K.S.K.

REVISIONAL CIVIL

Before Daya Krishan Mahajan, J.

SHIV DATT AND OTHERS;—*Petitioners*

versus

MST. SARDAR BEGUM AND OTHERS,—*Respondents*

Civil Revision No. 151-D of 1959

1962

Dec., 3rd.

Administration of Evacuee Property Act (XXXI of 1950)—Proviso to section 16(3)—Whether overrides the provisions of Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—Application for fixation of standard rent—Whether entertainable under the Rent Control Act.

Held, that the proviso to section 16(3) of the Administration of Evacuee Property Act does not in any way override the provisions of the Rent Control Act. All it does is to make the lessee of the Custodian as a lessee of the evacuee or his heir to whom the property is restored, with the rider that the lease will continue till determined by lapse of time or by operation of law. Therefore, the lease would stand on the same footing as a lease granted by the