

Raghubir Singh And Anr. vs Balkishen And Ors. on 28 November, 1950

Equivalent citations: AIR1952ALL328

JUDGMENT

Mushtaq Ahmad, J.

1. This is an appeal by Raghubir Singh and his son, Kunwar Brij Raj Singh, against an order refusing their application for amendment of a mortgage decree under Section 8, U. P. Debt Eedemption Act (XII [13] of 1940).

2. The application was dismissed by the Court below on the ground that appellant 1 was an undischarged insolvent and apppellant 2, though a discharged insolvent, had still his property vested in the Receiver. The effect of such vesting of the appellants' property in the Eeceiver was that they themselves had ceased to be the owners of any property and as such ceased to be entitled to apply for amendment of the decree under the said Act. The Court below relied on the case of Gauri Shankar v. Jamuna Prasad, 1944 ALL. L. J. 440 and that of Abu Obaida v. Jamil Hasan, 1947 ALL. W. R. H. C. 260.

3. Learned coansel for the appellants has disputed the correctness of the order on the ground that, under Section 28(6), Provincial Insolvency Act, the debt in question being a secured debt, the appellants still continued to be the owners of the property so as to be entitled 60 apply for the relief granted by the C. P. Debt Redemption Act. His other ground against the judgment under appeal was that, under Expln. I to Section 2 (2), U. P. Debt Eedemption Act, where a proprietor or a tenant had a subsisting interest in the land, but, by reason of a temporary transfer, did not for the time being pay the rent or local rate payable in respect of that land, such rent or local rate should, for the purposes of this sub-section, be deemed to be payable by him.

4. So far as his first ground is concerned, it is quite obvious that the provisions in Section 28(6), Insolvency Act are solely for the benefit of secured creditor, and they have nothing to do with the debtor. That sub section reads :

"Nothing in this section shall affect the power of any secured creditor to realise or otherwise deal with his security, in the same manner as he would have been entitled to realise or deal with it if this section had not been passed."

The plain meaning of this provision must be that an order of insolvency passed against a person would not affect a secured creditor, who as usual, would be entitled to avail himself of all proceedings that may be allowed by the law for the purpose of realisation of his debt.

5. The second argument of learned Counsel with reference to Expln I to Section 2 (2), U. P. Debt Eedemption Act is equally untenable. It underlies the assumption that in spite of an order of adjudication passed against a person he continues to own the property which, under the provisions of the Act, really vests in the Receiver. This point is fully covered by the two decisions referred to in the judgment of the Court below, and we do not think it necessary to reconsider the matter any further. The latter case was based mainly on a previous bench decision of this Court in *Sakhawat Ali v. Badha Mohan*, 41 ALL. 243, in which the argument now advanced on the authority of Expln. I to Section 2 (2) of the Act was specifically considered. Their Lordships remarked: "It was suggested in argument in support of the appeal that the insolvent has an interest in the surplus, which may arise after distribution. It has long been settled by the English Court of Appeal that this view, as a matter of law, is unsound. He has no legal interest, but merely a hope or expectation. See *ex parte Sheffield*, *In re Austin* (1879) 10 Ch. D. 434. The same Court *In re Leadbitter*, (1878) 10 Ch. D. 368 decided that, although an insolvent was entitled to the surplus, he was not a party interested in the costs of an insolvency proceeding. There can be no doubt that any surplus that may be left after the satisfaction of the debts is payable to the debtor under Section 67 of the Act, but, so long as such surplus has not come into existence, that is to say, so long as the debts have not been completely discharged, there can be no question of the debtor retaining any interest in the property, otherwise it would be a case of rival ownerships in the same property vesting in two different persons, which is legally untenable. The property, for the purpose of the payment of the debts vests completely in the Receiver to the complete divestment of the debtor.

6. No other point was raised. In every aspect of the matter we are satisfied that the view taken by the Court below was correct.

7. Accordingly, we dismiss the appeal. As the respondents are not represented there is no question of their costs.

8. The appeal having been dismissed, the stay order is discharged.