
(1930) 02 AHC CK 0025
In the Allahabad High Court

Abdul Muwali

APPELLANT

Vs

Tahsildar of Kashipur

RESPONDENT

Date of Decision : 19-02-1930

Acts Referred:

Citation : AIR 1930 All 511

Hon'ble Judges : Niamatullah, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Niamatullah, J.—A preliminary objection has been taken to the hearing of this appeal on the ground that no appeal lies to this Court from the order of Mr.G.L. Vivian, the Deputy Commissioner of Kumaun,"dated 26th July 1928, passed in insolvency proceedings.

2. One Mubarak Husain was adjudged insolvent on 8th December 1925 on application presented by his creditor Sukhdeo on 28th March 1924 and the 13th May 1925. He had executed a mortgage deed, dated 30th December 1922 in favour of Abdul Muwali, the appellant. The Tahsildar of Kashipur who was appointed receiver made an application for annulment of the mortgage aforesaid on 10th January 1928. The Deputy Commissioner, Naini Tal, who exercised the powers of a civil Court under the Insolvency Act, annulled the mortgage impugned by the receiver, u/s 53, Insolvency Act. The present appeal was filed by the mortgagee Abdul Muwali impugning the correctness of the order of the Deputy Commissioner referred to.

3. It has been argued for the respondent that the forum of appeal from the order of the Deputy Commissioner exercising jurisdiction of a civil Court under the Provincial Insolvency Act is the Court of the Commissioner, Kumaun Division, and not this Court. The contention is based on Rs. 11, 12 and 24 of the Kumaun rules which, it is alleged, are applicable to the present case. Assuming for the present, that the rules are applicable we have no hesitation in holding that the appeal lay

to the Commissioner, Kumaun Division, and not to this Court. R. 11 provides that:

the Commissioner shall exercise the powers and perform the duties of a High Court for the Kumaun Division for the purposes of all Acts other than the Succession Act, 1865, the Companies Act, 1882 and the Railways Act, 1890.

4. Rule 12(2) authorizes the Deputy Commissioner to exercise the powers and perform the duties of a District Judge for the purpose of all Acts other than the Succession Act, 1865. Rule 24 makes decrees and orders passed by the Deputy Commissioner to be appealable to the Commissioner. It is clear from these provisions that the Deputy Commissioner, Kumaun Division, is a District Court within the meaning of Section 3, Provincial Insolvency Act, and the Commissioner of Kumaun Division is the High Court for the purposes of Section 75 of the same Act and therefore an appeal from order setting aside an alienation which lies u/s 75 to the High Court must lie to the Court of the Commissioner, Kumaun Division, who has the power of a High Court in that respect. If therefore the Kumaun rules are applicable to the case, the preliminary objection raised by the learned advocate for the respondent is irresistible.

5. As to whether the Kumaun rules are applicable, a reference to notification No. 543/7-421 published in the U.P. Gazette of 3rd April 1926 leaves no room for doubt that the Kumaun rules continue to apply, though the notification has transferred the jurisdiction of the Deputy Commissioner in certain civil matters including insolvency proceedings to the District Judge of Pilibhit. If the arrangement introduced by the notification applies to the present case the jurisdiction of this Court cannot be questioned. But a certain "qualification," which has been super added to the notification, runs as follows:

6. Nothing in this notification... shall operate to affect the disposal of: (a) any suit or proceeding instituted before the first day of April 1926, in any Court or before any officer of the Kumaun Division; or (b) any application, appeal, review, revision, proceedings in execution, or other proceeding filed or taken, whether before, on or after the said day in any such Court or before any such officer, in continuation or pursuance of any suit or proceeding defined in para. (a), but all such applications, suits and proceedings shall be heard and decided as if this notification had not been, issued.

6. Though the application for annulment was made after the date of this notification, the order of adjudication and the applications for adjudication were made before the date of the aforesaid notification. We are of opinion that the application, dated 10th January 1928 for annulment of the mortgage deed executed by the insolvent, was "in pursuance of" the insolvency proceeding. We think that annulment of an alienation u/s 53, Insolvency Act, is invariably in pursuance" of the order of adjudication. If, therefore, the order of adjudication was made before the notification, as is the case here, the application for annulment of a transfer made by the insolvent would be subject to the Kumaun rules and not to the arrangement introduced by the notification referred to above.

7. For these reasons we uphold the preliminary objection and return the memorandum of appeal to the appellant for presentation to the proper Court, if so advised. The respondent will have his costs of this Court.