(1939) 08 PAT CK 0037

In the Patna High Court

Antarijyami Naik and Others — APPELLANT

Vs

B.S. Rath — RESPONDENT

Date of Decision : 22-08-1939

Acts Referred:
Provincial Insolvency Act, 1920 — Section 4, 5

Citation : AIR 1941 Patna 216

Hon'ble Judges : Harries, C.J;Mohammad Moor, J

Bench : Full Bench

Judgement

Harries, C.J.—This is an appeal by certain insolvents against an order of the learned District Judge of Cuttack made in an insolvency matter.

2. The respondent who is the Official Receiver of Ganjam petition, ed the insolvency Court under Sections 4 and 5, Provincial Insolvency Act, 1920, praying: (1) for a declaration of the right of the Official Receiver to receive the usufruct arising from certain lands set out in Schedule A and B which were held by the insolvents from year to year including the crops than standing on the said lands, (2) for an injunction to restrain the insolvents from misappropriating the usufruct from the said lands including the crops then standing thereon.

3. The petition came before the learned subordinate Judge of Berhampore and he held that the crops in question did not vest in the Official Receiver and accordingly dismissed the petition. On appeal the learned District Judge reversed the decision of the learned subordinate Judge and held that these crops did vest in the Official Receiver. He remanded the case to the Court below to deal with the question of the injunction. Against that order this present second appeal has been preferred. The appellants were adjudicated insolvent and it appears that their debts amount to Rs. 50,000. Appellant 1 is the owner of certain land which is sardar inam and appellant 2 is the owner of a naik inam. These inam lands, it is alleged on behalf of the appellants, cannot be attached in execution of a decree and cannot vest in the Official Receiver on insolvency.

4. The learned subordinate Judge held that these inam lands were protected from attachment by Section 5, Madras Hereditary Village Offices Act, 1895 (Act III of 1895) and as the land could not be attached in execution it could not vest in the Official Receiver by reason of Section 28(5), Provincial Insolvency Act. That section deals with what property vests in the Official Receiver when a person is adjudicated insolvent and Sub-section (5) is in these terms:

The property of the insolvent for the purposes of this section shall not include any property (not being books of account) which is exempted by the Civil Procedure Code, 1908, or by any other enactment for the time being in force from liability to attachment and sale in execution of a decree.

5. Applying this Sub-section, the learned subordinate Judge held that the crops did not vest in the Official Receiver and dismissed the petition. The learned District Judge appears to have been of opinion that the protection afforded to these inam lands had ceased to exist when the holders of the inam lands had ceased to perform any useful functions. He points out that the protection was given originally on the ground of public policy but in his view public policy of the present time demanded that the insolvent holders of these lands should pay their debts. He accordingly reversed the decision of the learned subordinate Judge and held that the crops on these lands vested in the Official Receiver.

6. On behalf of the appellants, it has been contended that the present case is clearly within the protection afforded by Section 5, Madras Hereditary Village Offices Act, 1895. The Act applies to a number of offices which are enumerated in Section 3, and Section 5 is in these terms:

The emoluments of village offices, whether such offices be or be not hereditary, and, in the scheduled districts as defined in the Scheduled Districts Act, 1874, all such emoluments and other emoluments granted or continued in remuneration for the performance of duties connected with the collection of the revenue or the maintenance of order, shall not be liable to be transferred or encumbered in any manner whatsoever and it shall not be lawful for any Court to attach or sell such emoluments or any portion thereof.

7. The learned District Judge came to the conclusion that there was a difference between the crops on the land and the land itself. He appears to have thought that though the land itself might be protected by this section the crops which were grown yearly on it would not be within the protection. Land, apart from the produce or the income to be derived from it, is of no value to an office-holder. If land is given as an emolument for the office then clearly what is intended is that the holder of the office should have the crops or the profits arising from the land year by year in payment for the duties which he has performed. In my view, it is impossible to separate the land from the crops growing thereon when dealing with this section. In fact the matter has been considered by the High Court of Madras in a number of cases and it must be remembered that this case comes from the Ganjam district which was within the jurisdiction of the Madras High

Court until the new province of Orissa was created.

8. In Kannam Naidu v. Latchanna Dhora (1900) 23 Mad. 492 it was held by a Bench that an attachment by a decree-holder of a crop growing on certain lands in a zamindari which were the inam service lands held by the judgment-debtor as a village servant, was illegal and was rightly set aside by the Court below.

9. That case has been expressly approved in a later Pull Bench case of the same High Court, namely Gokavarapu Swami Vs. Manda Satheyya and Another, . In that case it was held that the attachment in execution of a decree of growing crops on potter service inam lands is prohibited by the Madras Hereditary Village Offices Act, 1895. It appears to me that we are bound to follow the Madras decision having regard to the fact that this case comes from the ex-Madras area.

10. Mr. Kay who appeared on behalf of the respondent has contended that the decisions of the Madras High Court have not been consistent and he has relied upon the case Khetrabaro Nawanagaram v. Sobhanapuram Harikriahna 33 Mad. 340. In that case it was laid down that Section 5 of the Act in question only prohibits the transfer of ownership and that a permanent lease of land forming the emoluments of an office did not amount to a transfer of ownership and was not prohibited under the Act. It appears to me that this case is clearly distinguishable from the other Madras cases which I have cited. If the holder of a service inam land leases the land he obtains the rent which is the emolument of his office.

11. On the other hand, if he retains the land then the only way in which he can obtain the yearly emoluments is by appropriating the crops of the land which is in his possession. In my view, the law has been clearly and consistently laid down that growing crops on service inam lands cannot be attached in execution of a decree hold against the holder of the inam lands.

12. On behalf of the respondent, Mr. Ray has argued that it was not established in this case that the land in question was service inam land and further that it had not been established that it was land protected by the Madras Act, 1895. It is clear that the, Government of Madras had recognized these particular service tenures as falling within the purview of the Act though it is not clear from the standing orders of the Board of Revenue, Madras, why they were so regarded. The fact that the Madras Government regarded them as falling within the Act would not bind this Court but unfortunately for the respondent he has conceded expressly before the District Judge that these lands are lands which are protected by the Madras Act of 1895. The only point which the respondent has made throughout this case is that the standing crops are not protected from attachment though the land itself is.

13. In my view, it is not open to the respondent in second appeal to take this point because it has been conceded in both Courts that the land is protected by this Act and by reason of that admission the appellants have not adduced any evidence showing precisely why the land does come within the purview of the

Act. It was unnecessary for them, to establish that having regard to the admission made on behalf of the Official Receiver.

14. It has been further contended by Mr. Ray on behalf of the respondent that even if the crops are protected by Section 5 of the Act then only such portion is protected as would be necessary to maintain the Sardar and Naik. This is a point that was never investigated in the Court below and there is no finding as to what would be necessary to maintain these two persons. In any event it appears to me that the Court cannot go into that question. These lands were granted to the predecessors of the insolvents in order that the profits arising there from should be their emoluments. Presumably the Government which granted these lands had come to the conclusion that the profits would provide only a sufficient remuneration for the services which they were qalled upon to perform. It is too late now to go into the question and to ask the Court to hold that very little is sufficient to remunerate the Sardar and Naik for any services which they may have to perform.

15. Lastly, it was contended on behalf of the respondent that no services are in fact now rendered and that being so the whole purpose of this tenure has disappeared. Accordingly it was urged that the District Judge was right in holding that public policy now demanded that the crops should be made available for the creditors. If this argument were sound then the land also should be made available for the creditors but in my view the contention which is put forward on behalf of the respondent has no force.

16. The very same point was urged before their Lordships of the Privy Council in Ashutosh v. Banshidhar AIR 1982 P.C. 177. In that case it was found by the High Court that the service which the holder of a service tenure had to perform had long since ceased to be performed and the necessity for such service had long since disappeared. Accordingly the High Court held that the protection which the law had afforded to such a tenure no longer existed and that it was alienable. Dealing with that argument Lord Sumner who delivered the judgment of the Board observed at page 751:

The maxim cessante ratione legis cessat ipsa lex, or any corresponding rule has no application to the present case. The contention really amounts to a claim that a Court of law can inquire into the present utility of an ancient incident of tenure and annul it and its enjoyment by the ruling power, whenever in its opinion the incident has survived its usefulness. This is a matter of policy, not of interpretation of a legislative instrument or of application of general law, and is beyond judicial powers.

17. It may well be that these Sardars and Naiks have long since ceased to be useful, but that is no ground upon which a Court can hold that they are not entitled to the protection which the law gives to their property. In my judgment the order of the learned District Judge cannot be sustained. The crops in question cannot be attached in execution of a decree and that being so they did not vest

in the Official Receiver when the present appellants were adjudicated insolvent. Accordingly the Official Receiver had no right to the declaration sought for or an injunction.

18. For these reasons I am satisfied that the order of the Court below must be reversed and accordingly I would allow this appeal, set aside the order of the Court below and restore the order of the learned subordinate Judge. The appellants must have their costs in this Court and in the Courts below.

Mohammad Moor J.

I agree.

