

(1917) 03 CAL CK 0057
In the Calcutta High Court

In Re: Prem Lal Dhar, Ex part The Official Assignee

Date of Decision : 23-03-1917

Acts Referred:

Bankruptcy Act, 1869 — Section 125
Transfer of Property Act, 1882 — Section 109

Citation : 43 Ind. Cas. 348

Hon'ble Judges : Greaves, J

Bench : Single Bench

Judgement

Greaves, J.—This is an application in insolvency to set aside an execution sale of an undivided one fourth share of the premises No. 58-1, Wellington Street, made in Suit No. 694 of 1916, or in the alternative for an order directing the Sheriff to pay the sale-proceeds to the Official Assignee. The application in terms is to set aside the sale of the premises and no share is specified, but this is clearly wrong. On the 24th July 1916 Messrs. Blackwood, Blackwood & Co. obtained a decree for Rs. 5,541-8-6 in Suit No. 690 of 1916 against Sreemati Sukumari Dasee, the widow and administratrix of Prem Lal Dhar, deceased.

2. Messrs. Blackwood, Blackwood & Co. on the 31st August 1916, in execution of this decree attached, inter alia, an undivided one-fourth share of No. 58-1, Wellington Street, which formed part of the estate of Prem Lal Dhar, deceased. By an order of this Court, dated the 8th December 1916, and made in Suit No. 694 of 1916, the Sheriff was directed to sell, inter alia. these premises in execution of the decree and to pay the money arising from such sale, less his poundage and charges, to the Comptroller General of Accounts with the privity of the Accountant General, to be placed by them to the credit of this suit subject to further order. By an order dated the 23rd February 1917, made in insolvency, on the petition No. 24 of 1917 of one Upendra Mohan Chowdhury, a creditor of the estate of Prem Lal Dhar deceased, it was ordered that the estate of Prem Lal Dhar deceased should be administered in insolvency. Notice of this order was given to Messrs. Blackwood, Blackwood & Co.'s attorneys on the same day by the attorney for Upendra Mohan Chowdhury, and the attorney requested them not to proceed further with the execution proceedings.

3. The sale of the premises was ultimately fixed by the Sheriff for the 16th March, this was brought to the notice of the Official Assignee on the 15th March and he thereupon wrote to the Sheriff informing him of the order of the 23rd February and requesting him to stay the sale, and a copy of the letter was sent to Messrs. Blackwood, Blackwood & Co.'s attorneys. The sale ultimately proceeded and the premises were sold. Messrs. Blackwood, Blackwood & Co. contended that the order of the 23rd February did not affect their right to proceed with the sale and to be paid the amount of their decree and costs out of the sale proceeds; the Official Assignee, however, contends that, inasmuch as the premises had not been brought to sale prior to the order of the 23rd February, Messrs. Blackwood, Blackwood & Co. are not entitled to the benefit of the execution against him.

4. Section 109 of the Presidency Towns Insolvency Act provides (1): "Upon an order being made for the administration of a deceased debtor's estate u/s 108, the property of the debtor shall vest in the Official Assignee of the Court, and he shall forthwith proceed to realise and distribute the same in accordance with the provisions of this Act. (2) With the modification hereinafter mentioned all the provisions of Part III relating to the administration of the property of an insolvent shall, so far as the same are applicable, apply to the case of such administration order in like manner as to an order of adjudication under this Act."

5. The corresponding section of the English Bankruptcy Act, 1914, is Section 130(4) and (5), this section and these sub sections corresponding to Section 125(5) and (6) of the English Bankruptcy Act, 1883.

6. Part III of the Presidency Towns Insolvency Act includes Section 53(1), which is as follows: "Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the Official Assignee, except in respect of assets realised in the course of the execution by sale or otherwise before the date of the order of adjudication and before he had notice of the presentation of any insolvency petition by or against the debtor."

7. The corresponding section of the English Act of 1914 is Section 40, and of the Act of 1883, Section 45. The English Courts have held that an order for administration of the estate of a deceased debtor u/s 125 of the Bankruptcy Act, 1883, is not equivalent to a receiving order for the purposes of Section 45 of that Act, so as to disentitle an execution creditor of the deceased debtor to retain the benefit of his execution against the trustee of the debtor's estate in cases in which he has not completed the execution before the date of the administration order: see *Hasluck v. Clark* (1898) 2 Q.B. 28 : 67 L.J.Q.B. 627 : 5 Manson 113 affirmed on appeal (1899) 1 Q.B. 699 : 68 L.J.Q.B. 486 : 80 L.T. 454 : 47 W.R. 471 : 6 Manson 146 : 15 T.L.R. 277. The learned Judges point out that Section 125 (Section 108 of our Act) applies to the mode of administration and not to the subject-matter to be administered, and that it dealt with the deceased debtor's estate and nothing else, and Chitty, L.J., points out that the question is not

whether the property in the goods passed to the trustee under the administration order, but whether they passed free from the right of the execution creditor. Hasluck v. Clark (1898) 2 Q.B. 28 : 67 L.J.Q.B. 627 : 5 Manson 113 affirmed on appeal (1899) 1 Q.B. 699 : 68 L.J.Q.B. 486 : 80 L.T. 454 : 47 W.R. 471 : 6 Manson 146 : 15 T.L.R. 277 is considered in Johnson v. Pickering (1908) 1 K.B. 1 : 77 L.J.K.B. 13 : 98 L.T. 68 : 14 Manson 263 : 24 T.L.R. 1, and Fletcher Moulton, L.J., states: "I am satisfied that the effect of the decision in Hasluck v. Clark (1898) 2 Q.B. 28 : 67 L.J.Q.B. 627 : 5 Manson 113 affirmed on appeal (1899) 1 Q.B. 699 at p. 706 : 68 L.J.Q.B. 486 : 80 L.T. 454 : 47 W.R. 471 : 6 Manson 146 : 15 T.L.R. 277 is that the property which vests under the administration order in the trustee and is to be administered for the benefit of the creditors of the deceased, is the property of the deceased, subject to any liabilities and rights which attached to it in his hands." In that case the decision was against the execution creditor because under the circumstances the Court held there had been no seizure, and that, therefore, no charge or lien had attached. In Hasluck v. Clark (1898) 2 Q.B. 28 : 67 L.J.Q.B. 627 : 5 Manson 113 affirmed on appeal (1899) 1 Q.B. 699 at p. 706 : 68 L.J.Q.B. 486 : 80 L.T. 454 : 47 W.R. 471 : 6 Manson 146 : 15 T.L.R. 277 the goods had been seized under a writ of fi fa., and although under such seizure the property in the goods remains in the execution debtor under sale, yet after seizure and before sale the execution creditor is, as regards these goods, in the position of a secured creditor and has a legal right as against the execution debtor, the owner of the goods, to have the goods sold and to be paid out of the proceeds of sale [Clarke, In re (1898) 1 Ch. 336 at p. 339 : 67 L.J. Ch. 234 : 78 L.T. 275 : 46 W.R. 337 : 14 T.L.R. 274, Williams, Ex parte; Davies, In re (1872) 7 Ch. A. 314, Slater v. Pinder (1871) 6 Ex. 228 at p. 236 : on appeal (1872) 7 Ex. 95 : 41 L.J. Ex. 66 : 26 L.T. 482 : 20 W.R. 441] and accordingly under an administration order made u/s 130 (formerly Section 125) of the English Bankruptcy Act, 1914, the goods pass to the trustee subject to these rights of the execution creditor. The question I have got to decide is whether an attachment in this country has the effect of giving any and similar rights to the attaching creditor. If it has, then Hasluck v. Clark (1898) 2 Q.B. 28 : 67 L.J.Q.B. 627 : 5 Manson 113 affirmed on appeal (1899) 1 Q.B. 699 at p. 706 : 68 L.J.Q.B. 486 : 80 L.T. 454 : 47 W.R. 471 : 6 Manson 146 : 15 T.L.R. 277 is an authority in favour of Messrs. Blackwood, Blackwood & Co., and the rights of the Official Assignee are subject to their rights in the sale-proceeds. If, however, an attachment in this country gives no right to the attaching creditor prior to sale, then Hasluck v. Clark (1898) 2 Q.B. 28 : 67 L.J.Q.B. 627 : 5 Manson 113 affirmed on appeal (1899) 1 Q.B. 699 at p. 706 : 68 L.J.Q.B. 486 : 80 L.T. 454 : 47 W.R. 471 : 6 Manson 146 : 15 T.L.R. 277 has no application. My decision is based upon the non-applicability of the provisions of Section 53(1) of the Presidency Towns Insolvency Act to an administration of the insolvent estate of a deceased person under the provisions of Sections 108 and 109 of that Act, and to this extent I agree with the arguments addressed to me on behalf of Messrs. Blackwood, Blackwood & Co., but I am not prepared to assent to their arguments to the full extent, as I do not think that an attachment in this country

creates any charge or lien upon the attached property such as attaches in England upon seizure under a writ of fi fa. Attachment in this country only prevents alienation, it does not confer any title. *Frederick Peacock v. Madan Gopal* 29 C. 428 at p. 431 : 6 C.W.N. 577, *Raghunath Das v. Sundar Das Khetri* 24 Ind. Cas. 304 : 42 C. 72 at p. 80 : 18 C.W.N. 1058 : 27 M.L.J. 150 : (1914) M.W.N. 147 : 16 M.L.T 353 : 16 Bom. L.R. 814 : 20 C.L.J. 555 : 13 A.L.J. 154 : 1 L.W. 567 : 41 I.A. 251 (P.C). The result is that the principles upon which *Hasluch v. Clark* (1898) 2 Q.B. 28 : 67 L.J.Q.B. 627 : 5 Manson 113 affirmed on appeal (1899) 1 Q.B. 699 at p. 706 : 68 L.J.Q.B. 486 : 80 L.T. 454 : 47 W.R. 471 : 6 Manson 146 : 15 T.L.R. 277 was decided, have no application here and upon the making of the administration order of the property vested in the Official Assignee, and Messrs. Blackwood, Blackwood & Co. have no rights therein and are relegated to the same position as the other creditors, that is to say, the sale-proceeds are distributable rateably between them and the other creditors. I declare that the Official Assignee is entitled to the sale-proceeds of the one-fourth undivided share of the premises No. 58-1, Wellington Street, sold in Suit No. 694 of 1916, in the hands of the Sheriff, in priority to Messrs. Blackwood, Blackwood & Co. Suit No. 694 of 1916 is not before me and I can, therefore, in view of the order in that suit make no order upon this application for payment by the Sheriff to the Official Assignee of the sale-proceeds of the one-fourth undivided share.