

(1970) 08 AHC CK 0011
In the Allahabad High Court
Case No : Civil Revision No. 49 of 1969

Kishan Singh

APPELLANT

Vs

Thakur Lal
Kishan Singh Vs Badan Singh and Others

RESPONDENT

Date of Decision : 26-08-1970

Acts Referred:

Provincial Insolvency Act, 1920 — Section 37
Provincial Insolvency Act, 1920 — Section 37
Provincial Insolvency Act, 1920 — Section 37

Citation : (1970) 40 AWR 781

Hon'ble Judges : K.B. Asthana, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K.B. Asthana, J.—This is an application in revision u/s 75 of the Provincial Insolvency Act questioning the validity of an order passed by the learned District Judge of Mathura in appeal and reversing the order of the Insolvency Judge setting aside an auction sale held by the official receiver.

2. The Applicant Kishan Singh was declared insolvent by an order of the Insolvency Judge on 19-9-1962 on the ground that he was unable to pay his debts. In due course out of the Property of the insolvent two bhumidhari plots were auctioned by the official receiver on 10-11-1963, the bid of the opposite party, Thakur Lal, being the highest was accepted. No sale deed was got executed and registered. One Genda Lal who had filed objection to the sale of the bhumidhari plots claiming that they belonged to him, had obtained certain injunction orders from civil court in a suit filed by him which prevented the sale deed from being executed and registered. Ultimately the suit of Genda Lal was dismissed but before the official receiver could execute the sale deed and get it registered in favour of Thakur Lal on an application filed by the insolvent Kishan Singh u/s 35 of the Insolvency Act adjudication was annulled on the ground that the debts owed to the creditor were paid off. This order was passed on

23-5-1966. By the same order the learned Insolvency Judge holding that mere auction sale held by the official receiver did not pass any title to Thakur Lal, the auction purchaser and out of the money deposited nothing was paid by the official receiver to the creditors, the auction sale be set aside. Thakur Lal, the auction purchaser, filed an appeal. The learned District Judge while upholding that part of the order of the Insolvency Judge by which the adjudication was annulled, however, allowed the appeal in part and set aside the order of the Insolvency Judge cancelling the auction sale. Kishan Singh, the insolvent, has now come up in revision before this Court.

3. Sri R.P. Goel, learned Counsel for the Applicant, contended that the learned District Judge fell into a legal error in taking the view that by the auction sale held on 10-11-1963 the title passed and the Insolvency Judge had no jurisdiction to set aside that sale. Learned Counsel submitted that an auction sale held by the official receiver in enforcement of the adjudication order for realisation of the assets of the insolvent is not like an auction sale held in execution of the decree under the CPC that is to say, an auction sale held by the official receiver is not an act of court unlike an auction sale held under CPC in execution of a decree which is always an act of court. I think there is substance in this contention. There is no provision in the Provincial Insolvency Act providing for any order, from the court to the official receiver to hold any auction. There is no provision either requiring confirmation of any sale held by the official receiver by the Insolvency Judge. There is ample authority for the proposition that mere acceptance of the highest bid by the official receiver at an auction sale held by him does not amount to a complete sale in the sense that the title in the property does not pass to the auction purchaser. The this would not piss unless the official receiver duly executes a document and gets it registered. The transaction so evidenced is nothing but the act of parties. On the other hand no registered sale deed or document is required to be executed when a property is sold in execution of a decree under the provisions of the Code of Civil Procedure. The confirmation of the sale by the Court is sufficient to pass the title. Thus when a property is sold in execution of a decree under the CPC the title passes to the auction purchaser by operation of law while in an auction held by the official receiver under the Provincial Insolvency Act the title passes to the official receiver by act of parties. This view is supported by a division bench decision of this Court in the case of Raghurir Saran Das v. Kunj Behari Lal 1941 AWR 362 (HC). Learned Counsel for Thakur Lal opposite party, contended that the ratio of the decision in the case of Raghurir Saran Das v. Kunj Behari Lal (supra) will not be applicable inasmuch as that decision turned on the peculiar facts of that case which arose out of and suit brought by the auction purchaser himself for recovery of the money deposited by him with the official receiver. I do not find any good ground for distinguishing that case in so far as the legal question which arises is concerned. The question directly arose in Raghurir Saran Das's case. There the official receiver who was the Defendant took up the stand that the sale was completed and no question of returning of any money arose. The auction purchaser contended that the sale

was not completed and in equity and under contract lie was entitled to the return of the consideration if transaction had failed. The learned District Judge strangely enough has not noticed the decision of the division Bench of the High Court in Raghubir Saran Das's case though the learned Insolvency Judge had followed that decision and referred to it in his order. The learned Judge seems to have been much influenced by a learned Single Judge's decision of the Oudh Chief Court in the case of Wazirey v. Mathura Prasad AIR 1939 Ori 55. Much reliance was placed on this decision by the learned Counsel for the opposite parties also before me. With great respect to the learned Single Judge who decided that case, I find it difficult to agree with him as the whole approach adopted by the learned Single Judge in Wazirey v. Mathura Prasad's case was that an auction sale held by the official receiver under the Provincial Insolvency Act is of the same nature and of the same character as the auction sale held in execution of the decree Under the Code of Civil Procedure. Moreover, the learned Single Judge of Oudh Chief Court distinguished the full Bench case of Pinna mamavi Basava Sankaram v. Ganapati Narasimbulu AIR 192 Mad 81 which case was also noticed by the division bench of this Court in Raghubir Saran Das's case and relied upon.

4. It was next contended by "the learned Counsel for the opposite party that by virtue of Section 37 of the Provincial Insolvency Act all sales held by the official receiver would be valid and they will have effect as such, even if an order of annulment was passed. The learned Counsel then submitted that irrespective of the fact that an order of annulment was passed the official receiver could be directed by the court to perform the formality of executing the necessary document and getting it registered. Besides the case of Wazirey v. Mathura Prasad (supra), reliance was further placed on a decision of High Court of Rangoon in the case of R.K. Banerjee, Official Receiver Mandalay v. D. Succaram AIR 1935 Ran 328. I have already discussed the decision of the Oudh Chief Court and found it difficult to agree with it. In so far as the case of Official Receiver v. Succaram decided by the Rangoon High Court is concerned, suffice it to say that its ratio decidendi is not applicable as in that case, on passing an order of annulment u/s 37 of the Provincial Insolvency Act, the Insolvency Judge had appointed the official receiver himself for realisation of certain decree. The official receiver thus was an appointee u/s 37 of the Provincial Insolvency Act and in those circumstances, the Rangoon High Court held that in spite of the order of annulment the official receiver could be directed by insolvency court to realise the decrees.

5. The learned District Judge also fell into a legal error in proceeding on the basis that the insolvent Kishan Singh had no right or title to the bhumidhari land on the date the adjudication was annulled, as the said land had vested in the official receiver who had sold it to Thakur Lai. u/s 37 of the Act it is clear all those assets and properties in which title had not passed to third person by the act of official receiver, will revert to the insolvent. Here in the instant case once it is held that merely by accepting the highest bid at the auction sale held on 10-11-1963 by the official receiver the title did not pass in the bhumidhari land

but continued to vest in the official receiver so long as the adjudication order stood, thus the date on which it was annulled the title will revert to Kishan Singh, no title in any third person by the act of official receiver having come into existence.

6. For all these reasons given above, I think the direction given by the learned Insolvency Judge cancelling the auction sale dated 10-11-1963 was justified. In equity certainly Thakur Lal would be entitled to the return of the amount deposited by him with the official-receiver or in the court and I hope there would be no difficulty in his way. Accordingly this revision is allowed and the order of the learned District Judge is set aside and that of the Insolvency Judge is restored with costs.