(1933) 12 AHC CK 0060

In the Allahabad High Court

Lachman Kachhi APPELLANT

Vs

Secy. of State RESPONDENT

Date of Decision : 21-12-1933

Acts Referred:

Citation : AIR 1934 All 547

Hon'ble Judges : Sulaiman, C.J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sulaiman, C.J.—This is a civil revision from a decree of the Court of Small Causes dismissing the plaintiff''s claim, It appears that Mr. Baijal was appoint-ed the Official Receiver of an insolvent''s estate. On 24th February 1926, the present plaintiff paid him Rs. 325 under a receipt signed by him as part of the purchase money of the estate of the insolvent which Mr. Baijal promised to transfer to him subject to the approval of the Insolvency Court. Apparently the Insolvency Court did not sanction the sale to the present plaintiff and the property was sold in auction on 5th September 1227. The receiver appears to have absconded. The plaintiff, accordingly applied to the Insolvency Court on 21st October 1929 for a refund of the amount paid by him to the receiver. This application was dismissed by the Court on 29th November 1929, on which the present suit was instituted on 16th May 1931, both against the Secretary of State through the Collector of Agra and the present receiver who has succeeded to the office. The Court below has held that the present claim, is barred by limitation and has dismissed the suit. It has also expressed the opinion that the present Official Receiver is not liable to make good the amount. It seems to us that the findings of the Court below are not clear on the question of liability. The present Official Receiver did not deny that the amount had been paid to the ex-receiver, nor did he deny that he was in possession of the assets of the insolvent. He merely pleaded the bar of limitation and absence of liability on his part. In revision, the plaintiff is not pressing his claim against the Secretary of State. We are therefore not called upon to express any opinion on the liability of the Secretary of State.

2. It seems prima facie, that when money was paid to the ex-receiver as part of the purchase-money of the property, the receiver received the amount as representing the estate, that is to say, as a representative of all the creditors and the insolvent, in such an event if subsequent to the receipt of the amount he misappropriated it, there is no reason why the plaintiff should suffer-and why the estate should not be made liable. It is however not necessary to decide this point finally in this case, as in our opinion it is clear that the present claim is barred by limitation. It is not the plaintiff''s case that the contract was a completed one so as to entitle him to a decree for its specific performance. Indeed he never brought any suit to enforce the contract. He merely applied to the insolvency Court for return of the amount paid by him. The appropriate article which would apply to a case of this kind would be Article 97, which fixes three years from the date of the failure of consideration when money is paid upon the existing consideration which afterwards fails. The consideration undoubtedly failed when the plaintiff did not get the property which had been promised to him. Even if we exclude the period of about a month taken up in the proceeding relating to the refund of the amount pending in the Insolvency Court, the present claim was more than three years after the expiry of the date when the property was sold to another person and after which it became impossible for the ex-receiver to carry out his promise. The present suit having been brought more than three years after the date when the consideration failed it is barred by time.

3. The revision is accordingly dismissed.

