(1979) 05 AHC CK 0009

In the Allahabad High Court

Case No : Second Appeal No. 336 of 1970

Nand Lal APPELLANT

Vs

Reoti Lal and Another RESPONDENT

Date of Decision : 15-05-1979

Acts Referred:
Provincial Insolvency Act, 1920 — Section 51(1)

Citation : AIR 1979 All 365 : (1979) AWC 487

Hon'ble Judges : Deoki Nandan, J

Bench : Single Bench

Advocate : G.N. Verma, for the Appellant; V.K. Burman and Kailash Nath Saxena, for the Respondent

Final Decision : Dismissed

Judgement

Deoki Nandan, J.—There is no merit in this execution second appeal by the judgment-debtor.

2. The only objection raised by the judgment-debtor was that he was adjudged an insolvent with effect from 30th Oct., 1965, but the sale took place on 8th Jan., 1966, in execution of the decree against him without any notice to the official receiver. It, however, appears from the judgment of the lower appellate Court that the official receiver moved an application dated 3rd March, 1966, before the executing Court, saying that the sale had been for a reasonable price, therefore, he had no objection to the same and that money realised from the sale should be sent to the Insolvency Court for distribution among the creditors.

3. Learned counsel contended that the sale was wholly null and void. That is not so. All that Section 51(1) of the Provincial Insolvency Act declares is that where execution of a decree is issued against the property of judgment-debtor no person shall be entitled to the benefit of the execution against the receiver, except in respect of assets realised in the course of execution by sale or otherwise before the date of the admission of the petition. The plain effect is that

if some property is sold or assets realised in an execution proceeding against an insolvent judgment-debtor, the decree-holder is not entitled to the benefit of the assets realised against the receiver. Now, in the present case, the receiver had not objected to the sale. He had requested the executing Court to transfer the proceeds of the sale to the Insolvency Court. The decree-holder did not have the benefit of the assets realised at all. The assets realised were transferred to the insolvency Court. As to the sale, it has been noticed by the lower appellate Court that under Sub-section (3) of Section 51 of the Provincial Insolvency Act, a person, who, in good faith, purchases the property of a judgment-debtor under a sale in execution, shall acquire good title against the receiver. It has not been shown that the purchaser, in this case, had any knowledge of the adjudication of the judgment-debtor as an insolvent. Indeed, the finding is that the purchaser had taken the property of the judgment-debtor in good faith without notice of the insolvency of the judgment-debtor.

4. In the result, the appeal fails and is dismissed with costs.

