
(1971) 02 AHC CK 0037
In the Allahabad High Court
Case No : Civil Revision No. 1341 of 1968

Official Receiver, Varanasi

APPELLANT

Vs

Jagardeo and Others

RESPONDENT

Date of Decision : 26-02-1971

Acts Referred:

Provincial Insolvency Act, 1920 — Section 28A, 4
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B, 331

Citation : AIR 1971 All 551 : (1971) 41 AWR 393 : (1972) RD 88

Hon'ble Judges : Hari Swarup, J;B.D. Gupta, J

Bench : Division Bench

Advocate : K.P. Singh, for the Appellant; R.N. Singh and Sinbatha Rai, for the Respondent

Final Decision : Dismissed

Judgement

B.D. Gupta, J.—This revision arises out of proceedings under the provisions of the Provincial Insolvency Act (hereinafter referred to as the Act).

2. Some time in 1960, Jagardeo and Behari, arrayed as the first two opposite-parties in this revision, applied for being declared insolvents and there is no controversy that they were so declared some time in 1964, where after an Official Receiver, who is the applicant in this revision, was appointed. In the schedule of property stated to belong to Jagardeo and Behari, only certain moveables were mentioned. In July, 1965 the Official Receiver made an application purporting to be u/s 4 of the Act which stands dismissed by the order sought to be revised by this petition. In the application, the assertion made by the Official Receiver was that certain agricultural plots were "Sirdari" plots of the insolvents which had been under the cultivation of the insolvents but the insolvents, under collusion with Basantu and Darbari, described as his relatives, had manipulated false entries in the revenue records through the village Lekhpal in order to defraud their creditors. Basantu and the heirs of Darbari are also impleaded as Opposite-parties in this revision. The relief claimed in the

application was as follows:--

"Declaration be kindly made that the insolvents Behari and Jagar Deo are sirdars of the plots detailed in Schedules A and B of this petition and Basantu and Darbari or Mst. Kaushalya, the widow of Darbari have no concern with the said plots."

The application was contested by Basantu and Mst. Kaushalya who asserted that Basantu had been in actual cultivatory possession over the plots for the last twelve years and was "sirdar" thereof. It was also asserted that the entries in their favour were correct and neither fictitious nor collusive. The assertion that they were relations of the insolvents was denied. The last plea, with which we are concerned in this revision, was that the insolvency Court had no jurisdiction to grant the declaration sought for. The Insolvency Judge took the view that the relief claimed in the application u/s 4 of the Act was not maintainable before the insolvency court with the result that the application made by the Official Receiver was dismissed. On appeal to the District Judge, the order passed by the Insolvency Judge was affirmed where after the Official Receiver filed the revision before us. After hearing learned counsel at some length, we have come to the conclusion that the view taken by the Courts below is perfectly correct and this revision must fail.

3. The plea that the insolvency court had no jurisdiction to grant the declaration sought for by the Official Receiver was based on the provisions contained in the U. P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as the U. P. Z. A. & L. R. Act). It was urged that, keeping in view the provisions contained in Section 229-B of the said Act read with Section 331 of the said Act, revenue courts had exclusive jurisdiction to declare that a certain person or persons were "sirdars" of any particular land. On behalf of the Official Receiver, reliance was placed on the provisions contained in Section 4 of the Act and it was urged that it was the insolvency court which had full power to decide all types of disputes arising in the course of insolvency and the said jurisdiction of the insolvency court was not excluded by the provisions contained in the U. P. Z. A. & L. R. Act. We have no doubt that in so far as the provisions contained in Section 4 of the Act are concerned, the insolvency court would, normally, have jurisdiction to decide the controversy raised by the petition u/s 4 of the Act filed by the Official Receiver. The question, however, is as to whether this can be done by the insolvency court notwithstanding the provisions contained in Section 331 of the U. P. Z. A. & L. R. Act read with Section 229-B thereof.

4. There is no controversy that a claim for declaration that a person is the "Bhumidhar" of certain land is a relief which falls within the ambit of Section 229-B of the U. P. Z. A. & L. R. Act and, further, that in view of the provisions contained in Section 331 of the said Act, suit for such a relief would normally be maintainable only in the revenue court. What has been contended on behalf of the Official Receiver is that even so the aforesaid provisions contained in the U. P. Z. A. & L. R. Act do not oust the jurisdiction of the insolvency court to decide the

question raised by the Official Receiver in his petition u/s 4 of the said Act and to get the relief of declaration prayed for by the Official Receiver on that application. The principal argument of learned counsel for the applicant was that notwithstanding the fact that the property belonging to the insolvents may vest in the Official Receiver the Receiver, does not by virtue merely of that fact, himself become the "sirdar" of any land which, according to him, constitutes land which belonged to the insolvent. We find ourselves unable to accept this contention. Whatever doubt there may have been in regard to what precisely vests in the Official Receiver u/s 28 of the Act, we have no doubt that since the incorporation in the aforesaid Act, of Section 28A, by way of amendment in 1948, the Official Receiver is invested with the status of the insolvent qua property which may be alleged to have belonged to the insolvent as also with the power to recover such property by taking appropriate proceedings. Section 28A of the Act runs as follows:--

"28-A. The property of the insolvent shall comprise and shall always be deemed to have comprised also the capacity to exercise and to take proceedings for exercising all such powers "in or over or in respect or property as might have been exercised by the insolvent for his own benefit at the commencement of his insolvency or before his discharge:

....."

5. We have no doubt that keeping in view the language in which the aforesaid provision is couched, the consequence of vesting is that the Official Receiver gets invested with the status of the insolvent in regard to property which may belong to the insolvent.

6. "Sirdari" rights are rights created by the provisions contained in the U. P. Z. A. & L. R. Act. The said Act lays down that a declaration as to such rights shall be made by the revenue courts alone and no other court. Keeping this in view, it appears to us beyond doubt that whenever a question arises as to whether a certain person is a "sirdar" of some land, that question has to be decided by the Court nominated in the U. P. Z. A. & L. R. Act and no other court. In the circumstances of the present case, therefore, the provisions contained in the U. P. Z. A. & L. R. Act must be deemed to override the provisions contained in Section 4 of the Act.

7. Learned counsel for the applicant urged that the claim set forward by the Official Receiver should not be held to fall within the ambit of Section 229-B of the U. P. Z. A. & L. R. Act read with Section 331 thereof because in the application u/s 4 of the Act made by the Receiver, neither the State Government nor the Gaon Sabha had been made a party. This argument appears to be misconceived. The case set forward by the Official Receiver in the application itself is that in the revenue records the name of Basantu and Darbari had been entered by the village Lekhpal, that is to say, the case set forward by the Receiver was that the entries were not in favour of the insolvents but in favour of

the principal opposite-parties to this revision. That being so, the mere fact that in the application made by the Official Receiver, the State Government or the Gaon Sabha had not been impleaded as parties, would not invest the insolvency court with jurisdiction to deal with the matter on the footing that the claim set forward by the Official Receiver did not fall within the ambit of Section 229-B of the U. P. Z. A. & L. R. Act. Reference may be made to the decision of a Division Bench of this Court in the case of Parsottam v. Narottam 1970 All LJ 505. At page 508 of the said Reports, in Paragraph 11, it has been laid down as follows:--

"..... .the legal position appears to be that where a plaintiff has a grievance against the village records which are maintained by the State Government and Gaon Sabha, the suit will lie in revenue court u/s 229-B and any other person who disputes the plaintiffs title shall also be impleaded as a defendant but if the village records support the claim of the plaintiff, the suit will not lie u/s 229-B but will be cognizable by a civil court in case the plaintiffs right is disputed by a third person."

Later on, in Paragraph 13, at page 509, the position has been stated as follows:--

"The crux of the matter is that if the plaintiff had claimed any relief against the Gaon Sabha or the State Government or he ought to have done so having regard to the facts of the case, the suit would lie within the exclusive jurisdiction of the revenue court." (Underlining is ours).

8. We have no doubt that merely by omitting to implead the Gaon Sabha or the State Government in the application u/s 4 of the Act, it is not open to the applicant to contend that Section 229-B of the U. P. Z. A. & L. R. Act did not apply to the facts of the case. We would like to add that a declaration of "sirdari" rights in favour of one person, as distinguished from another, is bound to affect the rights of the State Government also and we fail to see how even the insolvency court can possibly grant the relief claimed by the Official Receiver without impleading the State Government or the Gaon Sabha which, from the very nature of the relief claimed by the Receiver, would be interested in the matter. The Act does not contemplate that all reliefs, which an Official Receiver might like to obtain, shall be available to him in proceedings under the Act itself. Section 59 of the Act contains legislative recognition of the fact that the Official Receiver, for the purpose of convenient and speedy realisation of the property of the debtor and its distribution, may, inter alia, have to institute suits or other legal proceedings relating to the property of the insolvent.

9. We have no doubt that the view taken by the Courts below is perfectly correct.

10. Accordingly, this revision is dismissed with costs.