

(1925) 08 CAL CK 0017
In the Calcutta High Court

Sreeput Singh Dugar

APPELLANT

Vs

Ram Sarup Surjiya Prosad and Others
Das Vs Hari Ram Goenka and Others

RESPONDENT

Date of Decision : 18-08-1925

Acts Referred:

Provincial Insolvency Act, 1920 — Section 33

Citation : AIR 1926 Cal 982 : 95 Ind. Cas. 463

Hon'ble Judges : Ewart Greaves, J; Duval, J

Bench : Division Bench

Judgement

Duval, J.—These two appeals are directed against certain orders of the District Judge of Murshidabad in an insolvency proceeding. It appears that one Chhattarpat Singh applied for insolvency on the 21st May 1909. In his first application he set forward a large number of debts some of which were contested as being benami. The first Court and the High Court dismissed his application for adjudication but in appeal to the Privy Council the petition for adjudication was admitted on the 20th November 1916. Thereafter a Receiver was appointed in the insolvency proceedings Chhattarpat Singh died on the 25th April 1918 and after his death his sons made an application to the Court stating that they were prepared to come to an arrangement with the creditors in respect of all just debts. Proceedings were subsequently taken before the District Judge for the creditors to prove their debts and on the 6th April 1923 one Ram Sarup Surja Prosad appeared to prove his debt of Rs. 20,765-7-6 (rupees twenty thousand and seven hundred sixty-five, annas seven and pies six) being the amount due on a High Court decree obtained on the 6th September, 1897. The sons of the deceased insolvent opposed the entry of this debt in the schedule on the ground that this creditor was only a benamdar. There was an objection also put in on the ground of limitation but it was not urged before the Judge. The District Judge, however, held that as the insolvent had described this creditor as a bona fide creditor in his schedule of debts dated the 5th March, 1918, i. e., shortly before his death, his sons, as his representatives, were not entitled to argue that this

creditor was a mere benamdar. On the same date also the creditor Hari Ram Goenka proved his debt. Against these orders Appeal No. 213 has been presented but so far as Hari Ram Goenka is concerned the appeal has not been pressed. Later on Debendra Nath Das, the appellant in Appeal No. 297, who appears not to have pressed any objection on the 6th April, applied for the reconsideration of the claims of Hari Ram and Ram Sarup on the ground that they were barred by limitation. On the 9th June this application was rejected on the ground that the matter had already been disposed of. Hence Appeal No. 297 was lodged but here again the claim against Hari Ram is not pressed, we have only to consider in these two appeals the position with reference to the debt said to be due to the creditor Ram Sarup Surja Prosad. It is urged before us in appeal that the Insolvency Court must come to an adjudication itself as to whether a debt is a good debt or not. It is next urged that the claim is barred by limitation, and, lastly it is urged that this decree was found by a certain judgment of this Court which is not before us, to be a benami decree and so is incapable of execution. As to the question of limitation the decree was a decree of the Original Side of the High Court and Article 183 of the Limitation Act applies, Consequently Section 48 of the C. P. C. does not bar the recovery of the debt after twelve years of the date of the decree. In this case, as a matter of fact, a sum of Rs. 642-12-0 (Rupees six hundred forty-two, annas twelve) was recovered in part satisfaction of the decree in September 1908 and the next application was made in 1919. Notice was issued to the judgment-debtor under Order XXI, Rule 22 No objection was made as to the decree being barred by limitation and then under orders of the High Court the decree was ordered to be executed. We do not think, therefore, that in view of the fact that there is under Article 183 twelve years" limitation from the last date of payment it can be contended that this debt was barred by limitation. As to the question; of benami the position is different. On the representation of the sons of the insolvent the objection was disallowed simply on the ground that the insolvent had admitted the debt. It appears that the insolvent is governed by the Law of Mitakshara under which the children take by survivorship and not as heir and under that law they can attack the decree as benami on their own behalf as coparceners with their father. Similarly Debendra Nath Das who was a creditor appears to have a right to attack the decree for the same reason. We consider that it is the duty of the Insolvency Court u/s 33 of the Provincial Insolvency Act to adjudicate as to whether the debt is, as a matter of fact, a good debt or not and in this view we must allow these appeals to this extent only. The order of the District Judge in respect of these debts is set aside and the District Judge will now come to a decision on the merits as to whether the decree was a benami decree or not. The appeals are allowed with costs two gold mohurs in each case. One set of costs being allowed in each case.

Greaves, J.

2. I agree.