

(1923) 05 PAT CK 0033

In the Patna High Court

Umar Bahadur @ Nunku Mian

APPELLANT

Vs

Khaja Mohammad Karim Nawab and Others

RESPONDENT

Date of Decision : 22-05-1923

Acts Referred:

English Bankruptcy Act, 1914 — Section 47
Provincial Insolvency Act, 1920 — Section 28

Citation : AIR 1924 Patna 667

Hon'ble Judges : Mullick, J; Macpherson, J

Bench : Full Bench

Judgement

Mullick, J.—The question here is, whether the petitioner an undischarged bankrupt is entitled to sue in forma pauperis for the recovery of a debt which he claims to have become due since the adjudication order was made against him. The claim is for a sum of Rs. 12,929-10-8 on account of the petitioner's share of a dower-debt due to his deceased daughter from her husband the defendant No. 1.

2. Being unable to pay the Court-fees the petitioner applied for leave to sue as a pauper, and the Subordinate Judge after due inquiry having dismissed his application, the petitioner now prays for the exercise of our revisional jurisdiction.

3. Now, the first question is whether the petitioner has any right of pro-party in the debt. On behalf of the opposite party it is contended that he has no such right inasmuch as upon the passing of the adjudication order his properties vested in a trustee in bankruptcy who in this case is the Court itself. The law applicable is contained in Section 28 of the Provincial Insolvency Act of 1920, which has to be interpreted with reference to the decided cases both in India and England.

4. In *In Re New Land Development Association and Gray* [1892] 2 Ch. D. 138 the question for decision was whether an undischarged bankrupt could not, even before the intervention of the trustee in bankruptcy, convey to a bona fide purchaser for value real estate acquired after the bankruptcy, so as to give a good title to the purchaser as against the trustee. It was necessary in this case

to consider the earlier case of *Cohen v. Mitchell* [1890] 25 Q.B.D. 262, in which the broad proposition was laid down that, until the trustee intervenes, all transactions by a bankrupt after his bankruptcy with any person dealing with him bona fide and for value in respect of his after acquired property, whether with or without the knowledge of the bankruptcy, are valid against the trustee. The Court of appeal held in *In Re New Land Development Association and Gray* [1892] 2 Ch. D. 138 that the Rule in *Cohen v. Mitchell* [1890] 25 Q.B.D. 262, applied only to persona), estate; and the Legislature thereupon intervened by enacting Section 47 of the Bankruptcy Act of 1914 (4 & 5 Geo. V, chapter 59) and gave statutory effect to the decision in *Cohen v. Mitchell* [1890] 25 Q.B.D. 262 and extended the benefit of it to real estate.

5. The bankrupt's interest has sometimes been called special property and it is reasonable, therefore, that he should be competent to deal with, the estate subject to the rights of the trustee.

6. As regards the right of action, the general Rule was that the right except for personal injuries and the like passed to the trustee; but even where the right had passed to the trustee the bankrupt might sue, the amount recovered being subject to the right of the trustee to claim, the proceeds. So it was held in *Wadling v. Oliphant* [1875] 1 Q.B.D. 145, that a bankrupt may sue for rent due and in *Buchan v. Hill* [1888] W.N. 233 that he may sue for partnership account. Having regard to the provisions of Section 47 of the present English Bankruptcy Act, I have no doubt that the bankrupt will have the right to maintain an action in respect of property of every kind subject to the intervention of the trustee. In India there has been some conflict of opinion. In *Kristocomul Mitter v. Suresh Chander Deb* [1882] 8 Cal. 556 it was held that a prior purchaser from, an undischarged insolvent of the latter's share in immovable family property was entitled to recover as against a subsequent purchaser from the Official Assignee. A contrary view seems to have been taken in *Rowlandson v. Champion* [1893] 17 Mad. 21 and in *A.B. Miller v. Abinash Chunder Dutt* 2 C.W.N. 372. Again, *Rowlandson*'s case was distinguished in a later Madras case, namely, *Sriramulu Naidu v. Andalammal* [1906] 30 Mad. 145 and the Rule laid down, in *Kristcomuul*'s [1882] 8 Cal. 556 case was approved. Finally in this Court it was held in *Khilafat Hussain v. Azmat Hussain* 54 Ind.Cas. 699 that a person who has been declared an insolvent cannot, while his estate is in the hands of the Receiver, maintain a suit in his own name for the deferred dower of his daughter even though the Receiver has refused to bring such suit. As this authority is directly in point and is binding upon us, it might have been necessary to make a reference to a Full Bench if I had not been of opinion that there was another clear ground upon which the application could be dismissed.

7. In my opinion there has been a due exercise of jurisdiction on the part of the Subordinate Judge and it is not competent for us to interfere in revision in this case. The Subordinate Judge has found, upon the report of a Sub-Deputy Collector and upon other materials placed before him that the petitioner is not

unable to pay the Court-fees due from him and that he has a house worth several thousands of rupees. The petitioner might with propriety have asked the Insolvency Court to bring the suit, but he has not chosen to take that course in the circumstances, there is no merit in his application.

8. The application is dismissed with costs: hearing fee two gold in chars.

Macpherson, J.

9. For the reasons given, in the penultimate paragraph of the judgment just delivered by my learned colleague, I concur in the order proposed.