

(1916) 02 CAL CK 0012
In the Calcutta High Court

Upendra Mohansaha Chowdhary and Others	APPELLANT
Vs	
Brindaban Behari Saha Promanik	RESPONDENT

Date of Decision : 04-02-1916

Acts Referred:

Provincial Insolvency Act, 1920 — Section 36

Citation : 33 Ind. Cas. 188

Hon'ble Judges : D. Chatterjee, J;Beachcroft, J

Bench : Division Bench

Judgement

D. Chatterjee, J.—This appeal arises out of an application u/s 36 of the Provincial Insolvency Act made by some creditors of the insolvent, on the allegation that the insolvent had within two years of the insolvency order made a fraudulent transfer of his property. Upon notice to the transferees the learned Judge held that the proper person to make an application u/s 36 is the Receiver only and that, therefore, the creditors must move the Receiver to make an application. Subsequently he received a report from the Receiver supporting the application of the appellants and also making an allegation against the insolvent. He then sent the case down to the Munsif of Tangail for an enquiry. Upon perusal of the report of the Munsif, he ordered regarding the properties mentioned in 5a and 5b of the report to call upon all persons interested in the case to show cause why the said properties should not be included in the list of assets of the insolvent and sold by the Receiver. In the first place, we do not see under what law reference was made to the Munsif. The further order that was made upon the receipt of the report is also not quite accurate. The order should have been in accordance with the terms of Section 36, why the transfer should not be annulled. Now as the case has proceeded to that stage and the learned Judge has, upon the report of the Receiver, made an order purporting to be u/s 36, we direct that he shall proceed with the case after issuing fresh notice upon the transferees to show cause why the transfer should not be annulled u/s 36 of the Provincial Insolvency Act and upon hearing such cause as may be shown, he will pass the necessary order u/s 36. The case having proceeded so far, it is not

necessary to make any further remark upon the procedure followed. We direct that the appeal be disposed of in accordance with this judgment and the record be sent back to the District Judge.

2. We make no order as to costs in this Court.

Beachcroft, J.

3. I agree.