

# ALLAHABAD HIGH COURT

Nathu Ram

Vs

Madan Gopal

(Sulaiman, J.)

22.01.1932

## JUDGMENT

### **Sulaiman, J.**

1. This is an appeal arising out of an insolvency proceeding. On an application made by a creditor the insolvency Court ordered the Official Receiver to take possession of certain property alleged to belong to the insolvent the Official Receiver, in pursuance of the said order, attached this property on 8th June 1929. On 2nd July the son of the insolvent applied to the insolvency Court alleging that the property was his own property. The insolvency Court decided that the house belonged to the son, and released it from attachment. In that Court no objection was taken that the application to the Court had been made more than 21 days after the attachment by the receiver.

2. An appeal was preferred to the District Judge, before whom it was urged that the application having been made more than 21 days after the date of the attachment, it should not have been entertained.

3. The learned Judge has overruled this contention, and in our opinion rightly. The house was attached under an order of the insolvency Court, and not by any independent decision of the Official Receiver. The actual attachment was a mere ministerial act done in pursuance of the order of the Court. The objector was not challenging the act of the receiver, who had no voice in the matter, but the order of attachment passed by the Court ex parte. It seems to us that it was not an act or decision of the receiver within the meaning of Section 68. On the other hand, it was a claim put forward by a stranger to the insolvency proceedings setting up his own independent title, and it fell within the scope of Section 4, Provincial Insolvency Act. It was open to the Court to inquire into the question of title and adjudicate upon the rights of the objector. The learned District Judge is not wrong in holding that the application was not barred by time.

4. The learned advocate for the appellant relies on the case of *Bhairon Prasad v. S.P.G. Dass*<sup>1</sup>

and *Husaini v. Muhammad Zarair Abdi*<sup>2</sup> But in those cases there was not any order of the Court directing attachment, but the act complained against was an act of the receiver himself. Those cases are therefore distinguishable.

5. It is further urged that owing to some misapprehension on the part of the counsel for the appellant, he did not press all the points in the grounds of appeal before the District Judge and confined his argument to this question of limitation only. The learned District Judge in refusing to rehear the case has pointed out that he does not believe that there was any misunderstanding. After arguments had been heard the case was put down for delivery of judgment, and not for further hearing on the next date. In these circumstances, if the counsel did not advance any arguments on some of the grounds of appeal, it must be assumed that he had abandoned them. The appeal is accordingly dismissed with costs.

#### Cases Referred.

1[1919] 51 I.C. 113

2A.I.R. 1924 Oudh 294