

(1924) 08 AHC CK 0008**Allahabad High Court****Case No:** None

Sita Ram and Another

APPELLANT

Vs

Beni Prasad and Others

RESPONDENT

Date of Decision: Aug. 6, 1924**Final Decision:** Dismissed**Judgement**

1. This is a second appeal in insolvency proceedings. One Bam Prasad was declared an insolvent on 18th May, 1914, and a Receiver was appointed on 3rd June, 1914. At that time the insolvent's father, Basanti Lal, was dead, while his grandfather Girdhari Lal and three brothers, Shambhu Nath and others of his father Basanti Lal were alive. The receiver desired to take possession of a portion of the property in the possession of Girdhari Lal on the ground that it was joint ancestral property and that Ram Prasad had a share therein. Girdhari Lal objected and the insolvent Court held, on 10th September, 1915, that the property was the self-acquired property of Girdhari Lal in which Ram Prasad had no share. After the death of Girdhari Lal, the Receiver claimed ownership by right of succession of the insolvent to a one-fourth of the property left by Girdhari Lal, whereupon he was stopped by Shambhu Nath and others who claimed the entire property as beneficiaries under a will of Girdhari Lal. The matter was inquired into by the insolvency Court which decided, on 12th November 1917, in favour of the genuineness of the Will.

2. In 1921 two minor sons of Ram Prasad sued Shambhu Nath and others and also their father Ram Prasad for partition of their one sixth share, that is, two thirds of one-fourth, which according to them devolved on Ram Prasad by right of survivorship. A preliminary decree for partition was passed in their favour on 29th June, 1923. Before a final decree could be prepared, the parties compromised and the sons received a house and Rs. 8,000 in cash as their one-sixth of ancestral property.

3. One of the creditors, Beni Prasad, thereupon moved the insolvency Court to direct the Receiver to take possession of this property of sons for payment of their father's

debt. This application was dismissed by the trial Court of the Judge of Small Causes on 24th September, 1923, on the ground that it was barred by previous orders of the Court u/s 11 of the Code of Civil Procedure. The provisions of the CPC are made applicable to insolvency proceedings u/s 5 of the Act No. V of 1920. On appeal to the District Judge by the creditor the order of the trial Court was set aside and the Receiver was directed to take possession of the house and cash allotted to the sons on partition and to distribute the proceeds among the creditors.

4. It was argued here on behalf of the minor sons of Ram Prasad that the provisions of Section 4(2) of the Act of 1920 did not apply, as they invested insolvency Courts with a jurisdiction which did not exist formerly. We are however of opinion that prior to this Act also decrees of an insolvency Court had the same effect of binding the debtor and the debtor's estate and the claimants. This was held by a Bench of this Court in *Pitaram v. Jhujar Singh* (1917) 15 A.L.J. 661. In a subsequent Bench decision of this Court, *Irshad Husain v. Gopinath* (1919) 41 All. 378 this decision was followed and not dissented from though the learned Judge³ composing that Bench had a certain amount of hesitation in doing so. We are of opinion that the case in 15 A.L.J. 661 was rightly decided.

5. The present dispute however is not concluded by the previous orders of 1915 and 1917. In the previous disputes the sons were not parties. The question at issue here is not whether Girdhari Lal was in possession of joint family property or self acquired property. The point at issue is whether a Hindu father is entitled or not to property obtained by his sons, on a division of joint ancestral property, when he desires to satisfy his debts out of the proceeds of such property. In our opinion the previous orders are not a bar to the present inquiry.

6. In this view it is not necessary to consider whether the previous orders were obtained by fraud and collusion or not.

7. The claim of the Receiver, in whom the father's rights and interests vested u/s 28 of the Provincial Insolvency Act, is based on the principle of Hindu law enunciated by a Bench of this Court in *Bawan Das and Another Vs. O.M. Chiene*, That case also arose out of insolvency proceedings as here and the same question was in dispute as to the vesting of a Hindu father's property in the Receiver. At page 157 of the report, it was observed:

If we may refer to another principle of Hindu law we may note that in the event of a suit for partition by these minor sons against their father provision would first be required to be made for all debts due by the joint family as such including debts due by their father (vide Trevelyan's Hindu Law, Second Edition at page 355 and the authorities there cited).

8. The appellants' learned Counsel desired to distinguish this ruling on the ground that the Receiver was in this case attempting to take possession of the separate property of the sons. That of course he could not do vide *Devaguptapu v. Vaddadi*

(1915) 38 Mad. 1120. Here however the receiver has stepped in at the partition and not after. He was vested with all the property which devolved on the insolvent after the date of the order of adjudication and before his discharge - Section 28(4).

9. As soon as the sons received joint family property at partition the right became vested in the receiver of taking that property to pay Hindu father's debts. The Receiver did not become entitled to this eight subsequent to the partition.

10. The sons are liable to contribute towards the payment of any such debts of the father as are not tainted with immorality. The appellants' learned Counsel pointed out that the receiver will therefore have a fund out of which certain debts may be paid rateably and not others. This position was said to be contrary to the scheme of the Insolvency Act. We do not think that there is anything in the Act to prohibit the Receiver from holding such a fund.

11. The sons have not had an opportunity given to them to prove the immorality of the debts. This shall be done now. We modify the lower Appellate Court's decree and remand the case to the trial Court for a determination of the scheduled debts which may be proved by the sons to be tainted with immorality. The sons shall be bound to contribute to the rest of the debts and shall be paid the balance, if any, of the proceeds of the property. This order is passed under Order 41, Rule 23. Costs here and heretofore shall abide the result.