
(1936) 02 CAL CK 0033

Calcutta High Court

Case No: Suit No. 10 of 1930

Re: Tulsidas
Kissendoyal

APPELLANT

Vs

Exparte: Chhajuram
Chowdhury and Others

RESPONDENT

Date of Decision: Feb. 11, 1936

Judgement

Lort-Williams, J.

The firm, of Tulsidas Kissendoyal was adjudicated insolvent by this Court by an order dated 18th February, 1930. This firm was also adjudicated insolvent about the same time by the orders of the District Judges of Delhi and Sargoda. All these orders of adjudication were subsequently annulled. Prior to this the insolvent firm submitted a proposal for composition which was accepted by the creditors and approved by this Court by an order dated the 15th August, 1933. The composition provided that trustees should be appointed to carry out the composition. Further, it provided that the payment of the composition should be secured in the following manner:--

The insolvents and the Official Assignee will convey by a sufficient document to the said trustees their right, title and interest in their immoveable properties. The Official Assignee will convey and make over to the trustees the balance of the funds in his hands. The insolvents will vacate any immoveable property in their occupation at the time of the delivery of the said properties to the said trustees. The Official Assignee will make over to the insolvents all the books of account now in his possession, and all those to be made over to him by the Official Receivers at Delhi and Sargoda, respectively, and the insolvents when called upon by the trustees will produce the same for inspection for realisation of the outstandings of the insolvent firm."

" The trustees will realise the said assets, except the sum of Rs. 5000, which the insolvents will be entitled to realise from their debtors, and the properties belonging to the insolvents, and distribute the nett sale proceeds thereof rateably amongst the creditors.

2. The order dated the 15th August, 1933, provided inter alia, that upon: the trustees named in the proposal for composition furnishing security for the amount of the composition, the adjudication should be annulled and the Official Assignee was at liberty to make over the assets belonging to the estate of the insolvent firm to the trustees upon their furnishing such security.

3. Subsequently attempts were made by the trustees to sell the immovable properties which had belonged to the insolvent firm, and in August, 1935, an offer was received which they are anxious to accept, but doubts about the title have been raised by the proposed purchaser.

4. It is submitted by the Trustees that the title to these properties is vested in, them, and that they are in a position to give a good title to any purchaser.

5. It is contended in opposition that in view of the fact that there had not been any conveyance by a sufficient (document by the insolvents and the Official Assignee to the Trustees, within the meaning of the composition, the title is not vested in the Trustees, but is vested either in the Official Assignee or in those individuals who were members of the insolvent firm at the time of adjudication.

6. In my opinion, the property is vested in the Trustees. Sec. 30 (1) of the Presidency Towns Insolvency Act provides that if the Court approves of such a proposal as was made in this case, the terms shall be embodied in the order of the Court, and an order shall be made annulling the adjudication, and the provisions of sec. 23 (1) and [(3) shall thereupon apply.

Sub-sec. (2) provides that the provisions of the composition or scheme shall be enforced by the Court on application by any person interested.

Sec. 23 (1) provides that where an adjudication is annulled.... the property of the debtor who is adjudged insolvent shall vest in such person as the Court may appoint, or, in default of any such appointment, shall revert to the debtor to the extent of his right or interest therein, on such terms and such conditions (if any) as the Court may declare by order.

7. It is to be observed that the section does not require that the Court shall make a vesting order, but the effect of its provisions is that upon the Court making an appointment within the meaning of the section, the property of the debtor, ipso facto, vests in the person or persons appointed.

8. In my opinion, the effect of the order of the 15th August, 1933, was that the trustees referred to were appointed by the Court within the meaning of the section, and that the property of the debtors, ipso facto, vested in the Trustees, and I declare that the properties mentioned in the said composition have vested in the trustees. There is no doubt whatever about what the intentions of the parties were when the composition was

approved and the order of the 15th August, 1933, was made.

9. If however, I am wrong in the opinion which I have expressed about the effect of the order, then I make an order vesting the property referred to in the trustees. This I am empowered to do either under the provisions of sec. 7 or of sec. 30 (2). Each party will pay its own costs of this application.