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Raghusing Bhavansing Vs. Ogeppa Ramappa

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Court : Mumbai

Decided On : Mar-13-1946

Reported in : AIR1947Bom71; (1946)48BOMLR615

Judge : Lokur, J.

Appeal No. : Civil Application No. 1426 of 1945

Appellant : Raghusing Bhavansing

Respondent : Ogeppa Ramappa

Disposition : Application dismissed

Judgement :

Lokur, J.

1. This is an application under Section 37 of the Bombay Agricultural Debtors' Belief Act, 1939, requesting that second appeal No. 1149 of 1945 should be sent to the Debt Adjustment Board at Bijapur for disposal. The suit out of which that appeal has arisen was filed by the plaintiff for an account of a mortgage evidenced by a sale deed of 1933. He claimed that the sale deed was intended to create only a mortgage. The trial Court held that the transaction was an absolute sale and dismissed the suit. The appeal against that decree was summarily dismissed by the District Judge on July 31, 1945. The Bombay Agricultural Debtors' Belief Act,

1939, was extended to Bijapur on May 1, 1945, when the appeal was still pending before the District Judge. But the last date for making an application to the Debt Adjustment Beard under Section 17 was fixed as October 81, 1945. It is alleged that an application in respect of the alleged mortgage in suit was made to the Board before that date. Simultaneously on the last date the present application has been made to this Court requesting that the second appeal which is a continuation of the original suit should be transferred to the Debt Adjustment Board under Section 37(i) of the Act. That sub-section says:

All suits, applications for execution and proceedings for the recovery of any debt against a person pending at any time in any civil or revenue Court shall, if they involve the questions whether such person is a debtor under this Act and whether the total amount of debts due from him on the relevant date does not exceed Rs. 15,000, be transferred to the Board to which an application for adjustment of the debts of such person under section 17 lies .

2. It is obvious from the wording of this sub-section that it is intended to apply to suits filed by the creditor to recover his debts. If in such a suit the person against whom it is filed claims to be a debtor under the Act and the total amount of debts due from him does not exceed Rs. 15,000, the suit or application or proceeding is to be transferred to the Debt Adjustment Board. The use of the expressions 'against a person' and 'such person' clearly indicates that the sub-section does not apply to a suit or application or proceeding started by the debtor. For such a suit, application or proceeding Sub-section (2) provides that if an application for adjustment of debts made to a Board under Section 17 or a statement submitted to a Board under Section 31 includes a debt in respect of which a suit, application or proceeding is pending before a civil or revenue Court, the Board shall give notice thereof to such Court in the prescribed manner and on receipt of such notice, the Court shall transfer the suit, application or proceeding, as the ease may be, to the Board. The rulings referred to on behalf of the applicant were all under the old Section 37 which was quite differently worded. Under that section all pending suits and applications for execution before any civil Court in Which the question involved is the recovery of any debt from a person who is a debtor under this Act and all proceedings arising in or out of such suits or applications, if such

person ordinarily resides in any local area for which a Board is established under Section 4 or belongs to a class of debtors for which a Board is established under the said section shall, if the total amount of debts due from such debtor is not more than Us, 15,000, be transferred to the Board. In In re Reference wider O; XLVI, Civil Procedure Code (1942) 45 Bom. L.R. 445 the expression 'in which the question involved is the recovery of any debt' which appeared in the old section was interpreted as including suits by or against the debtor if the question regarding the recovery of debt be involved in it. In view of the wording of the present amended section it is obvious that if a suit is filed by the debtor himself the proper remedy is for him to move the Debt Adjustment Board to give a notice in the prescribed form to the Court where any suit or application or proceeding' is pending and then the Court will transfer it to the Board. The present application for the transfer of the pending suit or appeal in which the debtor himself is the plaintiff is not maintainable.

3. The application is, therefore, dismissed with costs.

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