

Hulas Singh and ors. Vs. Data Ram and ors.

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Court : Allahabad

Decided On : Feb-23-1943

Reported in : AIR1943All291

Appellant : Hulas Singh and ors.

Respondent : Data Ram and ors.

Judgement :

Iqbal Ahmad, C. J.

1. This is a defendants' appeal arising out of a suit for sale on a mortgage dated 10th July 1925. The defendants contested the suit mainly on the ground that the claim was barred by limitation. This contention of the defendants found favour with the trial Court and that Court accordingly dismissed the suit. On appeal by the plaintiffs, the lower appellate Court reversed the decision of the trial Court on the question of limitation and decreed the suit. The sole question in the appeal is whether or not the plaintiffs' claim was barred by limitation and the decision of this question depends on the construction of certain sections of the Encumbered Estates Act ('25 of 1934) and on the true interpretation of Section 15, Limitation Act.

2. The relevant facts are not in controversy and are as follows: The mortgage in suit was executed by the defendants or their predecessors in favour of the plaintiff-respondents on 10th July 1925, and, under the law of limitation, the time for

instituting a suit on the basis of the mortgage would have expired on 10th July 1937. The mortgagors, however, on 24th April 1936, filed an application under the Encumbered Estates Act and that application was forwarded by the Collector to the Special Judge on 6th June 1936, in accordance with the provisions of Section 6, Encumbered Estates Act. The application remained pending for some time before the Special Judge but owing to the default of the landlord, applicants, the Special Judge in conformity with the provisions of Sub-section (3) of Section 8, Encumbered Estates Act, dismissed the application on 10th August 1937. The suit giving rise to the present appeal was then filed on 17th September 1937.

3. The plaintiffs maintained that in the computation of the period of limitation they were entitled to the exclusion of the period intervening between 6th June 1936 the date on which the Collector had forwarded the application to the Special Judge, and 10th August 1937 when the application of the landlord applicants was dismissed by the Special Judge under Section 8 (3) of the Act. The defendants, on the other hand, contested this position and maintained that the period above referred to could not be excluded in computing the period of limitation for a suit to enforce the mortgage. The plaintiffs placed reliance on Clauses (b) and (c) of Section 43, Encumbered Estates Act, and also on Section 15, Limitation Act. In our judgment, Section 43 had no application to the present case. Clauses (b) and (c) of Section 43, before the amendments introduced by Act, 11 of 1939, ran as follows:

When an application has been dismissed under Sub-section (3) of Section 8 or when an order has been passed under Section 20 quashing further proceedings under the Act, the following consequences shall ensue, namely: ... (b) notwithstanding anything contained in Section 18 all rights and remedies and proceedings stayed under Sub-section (1) of Section 9 shall revive to the creditors as if no action had been taken under this Act; and (c) in computing the period of limitation prescribed for any suit or other proceeding for the recovery of debts in respect of which a written statement has been filed under Section 10 the period from the date of the order of the Collector under Section 6 to the date of the order of the Special Judge quashing further proceedings under the Act shall be excluded.

4. It would be noted that Section 9 referred to in Clause (b) quoted above corresponds to Section 7 of the Act as amended by Act 11 of 1939. Clause (c) of Section 43 is confined in its operation to cases in which a creditor had filed a written statement under Section 10 of the Act and as, in the present case the plaintiffs had not filed such a written statement, and indeed the application under the Encumbered Estates Act filed by the defendants had been dismissed long before the stage for filing a written statement under Section 10 had arrived, it is manifest that Clause (c) can have no application to the present case. It was, however, maintained by the plaintiff-respondents that as in pursuance of the provisions of Clause (b), their rights and remedies with respect to the mortgage debt had revived, they were entitled to the exclusion of the time that elapsed between the date of the order by the Collector under Section 6 and the date of the dismissal of the defendants' application under Section 8. This contention of the plaintiffs was accepted by the learned Judge of the lower appellate Court who held that:

Section 43 (b) means that the creditors' rights are in suspense during the proceedings under the Encumbered Estates Act and revive when the latter is dismissed. Section 29, Limitation Act, gives a Court power to apply the rules of limitation contained in the Act to cases where a special rule of limitation is given by some other Act.

5. In support of this conclusion, the learned Judge of the lower appellate Court observed that it would be monstrous if a creditor were forbidden to bring a suit whilst an Encumbered Estates Act case was pending and the moment it was dismissed through the fault of the debtors he would be precluded from bringing a suit because his claim by that time was time-barred. While we share the view of the learned Judge that it would be anomalous to hold that the period during which the proceedings under the Encumbered Estates Act were pending cannot be excluded in the computation of the period of limitation, we are unable to agree with his conclusion that that period is to be excluded by virtue of the provisions of Section 29, Limitation Act. Section 29, Limitation Act, has application only to those cases where a special or local law prescribes a period for a suit, appeal or application. The Encumbered Estates Act does not prescribe a period of limitation

and, therefore, it is not permissible to place reliance on Section 29, Limitation Act. Similarly, in view of the provisions of Section 9, Limitation Act, which are mandatory it is not, in our judgment, possible to invoke the principle of suspension of the period of limitation as has been done by the learned Judge of the lower appellate Court. We, however, consider that the case falls within the purview of Section 15, Limitation Act, and, in view of the provisions of that section, the plaintiffs were entitled to the exclusion of the period between 6th June 1936 and 10th August 1937. Clause (l) of Section 15 provides that:

In computing the period of limitation prescribed for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

6. A mass of case law has clustered round Section 15. It has been held in a series of cases that Section 15 applies only to those cases in which the institution of a suit has been directly or indirectly stayed by an order of a Court and does not apply to cases where the institution of a suit or other proceedings is forbidden by a statute: vide *Ramaswami Pillai v. Govindasami Naicker* ('19) 6 A.I.R. 1919 Mad. 656 and *Singaravelu Mudaliar v. Chokkalinga Mudaliar* ('23) 10 A.I.R. 1923 Mad. 88. It has, however, been held in *Sidhraj Bhojraj v. Alli Haji* ('23) 10 A.I.R. 1923 Bom. 33, that there need not be a direct order by a Court staying the institution of a suit and it is enough if such an order is implied. In other words, Section 15 is applicable to cases in which either as a direct or as an indirect consequence of an order of a Court a plaintiff is debarred from instituting a suit. Before the amendment introduced by Act 11 of 1989, the institution of a suit by a creditor, after the Collector had passed an order under Section 6, Encumbered Estates Act, was absolutely barred by Clause (b) of Section 7. It follows that after an order by the Collector under Section 6, no creditor could, during the pendency of proceedings under the Encumbered Estates Act, institute a suit for the recovery of the debt due to him from the landlord. The direct consequence of an order under Section 6 was, therefore, to bar the institution of a suit by a creditor. It is, therefore, correct to say that the Collector's order in the present case was tantamount to an

order staying the institution of a suit by the plain, tiffs. In this view of the matter, the order of the Collector under Section 6 attracts the provision of Section 15, Limitation Act, and the period intervening between the date of that order and the conclusion of the proceedings under the Encumbered Estates Act must, therefore, be excluded in the computation of the period of limitation for a suit by a creditor. The conclusion arrived at by us is in conformity with the decisions in Mathura Prasad Singh v. Jageshwar Prasad Singh ('26) 13 A.I.R. 1926 Pat. 260 and Mahabir Prasad Narayan Deo v. Bhupal Singh ('29) 16 A.I.R. 1929 Pat. 694, though the reasons given by the learned Judges of the Patna High Court are not identical with the reasons that we have given in support of our decision. For the reasons given above, we dismiss this appeal with costs.

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