Bhagwan Singh Vs. Saheb Singh and Others

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Court : Allahabad

Decided On : Sep-30-1999

Reported in : 2000(1)AWC151

Judge : Yatindra Singh, J.

Acts : Uttar Pradesh Debt Relief Act, 1977 - Sections 2(5), (6) and (9), 4 and 5; Code of Civil Procedure (CPC), 1908 - Sections 50 to 53

Appeal No. : C.M.W.P. No. 7434 of 1980

Appellant : Bhagwan Singh

Respondent : Saheb Singh and Others

Advocate for Def. : S.S. Agnihotri, ;R.P. Goel and ;S.R. Singh, Advs.

Advocate for Pet/Ap. : B.N. Srivastava, ;V.K. Burman, ;Sanjay Goswami and ;B. Dayal, Advs.

Judgement :

Yatindra Singh, J.

1. This writ petition involves' the applicability of the U. P. Debt Relief Act. 1977 (the Act) to the legal heirs of a debtor when the debtor was not alive on the date of enforcement of the Act. Are the legal heirs entitled to the benefit of the Act? Are

they also 'debtors' within the meaning of the Act

FACTS

2. Late Sri Har Prasad hadmortgaged his land to one Sri Saheb Singh (the contesting respondent). Sri Har Prasad died without redeemingthe mortgage before the enforcement of the Act. His nephews, namely, Sri Bhagwan Singh (the petitioner) and Sri Atar Singh (respondent No. 2), the legal heirs, inherited his property. The contesting respondent filed a suit for recovery of his debt against the legal heirs, which was decreed.

3. The contesting respondent started execution proceedings in which the property of late Sri Har Prasad in the hands of the legal heirs was sold on 1.3.1976. The legal heirs filed an objection against the same. During the pendency of this objection, the Act came into force with effect from 21.2.1977. The executing court, by its order dated 26.9.1978, held that the legal heirs are marginal fanners within the meaning of the Act and abated the execution proceedings. The contesting respondent filed an appeal, which was converted into revision. The revisional court allowed the revision on 22.5.1980. Hence the present writ petition.

POINTS TO BE DETERMINED

4. I have heard Sri Vishnu Sahai, counsel for the petitioner. Following points arise for determination in this case :

(i) The executing court abated the execution proceedings in view of the Act. Could the Court do so on the finding recorded by it?

(ii) Who owes a debt after the death of a debtor? The debt after the death of debtor can be recovered against--his estate, or his legal heirs?

(iii) Are the legal heirs, who inherited the estate of the deceased before the commencement of the Act, 'debtors' within the meaning of the Act? Are they entitled to benefit of the Act?

1st Point : THE ORDER OF THE EXECUTING COURT

5. The Act, initially promulgated as an Ordinance, was enacted, to provide relief from indebtedness to a landless agricultural labourers, rural artisans, marginal farmers, smallfarmers, and urban workers. The Act defines the words 'debt', 'debtor' and 'marginal farmer' in Section 2(5), 2 (6) and 2 (9) of the Act. Section 4 of the Act provides for discharge of all debts of a debtor whose annual household income does not exceed Rs. 2,400. The executing court has held that the petitioner (one of the legal heirs) has 64 decimal of land and is a marginal farmer within the meaning of the Act. But there is no finding about his annual income, yet the executing court abated the execution proceedings. This was incorrect. The execution proceedings could not be abated unless there was a finding that household income was less than Rs. 2.400 per annum.

6. There is another infirmity. Section 5 of the Act providesconsequences of discharge of a debt. It stales that no proceedings can be taken against a debtor, where Section 4 of the Act is applicable. But its proviso clarifies that, if any immovable property has been sold and the sale has been confirmed before the commencement of the Act, then Section 5 would not apply. The property in this case sold on 1.3.1976. The Act came into force on 21.2.1977. The executing court has not recorded any finding about the confirmation of the sale. Even if the legal heirs were entitled to the benefit of the Act, the executing court could not abate this proceeding without recording a finding about non-confirmation of the sale. The revisional court has not set aside the order of the executing court on the abovementioned grounds, but on the ground that the debtor (Sri Har Prasad) was not alive on the day of enforcement of the Act. Let's consider if this ground is correct.

2nd Point : THE LEGAL HEIRS DO NOT OWE A DEBT.

7. A person who takes a loan has to pay the same. If he does not, then a creditor can always recover it by taking appropriate legal proceedings. Limitation merely bars aremedy but does not extinguish the debt. A time barred debt is a good consideration for a contract. A debtor remains a debtor and if he fulfills the conditions of the Act is entitled to its benefit. The question here is. Are the legal heirs of a debtor on the date of commencement of the Act, also debtors within the

meaning of the Act? Are they also entitled to its benefit

8. The Supreme Court in Pannalal v. Mr. Naraini. : [1952]1SCR544 , while explaining the Hindu Lawsays :

'The son is not personally liable for the debt of his father even if the debt was not incurred for an immoral purpose and the obligation is limited to the assets received by him in his share of the joint family property or to his interest in such property and it does not attach to his self-acquisitions.

The Muslim Law is not different. Mulla's Principles of Mohammedan Law (14th Ed.) in paragraph 43 states :

43. Extent of liability of heirs for debts.--Each heir is liable for the debts of the deceased to the extent only of a share of the debts proportionate to his share of the estate.

This is a common thread in all jurisprudence irrespective of the faith of the parties. The liability of the legal heirs is limited to the estate of the deceased. The Sections 50 to 53 of the Code of Civil Procedure (the C.P.C.) merely illustrate this principle. Let's consider these sections.

Sections 50 and 52 of the C.P.C.

9. The Sections 50 and 52 are in Part II of the C.P.C., which dealswith execution. These sections explain the liability of a legal representative in an execution. Section 50 provides for a case where a decree has been passed against a person and he dies before the decree is fully satisfied. The Bombay High Court has held :

'To pass a decree against the legal representative of the deceased defendant so as to make them personally liable is not, in my opinion, competent for a Court to direct.

The Orissa High Court has held similarly.

10. Section 52 of the C.P.C. provides for a case where the decree is passed against the legal representative of a deceased person. The only difference in the

Sections 50 and 52 of C.P.C. is that in one case decree is passed against a party, in the second case it is against his legal heirs. Mulla on the Code of Civil Procedure (15th Ed. page 453) explains :'

'Whether a decree passed against a judgment-debtor is sought to be executed under Section 50 of the C.P.C. against his legal representatives or whether the decree itself has been passed under [this Section 52 of the C.P.C.]. against the legal representatives, the extent of their liability is the same. They are liable only for what has come into their hands as assets of the deceased and not duty accounted for.'

A decree obtained against the legal representatives of a deceased debtor can be executed only against the estate of the latter in their hands. If the legal representatives satisfy the Court that they have duly applied the property of the deceased that came into their hands, then the decree-holder is not entitled to proceed against their separate property.

11. The legal heirs merely represent the estate of the deceased debtor. Section 4 of the Act discharges all debts of a debtor but not against his estate. It is immaterial if the suit for recovery of a debt was filed against the legal heirs and the original debtor. The fact is that the debt cannot be personally recovered from the legal heirs even if the suit was filed against them. The legal heirs do not personally owe a debt.

3rd Point : LEGAL HEIRS--NOT ENTITLED TO THE BENEFIT

12. The 'debtor' is defined in Section 2 (6) of the Act as a person 'who owes a debt'. The legal heirs do not owe a debt. They are neither 'debtor' within the meaning of the Act, nor can they claim any benefit under Section 4 of the Act. The fact that the legal heirs are marginal farmers (and even if they were earning less than Rs. 2.400 per annum), they were entitled to benefit of the Act as far as a debt against them was concerned. But this does not discharge a debt of their predecessor in interest, who wasnot alive on the date of enforcement of the Act.

CONCLUSION

13. The legal heirs of a debtor are not personally liable to pay the debt. The debt can only be recovered from the estate of a deceased debtor. The legal heirs--if the debtor was not alive on the commencement of the Act, are not entitled to the benefit of the Act. The writ petition has no merits. It is dismissed.