

Deep Chand and ors. Vs. Mania and ors.

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Court : Allahabad

Decided On : Sep-24-1947

Reported in : AIR1948All194

Appellant : Deep Chand and ors.

Respondent : Mania and ors.

Judgement :

Bind Basni Prasad, J.

1. This judgment will govern Second Appeals Nos. 715 and 935 of 1945 also. A common question arises in all these appeals and that question is whether any one has a right to pre-empt a sale of land made by a Collector under the provisions of the Encumbered Estates Act.
2. Both the Courts below answered the above question in the negative. The plaintiffs come in appeal.
3. Section 6, Agra Pre-emption Act, provides inter alia that no right of pre-emption shall arise in respect of any sale in execution of the decree of a civil or revenue Court. The question for determination, therefore, is whether the sale made by the Collector under Clause 5, U.P. Encumbered Estates Act, can be regarded as a sale in execution of a decree of a civil Court. I have no doubt in my mind that, on a consideration of the scheme of the Act, the sale should be regarded as such. The

Collector entertains the application under Section 4. He then sends it to the Special Judge who passes simple money decrees under Sub-section (7) of Section 14. It is provided therein that such decrees shall be deemed to be decrees of civil Courts of competent jurisdiction. The special Judge then makes the ranking of debts under Section 16 and transmits them to the Collector under Section 19. It is important to quote here Sub-section (1) of Section 19:

The Special Judge shall send the decrees granted under Sub-section (7) of Section 14 to the Collector for execution in accordance with the provisions of the next chapter....

4. The Collector receives the decrees, therefore, for the purpose of execution. The heading of chap. 5 is 'Execution of Decrees and Liquidation of Debts.' The sales which are made by the Collector are in exercise of statutory powers and not as an agent of the debtor. It is true that the sales are made under the Encumbered Estates Act not by public auction but on the basis of valuation. It is well known that in the past properties were sometimes sold at very low prices to the detriment of the judgment-debtors. To relieve the debtors from this hardship, the Legislature provided that a fair valuation of the properties shall be made by the Collector and he shall then sell the property at those valuations. Only the method of sale of the property has been changed under the Encumbered Estates Act but the fact remains that the sales are compulsory and not by act of the parties. The debtor only sets the law in motion by an application under Section 4. He has no control over the proceedings subsequent to the filing of the application. He cannot control the powers conferred upon the Collector under the Encumbered Estates Act.

5. Learned Counsel for the appellants relies upon certain rulings in which a right of preemption has been held to exist in case of sales made by official receivers under the Provincial Insolvency Act. The position of official receivers is not identical with that of Collectors. The official receiver does not execute any decree. He only liquidates the debts and the sales made by him would not come within the expression 'sale in execution of the decree' occurring in Section 6, Agra Pre-emption Act. In the case of sales made by Collectors under the Encumbered Estates Act, they would clearly fall under this expression. The lower Court has

relied upon 1940 Sheo bandhan Pandey v. Kishun Prasad : AIR1940 All323 . It was held in that case that a co-sharer has no right of pre-emption in the case of a transfer of land under Section 5, Regulation of Sales Act, because such a transfer is by the Collector in execution of a decree and under Section 6, Agra Pre-emption Act, no right of preemption arises in a sale in execution of a decree of a civil or revenue Court. It is true that the said case did not arise from a sale made under the Encumbered Estates Act but the principle is the same. The Collector acts under the Encumbered Estates Act also as an officer for the purpose of executing decrees, and that was his position under the Regulation of Sales Act, 1934. learned Counsel for the appellants has also referred me to the definition of the term 'sale' as contained in Section 54, T.P. Act, and as adopted in the Agra Pre-emption Act. He contends that, a sale made under the Encumbered Estates Act would fall under this definition. I am unable-to agree with this contention. It will be seen from Section 4, T.P. Act, that the provisions of that Act which relate to contracts are to be taken as part of the Contract Act, 1872. Now the chapter relating to sales is certainly a provision relating to contracts. The intention is clear that the Transfer of Property Act deals only with those transactions which are brought about 'by acts of parties and not with those which are brought about by the operation of law. The sale under the Encumbered Estates Act is brought about by the operation of law and hence it would not fall within the definition of 'sale' as contained in Section 54, T.P. Act.

6. Agreeing with the lower appellate Court hold that no right of pre-emption accrues when is sale is made by the Collector tinder the pro-visions of the Encumbered Estates Act in execution of decrees.

7. The appeals fail and they are hereby dismissed with costs.

8. The standing counsel appears for the Collector and he will get separate costs.

9. There is a cross-objection in this appeal by one Brahma Din alleging that he has a preferential right of pre-emption as against other rivals. No pre-emption accrues on a sale by the Collector under the Encumbered Estates Act. The cross-objection is accordingly dismissed.

