

Mohammad Ali and ors. Vs. Mt. Bhari Dulhin and anr.

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Court : Allahabad

Decided On : May-02-1939

Reported in : AIR1939All648

Appellant : Mohammad Ali and ors.

Respondent : Mt. Bhari Dulhin and anr.

Judgement :

ORDER

Rachhpal Singh, J.

1. This is a revision application by the creditors in a case decided under the Encumbered Estates Act. A preliminary objection was taken by learned Counsel for the opposite party that the revision application was incompetent. Mt. Bhari Dulhin and Mt. Maharani Dulhin made an application under Section 4, Encumbered Estates Act. In due course, the matter came up before the Special Judge. After an enquiry, he passed an order under Section 14 of the Act determining the amount which has to be paid by the judgment-debtors and the method of its payment. Under Section 45, Encumbered Estates Act, the creditors had a right to prefer an appeal against the decision of the Special Judge but it is admitted that no such appeal was preferred.

2. It is contended by learned Counsel for the opposite party that having regard to the provisions of Section 46 of the Act no revision can be entertained. In my

opinion the contention is correct. The revision application is described as being one under Section 115, Civil P.C. But it is conceded that Section 115 does not apply, but the contention of the learned Counsel for the applicants is that the revision can be entertained by this Court under the provisions of Section 46 of the Act. it appears to me that this is the only question for consideration. Section 46, Encumbered Estates Act, enacts as follows:

Any Court empowered under Section 45 to hear an appeal under this Act may of its own motion, OE on the application of any person concerned, call for the record of proceedings in any case under this Act pending in a Court from which appeals lie to such Court, and after giving due notice to the parties concerned pass such orders thereon consistent with the provisions herein contained as it thinks fit, and such order shall be final.

3. It will be seen that there is a considerable difference between the provisions of Section 115, Civil P.C., and Section 46, Encumbered Estates Act. Under Section 115, Civil P.C., it is only the High Court which has the power to revise. Under the provisions of Section 46, Encumbered Estates Act, the Court to which an appeal lies has been given this power. For instance, an appeal lies to the District Judge against the decision of Special Judge, second grade. The District Judge has the power to revise the order of the Court below. Under Section 115, Civil P.C., the High Court may call for any case which has been decided by any Court subordinate to it and in which no appeal lies thereto. The provisions of Section 46, Encumbered Estates Act, are different. Under this Section the power of the Court of revision is confined to cases which are pending and has no reference to cases which have already been decided and are therefore no longer pending. In the case before me, it was open to the applicant to prefer an appeal against the order of the Court below. For some reason they did not do so. Ordinarily, a litigant should not be heard in revision if he deliberately elected not to avail himself of his remedy by way of appeal which was open to him. If the arguments of learned Counsel for the applicants were accepted then it would mean that it is open to litigants to ignore the provisions relating to filing of appeal and to come to Court by way of revision in each case and thus evade payment of court-fee.

4. In view of the provisions of Section 46, En-cumbered Estates Act, I am clearly of opinion that Courts empowered to hear appeals (High Court as well as the District Court) can exercise their revisional powers only in those cases which are pending. I apprehend that the revisional Court has no power to call for the record of a case which is not pending and which has already been decided by the trial Court. The wording of the Section shows that the power of revision in cases not pending was deliberately withheld. I uphold the preliminary objection and hold that no revision lies. In this view of the case it does not appear to be necessary to go into other questions which were raised by learned Counsel for the applicants. The revision application fails and is dismissed with costs.

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