

Mohd. MohsIn Vs. Mohd. Mohtashin

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SooperKanoon Citation : sooperkanoon.com/460621

Court : Allahabad

Decided On : Mar-16-1945

Reported in : AIR1945All281

Appellant : Mohd. Mohsin

Respondent : Mohd. Mohtashin

Judgement :

ORDER

Sinha, J.

1. This is a revision against an order of the learned Judge of the Court of Small Causes at Budaun. The decree-holder applied for the arrest of the judgment-debtor. The latter claimed that he was an agriculturist at the time of the debt and also at the time of the passing of the Debt Redemption Act; Section 23, U.P. Debt Redemption Act, therefore constituted a bar to his arrest. The learned Small Cause Court Judge repelled this contention; hence this civil revision.

2. The learned Judge finds that the share of the applicant in the khewat is infinitesimal and therefore he is an agriculturist only in name. He, however, held that he would have extended to the applicant the benefit of this provision of the law if his hands were not tied by the order passed in the suit itself, which did not accept the applicant's case that he was an agriculturist. The U.P. Debt Redemption Act was passed for the benefit of the agriculturists and the applicant

is entitled to its benefit even if his share in the khewat was a very small one, if he answered the test provided by the law. To my mind, any finding in the suit itself adverse to the applicant will not constitute a bar in the present proceedings. It was held in *Katwari v. Sita Ram Tewari* ('21) 8 A.I.R. 1921 All. 118 that even in execution proceedings it was open to a judgment-debtor to plead that his occupancy holding could not be transferred even though there was no such plea in the suit itself. At p. 475 their Lordships observed as follows:

No doubt it was not open to the judgment-debtor to contest the validity of the decree which was passed against him but it was open to him to say to the Court that as the law contains mandatory provision which precludes a Court executing a decree from selling an occupancy holding the Court was bound to carry out the provisions of the law and not to act in violation of those provisions.

The only difference in that case and this is that whereas in that case there was no express adjudication in the proceedings in the suit itself, in the present case there is, but that, to my mind, will not make any difference. It has been held in *Shri Nath v. Puran Mal* ('42) 29 A.I.R. 1942 All. 19 that the Agriculturists' Belief Act is meant for the benefit of a restricted class of people and there can, strictly speaking, be no res judicata. *Dar J.* at p. 74 observed:

I feel also some difficulty in applying the rule of res judicata and the rule about the amendment of judgment and decree on general principles to their full extent in matters arising between a creditor and agriculturist under the Agriculturists' Belief Act.

3. If the applicant was an agriculturist, as the learned Small Cause Court Judge felt inclined to hold, he was entitled to the benefit of this Act and any adjudication made in the suit itself should not prejudice his rights. I, therefore, allow this revision and set aside the order of the Court below. The parties will bear their own costs.