

Mt. Surja Vs. Aziz Ullah

Mt. Surja Vs. Aziz Ullah

SooperKanoon Citation : sooperkanoon.com/461576

Court : Allahabad

Decided On : Jan-22-1945

Reported in : AIR1945All305

Appellant : Mt. Surja

Respondent : Aziz Ullah

Judgement :

Bennett, J.

1. The appellant, Mt. Surja, obtained a decree in the following circumstances. She applied under Section 33 Agriculturists' Belief Act, for an account of money for which she had been liable upon a mortgage executed on 17th August 1926. A decree was passed on 2nd December 1940 in the following terms:

The plaintiff's suit be decreed with costs. It is declared that the mortgage deed in dispute has been satisfied and that a sum of Rs. 297 was payable to the plaintiff by the defendants up to the end of kharif 1348.

The decree further provided that the defendants should pay a sum of Rs. 91-13-0, the costs of the suit, to the plaintiff. On 18th January 1941, the appellant paid court-fee on the amount in accordance with the provisions of Sub-section (4) of Section 33 and applied for a decree. The Court held that no fresh decree was necessary. It was only necessary to note in the original decree that the court-fee

had been paid. There can be no doubt that this view was correct according to the terms of Sub-section (4) of Section 33. An application in execution was made by the appellant on 23rd February 1942. The respondent made an objection, raising, I understand, the question of the effect of the Debt Redemption Act under which Sub-section (4) of Section 3 had been repealed. The Debt Redemption Act came into force on 1st January 1941, that is prior to the appellant's application with which she paid the court-fee. The order passed by the Munsif, however, shows only that the objection was that no decree should have been passed for the amount in excess paid by the appellant, and he rightly observed that such an objection could not be taken in execution. In the lower appellate Court a different question was raised. It was objected that the decree passed under the provisions of Sub-section (4) of Section 33 was only a declaratory decree and as such was not executable. The lower appellate Court upheld this contention, taking a different view from that of the Court before which the application of 18th January 1941 had come. The Civil Judge referred to the fact that the appellant had merely asked for a declaration of the amount which might after accounts be found due to either party. He also remarked that the terms of the decree read in the light of the reliefs sought by the appellant made it quite obvious that the decree under execution was merely a declaratory decree so far as the sum of Rs. 297 was concerned.

2. Learned Counsel for the appellant contests this view taking his stand on the terms of Sub-section (i) of Section 33. He states that it was conceded in the Courts below that the repeal of this provision by the Debt Redemption Act did not affect the question. For the respondent stress is laid on the argument which found favour with the Court below and it is also objected that, in view of the Debt Redemption Act, it was not open to the appellant to apply in execution after 31st December 1940. Learned Counsel contends that the decree could have been executed up to that date only. It seems to me that there can be no doubt that the decree passed was a decree for money and not a declaratory decree. What the appellant asked for in his application under Section 33 is immaterial. Sub-section (4) provides that if the defendant is found to have been overpaid, the Court shall pass a decree for refund of the amount of such over payment in favour of the plaintiff. The decree which was passed can only be considered such a decree and it must be so considered notwithstanding the use of the word 'declared' by the

Court which passed it. The Munsif before whom the application of 18th January 1941, came quite rightly held that no fresh decree was necessary and that it was only necessary for the purpose of execution to note in the original decree that the appellant had paid the court-fee.

3. I come now to the other question whether the power of the appellant to execute this decree was taken away by the Debt Redemption Act. This plea was, it appears, either not expressly taken before or was not pressed. Learned Counsel has, however, pressed it before me. The argument, in my view, overlooks the provisions of Section 6, General Clauses Act, with which the learned Counsel seemed unfamiliar. I see no reason to doubt that where a decree had already been passed before the Debt Redemption Act came into force, it was open to the decree holder to execute it after that Act had come into operation. It is provided by Clauses (b) and (c) of Section 6, General Clauses Act, that where an Act repeals any enactment the repeal shall not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. I have no doubt, therefore, that it was open to the appellant to execute his decree. Lastly learned Counsel for [the respondent said that the application for a decree had been made behind his client's back, but he conceded that this objection was never taken before. I am not, therefore, prepared to consider it now. I accordingly allow this appeal with costs in this Court and in the Court below, set aside the order passed by the Additional Civil Judge, restore the Munsif's order and direct execution to proceed. Leave to appeal under the Letters Patent is refused.