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Sm. Radha and ors. Vs. Sm. Gulzari and ors.

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Court : Allahabad

Decided On : Dec-21-1949

Reported in : AIR1952All462

Judge : Harish Chandra, J.

Acts : Debt Law; Uttar Pradesh Encumbered Estates Act, 1934 - Sections 11 and 47; Code of Civil Procedure (CPC) , 1908 - Sections 11

Appeal No. : F.A.F.O. No. 69 of 1946

Appellant : Sm. Radha and ors.

Respondent : Sm. Gulzari and ors.

Advocate for Def. : S.B. Johari, ;Ambika Prasad, ;Anand and ;Prakash Chand, Advs.

Advocate for Pet/Ap. : Janki Prasad, ;S.S. Verma, ;Jagdish Sahai, ;Krishna Shankar and ;K.L. Misra, Advs.

Disposition : Appeal allowed

Judgement :

Harish Chandra, J.

1. This is a first appeal from orderagainst the order of the learned Civil Judge ofBanaras setting aside the order of the learnedCity Munsif of Banaras rejecting the plaint ofrespondent 1, who is the main respondent in thisappeal, under clause (d) of Rule 11 of order 7, Civil P.C.

2. The property in suit is a house in the cityof Banaras which respondent 1, sm. Gulzari Kuer, claims to be her own property. In theyear 1936 Jagdamba Prasad, the farther-in-law ofthe respondent and Ganesh Prasad her husbandtogether with her sons and nephews, who wereall arrayed as defendants in the suit, presentedan application under the Encumbered EstatesAct before the Collector of Banaras. It was indue course transferred to the Court of the SpecialJudge, Second Grade. The property in questionwas shown by the landlords-debtors as their own property. The Special Judge declared this property along with other properties belonging tothe debtors as liable to attachment, sale or mortgage in satisfaction of their debts, under Section 11,Encumbered Estates Act, 1934 (U.P. Act (XXV[25] of 1934). Thereafter, he determined the claimsto the creditors under Section 14 of the Act and sentthe decrees under Section 19 to the collector for execution.The Collector auctioned the property indispute as that of the debtors on 20-7-1943. Priorto the sale on 8-2-1943 the respondent had presentedan application before the :Special Judgeunder Section 11 to the Act claiming the property insuit as her own. It will be noted that under sub-Section(2) of Section 11 the time allowed for preferring aclaim of this nature is three months from thedate of the publication of the notice in the officialgazette under Sub-section (1). But a proviso wassubsequently added to that sub-section by Section 13,U.P. Act XI [11] of 1939 which permits a claimant,if he satisfies the Special Judge that he hadsufficient cause for not making his applicationwithin the above period, to prefer his claim atany time before such property is transferred toany person under the provisions of Sections 24, 25,28 or 31 a bond is issued byu the Collector to a creditor under Section 30 or Section 31. This Applicationwas, however, dismissed by the Special Judge on 3-4-1943, and thereafter the respondent field the present suit in the Court of the City Munsif ofBanaras. The view taken by the learned Munsifwas that inasmuch as any order passed by theSpecial Judge under Section 11 is, under Sub-section (4) ofthat section, to be deemed to be a decree of acivil Court of competant jurisdiction and Section 47of the Act provides that no proceedings of

theCollector or the Special Judge under the Actshall be questioned in any Court except as providedin Sections 45 and 56 of the Act, which relateto appeals and revisions, the respondents' suitwas not maintainable. He accordingly rejectedthe plaint under clause (d) of Rule 11 of Order 7. civilP.O., as already stated above.

3. On appeal, the learned Special Judge of Banaras set aside the decree of the learned City Munsif and directed that the plaint be admitted to its original number and proceeded with according to law. He considered the question whether the decree under Section 11, Encumbered EstatesAct, was res judicata or not for the purposes of the present suit and was of opinion that inasmuch as the claim of the respondent had been dismissed on the ground of limitation only, the decree did. not amount to res judicata and he relied upon the case of Har Sarup v. Anand Sarup, 1942 ALL. L. J. 506. That case was decided by a Bench of this Court. A question arose in that case whether a decree in a certain suit which had been dismissed on the ground of limitation was res judicata or not for the purposes of a subsequent suit brought by a member of the same family. Their Lordships say:

'We have already pointed out above that the only issue which the trial Court decided in that suit was whether Harnam Sarup had instituted the suit within three years of attaining his majority and that issue having been found in the negative the suit was dismissed. It was upon this very ground that the plea of res judicata raised by the defendants in suit No. 114 of 1983 failed and it is obvious that the defendants could not press that plea in appeal. The question of title raised by Harnam Sarup was never finally decided and we must, therefore, hold that the two suits now brought by Har Sarup are not barred by res judicata.'

4. In the present case, however, the decree of the Special Judge which is said to bar the present suit is not the decree passed by that Court on the time-barred claim under Section 11, Encumbered Estates Act, preferred on behalf of the respondent but the decree that had previously been passed by him under that section. The properties mentioned by the debtors in the proceedings before him were included in a notice published by the Special Judge under Sub-section (1) of Section 11 of the Act. Any person having any claim in the properties mentioned in the notice was required to make an application before the Special Judge within

three months, stating his claim. No such application was received by the Special Judge from the respondent and he then passed a decree declaring the properties including the property in question to be liable to attachment, sale or mortgage in satisfaction of the debts of the landlords-debtors. Under Sub-section (4) of Section 11 such an order passed by the Special Judge is to be deemed to be a decree of a civil Court of competent jurisdiction and according to Section 47 no proceedings of the Special Judge under the Act can be questioned in any Court and the contention is that the validity of the order passed by the Special Judge with respect to the property in question can in consequence not be challenged by the respondent in a separate suit. No doubt, the respondent subsequently made an application to the Special Judge, claiming the property under Section 11 of the Act. But that application was beyond time and was not entertained by the learned Special Judge and cannot affect the decree previously passed by the Special Judge declaring the property in suit to be liable to attachment, sale or mortgage in satisfaction of the debts of the debtors. This question was considered by a Bench of this Court in the case ofRam Ran Bijai Prasad Singh v. Sarjoo Singh, 1946 ALL. L. J. 385 and it was held that a person who has failed to put forward a claim to property specified in the notice referred to in Section 11 cannot maintain a suit to establish his title to it in the ordinary civil Court. Reliance was placed upon Sub-section (4) of Section 11 by which any order passed by the Civil Judge under that: section is to be deemed to be a decree of the civil Court of competent jurisdiction. Reference was also made to the decision of the Calcutta High Court in Bhandi Singh v. Ramadhin Rai, 2 Cal. L. J. 359 in which it was held that when, 'statutory rights and liabilities have been created and jurisdiction has been conferred upon a Special Court for the investigation of matters which may possibly be in controversy, such jurisdiction is exclusive and cannot concurrently be exercised by the ordinary Courts'.

5. An argument was addressed before the Bench that although a provision was made in Section 13 that claims of creditors not made as required by the Act shall be deemed to have been discharged, there was no corresponding provision in existence to the effect that orders passed by the Special Judge under Section 11 were conclusive on the point of title and barred a separate suit. But their Lordships were of the view that the absence of an express provision of that nature did not

warrant the inference that such litigation was maintainable and took the view that although Section 11, Civil P. C., did not expressly apply, the principle of res judicata, was applicable. I respectfully agree with the view taken in this case and the reasoning by which it is supported.

6. I am, however, referred to the case of Ramdal v. Sooraj Baksh, decided by a Bench of the Avadh Chief Court A.I.R. (35) 1948 Oudh 271). The Avadh Chief Court considered Ram Ran Bijai Prasad Singh v. Sarjoo Singh, (1946 ALL. L. J. 383) referred to above and differed from the view that had been taken in that case. But the observations of that Court in regard to the question before us were in the nature of an obiter dicta. For in the Avadh case what had happened was that the Special Judge had included in the list prepared by him for the information of the Collector, property which had not in fact been included in the notice published under Section 11, although he had, on the motion of one of the parties to the proceedings, found it to be liable to attachment, sale or mortgage in satisfaction of the debts of the debtor-applicant. It was held that if he makes any such enquiry in relation to such property rot mentioned in the notice, he exercises a power which has not been conferred upon him and that mention of the property in the notice under Section 11 was a condition precedent to the Special Judge acquiring the power to investigate whether such property was liable to attachment, sale or mortgage in satisfaction of the landlord's debts. It was further held that an order passed by the Special Judge with respect to property not mentioned in suchnotice would not constitute a decree of a civil Court of competent jurisdiction within the meaning of Sub-section (4) of Section 11. The question what the effect of an order properly passed under Section 11 with respect to property which had been included in the notice under Section 11 would be was not before that Court and in this view of the matter it cannot be said that the decision of the Avadh Chief Court in Ramdal's case is in conflict with the view taken by the Allahabad High Court in Ram Ran Bijai Prasad Singh's case and I am bound to follow the Bench decision in the latter case.

7. In a later case of Jitendra Mohan v. Bindbasni Kuar A.I.R. (86) 1949 Oudh 1 of the Avadh Chief Court, however, there are certain observations which seem to support the view taken in the Allahabad case. Their Lordships say:

'The jurisdiction which is exercised by the Special Judge under the Encumbered Estates Act is an exclusive jurisdiction. His decisions are liable to appeal and revision under Sections 45 and 46. Section 47 however prescribes that except as provided in Sections 45 and 46 no proceedings of the Collector or the Special Judge under the Act shall be questioned in any Court. It is clear, therefore, that the order of the Special Judge as modified by the appellate order of this Court holding that the properties to which the objection related belonged to the lady and could not be availed of for the liquidation of the landlord's debts concludes Jitendra Mohan Singh ..... We must, therefore, hold that the orderunder Section 11, Encumbered Estates Act, conclusively determines the rights of the parties with respect to the properties with which it dealt. The effect of this finding is that the plaintiff's title to the immovable property in suit is duly established and is not liable to be defeated in appeal ..... the plaintiffs' title to themovable property which was included In the objections under Section 11, Encumbered Estates Act, cannot be defeated by Jitendra Mohan Singh .....

We ought also to refer to an argument addressed to us on behalf of the defendant on the assumption that Section 47, Encumbered Estates Act, operates to conclude his client as regards the properties which were covered by the objections. That argument is to the effect that from the date of the objections in the Court of the Special Judge, the learned Additional Civil Judge lost jurisdiction to try the suit and his judgment is, therefore, a nullity. The contention is apparently based upon a confusion of thought and a misconception as to the provisions of Section 47. Neither the Act nor the section prohibited or took away the jurisdiction of the Civil Court to entertain the suit of the nature instituted by Bindbasni Kuer. The order of the Civil Judge did not question the proceedings of the Special Judge and the civil suit being one for possession was wholly outside the scope of the proceedings under the Encumbered Estates Act. The contention must therefore be overruled.'

8. No doubt the view taken in the earlier Avadh case that the Special Judge has no jurisdiction to decide whether a certain property not mentioned in the notice under Section 11 was liable to attachment, sale or mortgage in execution of the landlord's debts is in conflict with the view taken by a Bench of the Allahabad High Court in Lochan Singh v. Mauji Ram, 1945 ALL L J. 40, but we are not concerned

with that question in the present case.

9. For the reasons given above my view is that the learned Munsif was right in holding thatthe respondent was not entitled to file a fresh suit to establish her title with respect to the property in question after the Special Judge had passed an order under Section 11 that that property was liable to attachment, sale or mortgage in execution of the landlords' debts and after her claim had been dismissed by the same Court as time-barred, and in rejecting the plaint under Clause (d) of Rule 11 of Order 7, Civil P. C.

10. I accordingly allow the appeal with costs throughout and setting aside the judgment and decree of the Court below restore the judgment and decree of the trial Court rejecting the plaint of respondent 1 under Clause (d) of Rule 11 of Order 7, Civil P. C.

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