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Court : Allahabad

Decided On : Nov-16-1949

Reported in : AIR1952All628

Judge : Kaul and ;Chandiramani, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11; Uttar Pradesh Agriculturists Relief Act, 1934 - Sections 10 and 12

Appeal No. : Revn. Appl. No. 120 of 1944

Appellant : Hinga

Respondent : Ali Sher and ors.

Advocate for Def. : R.N. Shukla, Adv.

Advocate for Pet/Ap. : Naimullah, Adv.

Disposition : Application dismissed

Judgement :

ORDER

1. This is an application for revision of an order passed by Mr. Gopal Chandra Sinha Additional Civil Judge, Hardoi, in a proceeding initiated by an application under Section 12, Agriculturists' Relief Act. It arises on the following facts: Durga Prasad, Gaya Prasad & Nand Ram owned a 10 biswas zamindari share in village

Jalalpur in Hardoi district. By a deed dated 20-10-1904, they sold this share to Sardar Khan, Turab Khan, Kaley Khan, Ahmad Khan, Munir & Karim for a consideration of Rs. 1000. Two preemption suits were filed in respect of this sale, one by Imami, grandfather of the present petitioner Hinga, & the other by one Bhagga. Both the pre-emptors were held to be equally entitled to pre-emption. It was agreed that pre-emption of half of the property should be decreed in favour of Imami on payment of Rs. 500 & the other half in favour of Bhagga on the same terms. Imami did not deposit the pre-emption money in Court. On the other hand, he created a usufructuary mortgage over the property, to which he was entitled by the decree for pre-emption in favour of the vendee in lieu of RS. 500. The deed of mortgage was executed on 19-5-1906. On 30-5-1919, Ali Bux, father of the present petitioner, Hinga, filed a Suit for redemption of the mortgage in the Court of the Munsif Bilgram. The learned Munsif held that the deed of mortgage on which Ali Bux relied was of no effect. His line of reasoning, as we gather from his judgment whereof a copy Ex. E 2 is on the record, was that Imami having failed to deposit the pre-emption money in Court did not acquire any right under the pre-emption decree. It was argued before him that the deft, mortgagee could not deny the title of his mortgagor. This argument was brushed aside by the learned Munsif with the observation that there can be no estoppel against law or legislature. The mortgage created by Imami having been held to be of no effect, the suit for redemption was dismissed. There was no appeal against that decree & it became final. After the passing of the U. P. Agriculturists' Relief Act, Hinga & Eda filed an application under Section 12, Agriculturists' Relief Act, for redemption of the mortgage of 1906 created by their grandfather. The suit was thrown out on the ground that the decision in the previous suit operated as res-judicata. Hinga went in appeal. He impleaded his brother Eda as a respondent. The appeal was dismissed on the same ground. Dissatisfied with this decision Hinga has come up in revision to this Court.

2. This matter originally came up for consideration before a learned single Judge of this Court, who, having regard to the importance of the question raised, has referred it to a Bench. We have heard the learned Counsel for the petitioner & are of opinion that the decision of the two Courts below must be upheld. It was contended by Mr. Naimulla, learned Counsel for the applicant, that the application

under Section 12, Agriculturists' Relief Act, was filed in the Court of the Collector, which was a Court of special jurisdiction. That an application, like the present he argued, could not be heard by a Munsif, & accordingly the decision in the previous suit could not operate as *res judicata*. There is no substance in the contention. In the first place, it may be pointed out, that a Collector exercising jurisdiction under Section 10, U. P. Agriculturists' Relief Act, cannot be said to be a Court of special jurisdiction. Under Section 2, Sub-section (5) the expression 'Court', as used in the Act, means a 'Civil Court.' Section 10 lays down that applications under Chapter III of the Act shall, if the principal money secured does not exceed Rs. 500, be brought before the Collector, & the word 'Court' in chap. III shall, in such cases, include a Collector. Under Section 12 of the Act, relief for redemption of a certain class of mortgages, which under the law could be obtained only by filing a suit in the Civil Court, can now be obtained by filing an application before the Court within whose jurisdiction the mortgaged property, or any part of it, is situate. Having regard, therefore, to the definition of the word 'Court' as given in Sub-section (5), it would appear that the Collector before whom the application, which, has given rise to the present revision, was filed, was a civil Court. The only difference between the jurisdiction exercised by him & that exercised by the Munsif was that the Collector's jurisdiction was limited to the class of cases mentioned in chap. III of the Agriculturists' Relief Act, and his pecuniary jurisdiction was limited to cases of redemption where the mortgage money secured did not exceed Rs. 500. Accordingly, there can be no bar to the application of the provisions of Section 11, Civil P. C. to proceedings before the Collector under chap. III of the Act. Section 27 of the Act makes the provisions of the Code of Civil Procedure in regard to suits applicable to proceedings under chap. III, whether they are before the Collector or before an ordinary civil Court.

3. It was argued by Mr. Naimullah that the Munsif of Bilgram was not competent to try the present suit or entertain proceedings initiated under Section 12, Agriculturists' Relief Act. It is well settled that the competency of a Court to try a subsequent suit must be determined with reference to the point of time when the first suit was heard & decided. We are clear, therefore, that the Munsif of Bilgram could entertain a suit for redemption, like the present, if it had been brought in 1919 when Ali Bux's suit for redemption was heard & dismissed. The mere fact

that there exists a Court of preferential jurisdiction to hear a case would not affect the competency of the Court which decided the previous suit for the application of the provisions of Section 11, Civil P. C. The Collector's Court, as has already been observed, is, for the purposes of proceedings under chap. III of the Agriculturists' Relief Act, a civil Court, & under Section 10, applications for redemption, if the principal money secured does not exceed Rs. 500, must be instituted in his Court. There is no inherent lack of jurisdiction in a Munsif or other Civil Court to entertain such an application. Reference in this connection may, with advantage be made to the case of Ghulappa v. Raghavendra 28 Bom. 338 where it was held that the plea of res judicata should be given effect to if the Court which passed the decree in the first suit is a Court of jurisdiction competent to try the subsequent suit whenever its inability to entertain the subsequent suit arises, not from incompetence, but from the existence of another Court with preferential jurisdiction. It is true that by passing of the Agriculturists' Relief Act the legislature has effected some changes in the substantive law, as also in the law of procedure applicable among other debtors & creditors, to a class of mortgagors & mortgagees. One of the effects of the change in the law of procedure is that while under the previous law redemption could, except under Section 83, Transfer of Property Act, be obtained only by instituting a suit, it can now be obtained in respect of a certain class of mortgages by making an application. It has also provided another civil Court besides those of Munsifs & Civil Judges, where suits for redemption are ordinarily instituted, the Court of the Collector. Care has been taken to make it clear that the Collector, while he exercises jurisdiction under chap. III of the Act, is a Civil Court. It will thus be seen that all the conditions required by the provisions of Section 11, Civil P. C. are fulfilled.

4. The issue which now arises for consideration is whether any mortgage subsists which Hinga & Eda could redeem. This was also an issue which was directly & substantially in issue in the previous suit instituted by Ali Bux, father of Hinga & Eda. Hinga & Eda are litigating under the same title under which their father Ali Bux brought the present suit. This issue was heard & finally decided by a Court of competent jurisdiction. That Court, as already pointed out, could be competent to try the present suit except for the existence of a Court of preferential jurisdiction. But that, as held in Ghulappa v. Raghavendra 26 Bom. 338 does not bar the

applicability of the provisions of Section 11, Civil P. C. to a suit or proceeding.

5. We are satisfied that the Courts below came to a correct conclusion. The application is dismissed with costs.

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