

Chhingaram Vs. Sunderlal

Chhingaram Vs. Sunderlal

SooperKanoon Citation : sooperkanoon.com/499759

Court : Madhya Pradesh

Decided On : Aug-05-1980

Reported in : AIR1981MP241

Judge : H.G. Mishra, J.

Acts : Madhya Pradesh Anusuchit Jati Avam Anusuchit Janjati Rini Sahayata Adhiniyam, 1967 - Sections 8(1), 8(2), 8(4) and 26; Madhya Pradesh Accomodation Control Act, 1961 - Sections 12(1)

Appeal No. : Civil Revn. No. 545 of 1978

Appellant : Chhingaram

Respondent : Sunderlal

Advocate for Def. : R.S. Saxena, Adv.

Advocate for Pet/Ap. : P.N. Kelkar, Adv.

Disposition : Revision allowed

Judgement :

ORDER

H.G. Mishra, J.

1. This revision is by defendant against order dated 23-1-1978, passed by Second Civil Judge, Class II, Gwalior, in Civil Suit No. 2-A of 1977 whereby the suit for ejectment and recovery of rent and mesne profits has been held to be maintainable.

2. Facts essential for decision of this revision are as under:--

Admittedly the defendant-applicant is owner of the suit house. He is a Khatik by caste. He was in need of money to the tune of Rs. 4500/-. Accordingly he executed a registered deed of mortgage by way of conditional sale on 24-2-1966 and took back the property on lease from the plaintiff-mortgagee by executing a rent-note on the same day i. e. 24-2-1966, wherein he agreed to pay Rs. 67.50 p. by way of rent per month. Rent was not paid by the defendant w. e. f. 24-9-1974. As such, the plaintiff served on the petitioner a demand-cum-quit notice dated 6-10-1976. This notice was served on the defendant on 7-10-1976. Thereafter on 12th Jan. 1977 the plaintiff has brought the suit giving rise to this revision for ejectment and recovery of arrears of rent and mesne profits as stated above. The suit is based on the ground under Section 12 (1) (a), default in payment of arrears of rent within two months of service of notice on the defendant, and under Section 12 (1) (c) for the user of the accommodation with the purpose for which he was admitted to tenancy and which is likely to affect adversely and substantially.

3. On being approached by the defendant-applicant the Debt Relief Court. Gwalior. vide order dated 14-3-1977 held that every claim of the plaintiff in respect of the mortgage stood discharged by virtue of Section 8 (4) of the Madhya Pradesh Anusuchit Jati Avam Anusuchit Janjati Rini Sahayata Adhiniyam, 1967, (for short the 'Adhi-niyam').

4. After passing of the aforesaid order, the defendant submitted written statement on 6-4-1977 inter alia contending that in view of the order dated 14-3-1977 passed by the Debt Relief Court. Gwalior. the Civil Court has no jurisdiction to try the suit. This objection gave rise to a preliminary issue which has been decided against the applicant. Hence this revision.

5. In this revision, Shri P. N. Kelkar, learned Counsel for the applicant, contended that as consequence of operation of Section 8 (4) of the Adhiniyam, every claim of the plaintiff must be deemed to have been discharged for all purposes and for all occasions as held by the Debt Relief Court by order dated 14-3-1977. Therefore, the plaintiff has no right to continue the suit and the Civil Court has no jurisdiction to try the same. Shri E. S. Saxena, learned counsel for the plaintiff-non-applicant, contended that right to evict a tenant and claim for rent accruing after 15-8-1973 are beyond the mischief of the Adhiniyam. Therefore, the suit is maintainable.

6. During the course of arguments, learned counsel for the applicant stated that the order dated 14-3-1977 passed by the Debt Relief Court under the Adhi-niyam was subjected to a revision which has been rejected by the Additional Collector, Gwalior, in Case No. 39/76-77 by order dated 10th April, 1978. Against this order the plaintiff submitted a writ petition (M. P. No. 83/78) which has been dismissed on 24-8-1979. These facts are not disputed by the learned Counsel for the plaintiff-non-applicant.

7. Having heard the learned counsel for the parties. I have come to the conclusion that the revision deserves to be allowed.

8. The Adhiniyam was applied to debtors belonging to Scheduled Castes with effect from 15-8-1973. Therefore, it was necessary for the plaintiff-non-applicant being a creditor, to have submitted, his claim against the defendant-applicant within the period as specified in Section 8 (2) of the Adhiniyam or within the period and in the manner contemplated by Proviso to Sub-section (4) of Section 8 thereof. Admittedly, the plaintiff-non-applicant did not submit any claim in the matter before the Debt Relief Court. Accordingly, the enacting portion of Section 8 (4) of the Adhiniyam became operative. It provides that :--

'(4) Every claim of a creditor against his debtor which is not submitted within the time specified in subsection (2) or Sub-section (3) shall be deemed for all purposes and all occasions to have been discharged against the debtor : Provided that if a creditor files an application within a further period of thirty days from the date on which the period of sixty days specified in Sub-section (2) or Sub-section (3), had expired and satisfies the Debt Relief Court that he was for good and

sufficient cause unable to file the same within the period specified, the Court may, on such terms and conditions as it may deem fit, revive the claim.'

As such every claim of the plaintiff against the defendant-applicant, stood discharged as held by the Debt Relief Court by its order dated 14-3-1977, which has by now attained finality, as stated above.

9. The Sub-section (1) of Section 8 enacts a legal right to the effect that every claim of the creditor which is not submitted within the specified time shall be deemed for all purposes and for all occasions to have been discharged against the debtor. The purpose of this fiction is to provide for extinguishment of every claim of the creditor on his failure to submit the same within specified time before the Debt Relief Court. This extinguishment is to be 'for all purposes and for all occasions'. It is law well settled that full effect must be given to statutory fictions:

'If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have followed from or accompanied it....The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.'

(See, Principles of Statutory Interpretation by Mr. Justice G. P. Singh, 2nd edition). Also see. *Dayasingh v. Dhan Kaur* (AIR 1974 SC 665 (6681)).

10. The claim which the plaintiff-non-applicant seeks to enforce by the present suit flows from the mortgage and as such it is title subordinate thereto. His status as landlord is conterminous with the mortgage. With the discharge of the parent transaction of mortgage all claims arising thereunder or created by virtue thereof cannot survive. Even in cases where mortgage is discharged within the contemplation of Section 83 of the Transfer of Property Act, the mortgagee is not entitled to claim any further relief against the mortgagor. How can then after the 'discharge' worked out by operation of special law as stated above, the mortgagee can be deemed to have any right to enforce against the debtor any claim arising

thereunder The 'discharge' so worked out has to be deemed 'for all purposes and for all occasions' like the present one.

11. In order to resist the aforesaid conclusion Shri Saxena. learned counsel for the plaintiff-non-applicant, tried to press into service ratio of Mathuralal v. Kesharbai (AIR 1971 SC 310) extracted below (at P. 312) :

'The mortgage security continued even after the passing of the said (preliminary) decree, if the mortgagee had continued in possession of the property after the passing of the preliminary decree and did not apply for a final decree, he would only lose his right to recover the mortgage money by sale of the property unless he applied for that purpose within the period of limitation fixed by the Limitation Act. After the mortgagee had lost his right to apply for a final decree for sale he did not lose his status as a mortgagee; he only lost his remedy to recover the mortgage money by sale. The mortgagor did not lose his right to redeem.'

Unlike the case of Mathuralal (supra) here the mortgage is not subsisting. Therefore, reliance on the aforesaid ratio cannot be available to the plaintiff-non-applicant in the present case. Likewise, reliance on what has been stated in para 22 (of Jab LJ) : (Para 20 of AIR) of the dictum of Budha v. Bedaria, (1980 Jab LJ 285) : (AIR 1981 Madh Pra 76) is not available in the present case. In that case the effect of Section 8 (4) of the Adhinyam did not fall for the consideration. Shri Saxena is also unable to show that ratio of Purushotam v. Ramcharanlal (1966 Jab LJ 1069) : (AIR 1967 Madh Pra 237) is applicable to the situation available in this case.

12. The order passed by the Debt Relief Court On 14-3-1977 is merely declaratory of consequences which ensued on account of non-submission of his claim by the plaintiff within the time specified by the law. Accordingly, by operation of law after 15-10-1973, with the expiry of the time prescribed for the purpose, every claim of the plaintiff in respect of the mortgage stood discharged for 'all purposes and for all occasions'.

13. As such, on 12-1-1977, when the present suit was brought, the plaintiff had no right which could be enforced. Moreover, the civil courts cannot sit upon the

validity of the orders passed under Section 8 (4) of the Adhinyam. The jurisdiction of the Debt Relief Court is exclusive in the matter. The order passed by the Debt Relief Court is not shown to be open to any, legally permissible challenge. Accordingly, the trial court acted in an illegal manner in holding that it has jurisdiction to try the suit.

14. In view of the aforesaid discussion, the revision succeeds and is hereby allowed. The impugned order is set aside and the suit is held to be not maintainable. In the facts and circumstances of the present case, I leave the parties to bear their own costs throughout.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com