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Ramniwas and ors. Vs. Thakur Devisingh and ors.

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Court : Rajasthan

Decided On : Mar-11-1965

Reported in : AIR1965Raj188

Judge : I.N. Modi and; B.P. Beri, JJ.

Acts : Provincial Insolvency Act, 1920 - Sections 20; Code of Civil Procedure (CPC) - Order 40, Rule 1; Tenancy Law; Ajmer Land and Revenue Regulation, 1877 - Sections 29; Constitution of India - Articles 14 and 19(1)

Appeal No. : Ex. First Appeal Nos. 25 of 1960, 28 of 1961 and Civil Misc. Appeal No. 79 of 1961

Appellant : Ramniwas and ors.

Respondent : Thakur Devisingh and ors.

Advocate for Def. : S.N. Bhargava, Adv. for Official Receiver,; P.C. Mathur, Adv. and;

Advocate for Pet/Ap. : R.C. Jain, Adv.

Judgement :

Modi, J.

1. These are three appeals which arise out of connected facts and we propose to dispose of them by a single judgment. Appeals Nos. 25 and 28 are by Kamniwas and others who are decree-holders and appeal No. 79 of 1961 is by Thakur Devi Singh son of Vijaisingh, Judgment-debtor.

2. The material facts are these. Ramniwas and others obtained a preliminary decree for Es. 97719/-in a suit for 'sale against Vijaisingh judgment-debtor from the court of the Senior Civil Judge, Ajmer, on the 11th August, 1951. This was made final on the 3rd May, 1952. The property under mortgage then came to be sold for a sum of Rs. 21349/14/- leaving the balance still to be realised personally against him. Vijaising died on the 24th August, 1956. Before his death, however, his creditors filed an insolvency petition against him on the 4th April, 1956, during the course of which an interim Receiver was appointed by the insolvency court by an order dated the 4th June, 1958. By this order, the learned insolvency Judge directed the receiver to 'take steps to recover compensation payable to the debtor'.

3. Before proceeding further it may be mentioned that the judgment-debtor Vijaisingh was an 'Istimrardar' in the former State of Ajmer and his estate was resumed as a result of the Ajmer Abolition of Intermediaries and Land Reforms Act, 1955 (Act No. III of 1955) and he became entitled to receive certain compensation in lieu of his estate. It appears that Devisingh respondent objected to the order by which an interim receiver was appointed for taking steps to recover the compensation money from the Jagir Commissioner ; but this objection was rejected and the order was made absolute on the 17th May, 1958. Meanwhile on 16th April, 1958, the appellants decree-holders made the execution petition, out of which appeal No : 25 of 1980 arises, seeking attachment of the judgment debtor's compensation money in the hands of the Jagir Commissioner. An order of attachment was issued by the executing court on the 14th May, 1958. The Jagir Commissioner, however, informed the court that it was not possible to comply with the order of the court as a Receiver had already been appointed by the insolvency court and the said Receiver had asked for payment to be made to him of the compensation money payable to the Istimrardar.

Thereupon on the 27th August, 1958, the decree-holders made an application to the court that although it was correct that an interim Receiver had been appointed by the insolvency court yet the compensation money payable to the judgment-debtor had not been paid to him, and so the Jagir Commissioner could not refuse to send the amount to the executing court in execution of their decree. This application was opposed on behalf of the Receiver who seems to have been under the impression (though a mistaken one) that the judgment-debtor Vijaisingh had been adjudged an insolvent, and that his estate vested in him, and, therefore, he alone was entitled to receive the compensation money payable to him (Vijaisingh). It is not disputed before us that Vijaisingh was never adjudged an insolvent and that he had died and the application for insolvency is still pending in the court of the insolvency Judge against his son and heir Devisingh. It is in these circumstances that the learned Senior Civil Judge Ajmer by his order dated the 15th February, 1960, which is under appeal before us held that the decree-holders 'cannot get the compensation attached', or, in other words, proceed in execution against the jagir compensation money payable to the judgment-debtor and in the hands of the Jagir Commissioner. These are the facts relative to appeal No. 25 of 1960.

4. As for the next appeal namely No. 28 of 1961 which arises out of a subsequent execution petition filed by the decree-holders on the 13th July, 1960, execution was sought therein against certain property which was alleged to have been received by the respondent-judgment-debtor from his deceased father Vijaisingh. This application was opposed on the ground that the judgment-debtor was completely protected by Section 29 of the Ajmer Land and Revenue Regulation, 1877, (No. II of 1877). The executing court has upheld this objection and dismissed the execution application.

5. It is unnecessary to state the facts out of which the third appeal No. 79 of 1961 by the judgment-debtor Devisingh arises because it has been candidly stated before us by his learned counsel that if the decision in the second appeal goes against him, he does not propose to press it.

6. We shall now deal with these appeals in their serial order.

7. The only question which arises out of appeal No. 25 of 1960 is whether an interim receiver having been appointed by the insolvency court for taking steps to recover the compensation money payable to the judgment-debtor, the decree-holders were precluded from proceeding in execution against that property and the executing court was powerless to attach the same.

8. The answer to this question, in our opinion, is clearly furnished by Section 20 of the Provincial Insolvency Act, 1920 (Act No. V of 1920). This section reads as follows :--

'The Court when making an order admitting the petition may, and where the debtor is the petitioner ordinarily shall, appoint an interim receiver of the property of the debtor, or of any part thereof, and may direct him to take immediate possession thereof or of any part thereof, and the interim receiver shall thereupon have such of the powers conferrable on a receiver appointed under the Code of Civil Procedure, 1908, as the court may direct. If an interim receiver is not so appointed, the Court may make such appointment at any subsequent time before adjudication, and the provisions of this Sub-section shall apply accordingly.'

In order to appreciate the true content and import of this provision, we may as well reproduce here the material portion of Section 28 which has a bearing on the question before us and which section comes into play after an order of adjudication has been made. Sub-section (2) of this section is in these terms :

'On the making of an order of adjudication, the whole of the property of the insolvent shall vest in the Court or in a receiver as hereinafter provided. .....'

Sub-section (4) then provides that

'All property which is acquired by or devolves on the insolvent after the date of an order of adjudication and before his discharge shall forthwith vest in the Court or receiver, and the provisions of Subsection (2) shall apply in respect thereof.'

Section 56 then deals with the appointment of a receiver and provides that once the Court has appointed a receiver for the property of the insolvent at the time of the order of adjudication or at any time afterwards, such property shall vest in him.

It further provides that where the Court has so appointed a receiver, it may remove the person in whose possession or custody the property of the insolvent may be, provided that nothing shall authorise the Court to remove from the possession or custody of property any person whom the insolvent has not a present right so to remove.

9. Viewed in this perspective, we are definitely of the opinion that an interim receiver appointed by the Court under Section 20 of the Act does not stand on the same footing as a receiver appointed at the time, or, after the order, of adjudication under Section 28. Furthermore, such an interim receiver can have only such powers as the Court may confer upon him and which are conferrable on a receiver appointed under Order 40, Rule 1 of the Code of Civil Procedure. In other words, the property of the insolvent does not vest in such a receiver.

10. Thus it was held in Subramania Aiyar v. Official Receiver, AIR 1926 Mad 432 that an interim receiver does not possess the powers of the Official Receiver and has under Section 20 only the powers of a receiver appointed under the Code of Civil Procedure and is not clothed even with these powers till he takes possession of the debtor's properties.

11. Again in Jokhiram Suraimal v. Chouthmal Bhagirath AIR 1931 Pat 70, it was held that an ad interim receiver appointed under Section 20 does not have all the powers of the full-fledged receiver but it is necessary for the Court to make an order under that section whereby the Court in its discretion may invest him with certain powers conferrable on him within the meaning of Order 40, Rule 1 C. P. C. It was also held that there was a very considerable difference between Section 20 and Section 56 and that the latter section contained the provision by which jurisdiction was given for the appointment of a receiver after adjudication and whereunder it was provided that on the appointment of such a receiver, the insolvent's property shall vest in him.

12. Again it has been held in Rama Raju v. Official Receiver Guntur, AIR 1964 And Pra 299 that whatever may be the powers conferred on an interim receiver, the property of the debtor does not vest in him as it does in a receiver appointed after adjudication under Section 58 of the Act and, therefore, his appointment has

not the same effect as the appointment of an Official Receiver after the order of adjudication.

13. With respect, we agree with this view.

14. It must follow from what we have discussed above that it is only after his adjudication that an insolvent can be said to have been divested of his property and it is only then that his property would vest in the receiver; but before that stage has reached, the debtor does and must continue to be the legal owner of the property.

15. In this state of the law, we cannot but hold that the learned Judge below was not right when he came to the conclusion that because of the appointment of an interim receiver in this case, the decree-holders were precluded from taking out attachment against the compensation money of the judgment-debtor lying in the hands of the Jagir Commissioner or that the court was in any manner precluded from proceeding in execution against the same. Appeal No. 25 of 1960 must, therefore, succeed.

16. Turning next to Appeal No. 28 of 1961, it has been strongly urged before us that Section 29 of the Ajmer Land and Revenue Regulation, 1877 (Regulation No. II of 1877) violates Articles 14 and 19 of the Constitution and therefore must be struck down. It may be pointed out at the very outset that this objection does not appear to have been raised in the court below. But as it is a pure point of law and goes to the very root of the case, we have thought it proper to allow it to be argued before us. Section 29 reads as, under :

'Notwithstanding anything contained in Section 234 or Section 252 of the Code of Civil Procedure (these correspond to Section 52 of the Code of Civil Procedure of 1908) or any other enactment in force at the time the Regulation is passed : no decree for money against an Istimrardar shall be executed after his death, and no decree for money shall be passed against any person as the representative of a deceased Istimrardar. Provided that nothing herein contained shall prevent the enforcement of a lien or other charge against any property not being part of an Istimrari estate.'

It clearly seems to us that this provision is violative of both Articles 14 and 19(1)(g) of the Constitution.

17. Now if a provision like this is allowed to remain on the statute book, it would clearly mean that firstly no decree for money against an Istimrardar can be executed after his death and secondly that no decree for money shall even be passed against any person as the representative of a deceased Istimrardar. The only exception to this rule is that if there is a lien or other charge against any property of the Istimrardar which is not part of the Istimrari estate, such a lien or charge shall be given effect to and the protection which is available in the main body of Section 29 will not be operative. In other words, the position boils down to this that if an Istimrardar incurs a money liability, the creditor must not only see to it that he files a suit within the former's lifetime; but he must secure a decree therein in the Istmirardar's lifetime and what is more, he must so manage things that the decree is fully executed during the debtor's lifetime because if despite the best will and effort in the world to do so, he fails in the aforesaid objectives, there will be an end of the Istimrardar's liability and neither such a decree would be capable of execution after his death, nor if by any chance it has not been passed in his lifetime it should possibly be passed against his legal representatives (howsoever unanswerable the claim might otherwise be) save in the cases covered by the proviso which may be said to be exceptional.

18. Now such a most extraordinary provision does not, so far as our knowledge goes, exist in any other part of our State at this date, and we do not see why a certain class of debtors in our State should alone be entitled to enjoy such an immunity or privilege after the commencement of the Constitution simply because they belong to the former State of Ajmer which was of course a separate unit by itself when the provision in question came to be enacted. A provision like this, in our considered opinion, is clearly repugnant to the principle of equal protection of laws enshrined in Article 14 of the Constitution.

19. We are quite alive to the principle that while Article 14 does not favour discrimination, it does permit legislative classification, because, all laws need not, and, indeed cannot, be general in character and/ or universal in application. But it

is well settled by numerous decisions of this Court as much as of our Supreme Court, to which it is hardly necessary to refer specifically, that such classification to be permissible must be, first, based on an intelligible basis or differentia which distinguishes persons or things which may have been grouped together for such a purpose from those left outside the group, and, secondly, such differentia must have a reasonable relation with the object sought to be attained by the enactment in question, or, in other words, it must not be arbitrary.

20. Judged by this two-fold test, we confess we are altogether unable to see why landholders or their legal representatives in the Ajmer area alone should stand in need of such an extensive protection in the matter of the money claims incurred by themselves or their ancestors while like protection should not be available to like class of people in other pacts of our State. Perhaps the object behind a provision like this at the time when it was enacted was to prevent the fragmentation or the alienation of such estates, but, to achieve this, it was hardly necessary, in our considered judgment, to go so far as to enact that a decree for money would not be executable against an Istimrardar after his death at all or that a decree for money could not be passed against :his heirs and legal representatives for the liabilities incurred by him so as to be enforceable either against his Istimrardari estate altogether or even against his other estate unless there was a charge or a lien subsisting against the latter.

21. On this analysis of Section 29, we are categorically of the opinion that it clearly falls foul of Article 14 of the Constitution and must be struck down.

22. Apart from this, we are also inclined to think that a provision of this character is an altogether unreasonable fetter on the fundamental right of a citizen to carry on the business of money-lending within the meaning of Article 19(1)(g) of the Constitution. It seems to us to be an ordinary incident of this business that if money lent in the course of such business to an individual has not been realised from him personally by his creditor, the latter should be free to recover it from his legal representative to the extent of the assets received by the latter from his deceased ancestor by filing a suit against the legal representative where one has not been filed during the original debtor's lifetime or by continuing the execution of

the decree where it was filed during such debtor's own lifetime. This is of course subject to the laws of limitation or insolvency which are available to all debtors alike in like circumstances. We have no doubt, therefore, that the provision contained in Section 29 in so far it compels a money lender to see that all his money claims against an Istimrardar debtor are satisfied in the latter's lifetime failing which all his claims in that behalf, howsoever valid, must be reduced to waste paper, is an entirely unreasonable restriction and we are unable to see what public interest can be served by a provision of such character.

23. We have, therefore, no hesitation in holding that Section 29 must be struck down as being violative of Article 19(1)(g) of the Constitution. That being so, appeal No. 28 of 1961 must also succeed. We allow it accordingly.

24. In view of the conclusion at which we have arrived on the last-mentioned appeal, it is unnecessary to deal with the third appeal which learned counsel for the appellant judgment-debtor has not rightly pressed before us.

25. The result is that we allow appeals Nos. 25 of 1980 and 28 of 1961, set aside the orders of the Senior Civil Judge, Ajmer, under appeal, and send these cases back to him for further action in accordance with law. The remaining appeal No. 79 of 1961 fails and it is hereby dismissed. Under the circumstances, we leave the parties to bear their own costs in this Court.

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