

Sukhanandan vs Shanker And Ors. on 28 February, 1952

Equivalent citations: AIR1952ALL917, AIR 1952 ALLAHABAD 917

ORDER

Desai, J.

1. This is an application by a plaintiff whose suit under Section 12, Agriculturists' Relief Act, for redemption of a mortgage executed on 24-4-1944 has been dismissed by the appellate Court on the ground that Section 12, Agriculturists' Relief Act, does not apply to redemption of this mortgage. Under Section 12, Agriculturists' Relief Act, a mortgage, whether executed before or after the passing of the Act, can be redeemed in certain circumstances.

Section 27, Debt Redemption Act, has unconditionally and absolutely repealed Section 12, Agriculturists' Relief Act in its application to mortgages made after the commencement of the Debt Redemption Act on 1-1-1941. The effect of Section 27, Debt Redemption Act, is that now no mortgage executed after 1940 can be redeemed under Section 12, Agriculturists' Relief Act. This is the view taken by the appellate Court and it is quite correct.

2. The Debt Redemption Act contains a definition of "loan"; that definition includes advances made before 1-6-1940 and excludes advances made after that date. It also contains definition of the words "suit to which this Act applies"; those words mean any suit or proceeding relating to a "loan" as defined above. In the present case the advance was made in 1944 and, therefore, it does not amount to a "loan" within the meaning of the Debt Redemption Act. Consequently, a suit relating to this advance would not amount to a "suit to which this Act applies" within the meaning of those words appearing in the Debt Redemption Act. Because of this it was argued that Section 27 of the Act has not the effect of repealing Section 12, Agriculturists' Relief Act.

The argument is unsound and illogical. As I said earlier, Section 27, Debt Redemption Act, unconditionally and for all purposes repeals Section 12, Agriculturists' Relief Act, in relation to loans made after 1-1-1941. The effect of that section does not at all depend upon whether other provisions of the Act are applicable to a particular case or not. There is nothing in the Act to lend support to the contention that if other provisions of the Act cannot be applied in a given case, Section 27 also should not be given effect to and Section 12, Agriculturists' Relief Act, should not be deemed to have been repealed by it.

The words "suit to which this Act applies", have been used in the Act in a special and artificial sense and not in the natural sense. They certainly do not mean a suit to which the provisions of the Act would be applicable ; they mean only, and nothing more, than a suit relating to a "loan" as defined in the Act. If certain provisions of the Act are applied in a "suit to which this Act applies" it is not because of what those words mean naturally, but because there are express provisions in the Act

itself making themselves applicable to it.

The contention of Mr. K. S. Saksena that as the instant suit was not a "suit to which this Act applies" no provision of the Act, not even Section 27, was applicable and that consequently as regards it there was no repeal of Section 12, Agriculturists' Relief Act, is founded on giving the words "suit to which this Act applies" their natural meaning and not the special or artificial meaning given to them by the Act. Those words must be understood only in the artificial meaning given to them in Section 2 (17). If a suit relates to a "loan", the provisions of the Act will be applied to it, if it relates to an advance which is not a "loan", the provisions of the Act will not be applied to it, but it does not follow that effect should not be given to the provisions of Section 27 of the Act and that Section 12, Agriculturists' Relief Act, should not be deemed to have been repealed.

The simple reason is that giving effect to Section 27 does not depend upon giving effect to some other provisions of the Act in a particular case. Effect will not be given to that section only if there are positive words, as in Section 4, laying down that effect shall not be given to any provision of the Act. The Debt Redemption Act has got to be applied in every case so far as it is applicable. If a particular case is not covered by the language used in the Act, its decision will not be governed by the Act but that does not mean that the Act is not given effect to. So the provisions of Section 27 must have their effect.

3. Bhagwan Das v. Radhey Lal, 1945 ALL. L. J. 290 (F. b.) cited by Mr. Saksena, has no application to the facts of this case. In that case the Full Bench merely interpreted the words "the provisions of this Act shall not apply to a suit" appearing in Section 4, Debt Redemption Act. No such words appear in Section 2 (9) or (17) of the Debt Redemption Act. If a creditor makes a declaration that he would not proceed against the person or property of an agriculturist, the provisions of the Act including those of Section 27 will not apply. But there are no words laying down that no provision of the Debt Redemption Act will apply to a suit relating to an advance made after 1-6-1940.

Certain provisions of the Debt Redemption Act are made applicable to a suit relating to an advance made before 1-6-1940. They will not apply to a suit relating to an advance made after 1-6-1940, but there are no words in the Act to the effect that the other provisions of the Act will not apply in the suit, or will not be given effect to in relation to it. Therefore, no assistance can be had from the decision in that case.

4. There is no force in this application and it is dismissed.