

Bahadur Singh And Anr. vs Ram Prasad on 28 September, 1951

Equivalent citations: AIR1953ALL611, AIR 1953 ALLAHABAD 611

JUDGMENT

P.L. Bhargava J.

1. This is a judgment-debtors' appeal. The facts and circumstances which have given rise to this appeal are these: The appellants, Bahadur Singh and his son Durag Singh, were indebted to different persons and their ancestral zamindari property, for which they paid less than Rs. 250/- as land revenue, was burdened with three mortgages, -- one in favour of Gopal, the other in favour of Chunni and the third in favour of Ram Prasad, who is respondent in this appeal. The appellants also owed some money to Ganga Sahai, who obtained a simple money decree in respect thereof. In execution of that decree, the property mortgaged under the three mortgages aforesaid was attached and sold. It was purchased by Durag Singh appellant and the three mortgages were notified at the time of the sale. After the execution sale just mentioned, Gopal and Chunni also obtained decrees on the basis of their respective mortgages, and in execution of their decrees, self-liquidating mortgages were executed in respect of the mortgaged property. Then Ram Prasad, the respondent, also obtained a decree on the basis of his mortgage and put the decree in execution by sale of the mortgaged property. The execution of the decree was transferred to the Collector, under Section 68, Civil P. C, and under Rule 3 of the Rules framed by the Government, under Section 16, U. P. Debt Redemption Act, 1940. During the pendency of the execution proceedings in the Court of the Collector, the appellants filed an objection, purporting to be under Section 47, Civil P. C. In this objection, it was alleged by them that the execution of the decree had been transferred to the Collector; that they formed a Hindu joint family and paid less than Rs. 250/- as land revenue; and, that under new law (evidently the reference was to the U. P. Debt Redemption Act, 1940) the mortgaged property was not liable to sale, although it could be transferred by means of a self-liquidating mortgage.

2. The learned Civil Judge of Aligarh, before whom the objection was filed, entertained it and proceeded to dispose it of. He recorded a finding that Durag Singh, by virtue of the sale in his favour, became owner of the property and as he had admittedly purchased only the equity of redemption, the property was not "protected" in the hands of Durag Singh, who was only a subsequent purchaser subject to the mortgages. Accordingly, he dismissed the objection. Against the order dismissing the objection, the present appeal has been filed by the appellants.

3. Learned counsel for the appellants has challenged the finding of the trial Judge to the effect that Durag Singh had become the owner of the property and that it was liable to sale. On behalf of the respondent, it has, however, been contended that the Court below had no jurisdiction to entertain the objection, as the objection being in substance for obtaining relief under Section 17, Debt Redemption Act, it should have been filed before the Collector.

4. A reference has already been made to Rule 3 of the Rules framed by the Government under Section 16, Debt Redemption Act. That rule provides:

"3. The execution of all decrees to which the Act applies in which a civil Court has ordered any land situated in the United Provinces or any interest in such land, to be sold or otherwise transferred, shall be transferred to the Collector."

The next Rule 4 is in these terms:

"(1) On receipt of a decree for execution under Rule 3, the Collector shall, having regard to the provisions of Clause (c) of Section 3, and the first proviso of Sub-section (1) of Section 17 of the Act, proceed to determine the local rate payable by, or recoverable from the judgment-debtor, or each of the judgment-debtors where there are more than one.

(2) Where the local rate determined under Sub-rule (1) in regard to any judgment-debtor does not exceed Rs. 25/-, the whole of his land shall be determined as protected land.

(3) Where the local rate so determined in regard to any judgment-debtor exceeds Rs. 25/-, the Collector shall, with due regard to the wishes of the judgment-debtor, proceed to determine what portion of the land shall be protected land.

(4) The Collector shall also see that the area of the land determined under Sub-rule (3) is as far as possible compact, and is situated in a village in or near which the judgment-debtor resides."

The rule just quoted empowers the Collector to determine the local rate and then to decide whether the land sought to be sold in execution of the decree is protected land or not. Section 17, Debt Redemption Act provides that notwithstanding anything contained in Section 16 or in any other law for the time being in force, the land of an agriculturist, the local rate payable by whom does not exceed twenty-five rupees per annum, shall not be sold or otherwise transferred in execution of a decree to which this Act applies, nor shall a final decree for foreclosure be passed in respect of such land. The section also provides that the Court may execute a decree to which this Act applies by granting to the decree-holder a self-

liquidating mortgage for a specified period of such land as is protected from sale, transfer or foreclosure by the provisions of that section.

5. The appellants in their objection clearly claimed the relief provided in Section 17, Debt Redemption Act and the question whether the mortgaged property, which was sought to be sold in execution of the decree, was protected land could only be determined by the Collector in accordance with the rules to which reference has already been made. The civil Court having transferred the execution of the decree to the Collector and also in view of the provisions of the rules to which

reference has already been made above had no jurisdiction to grant the relief which was claimed by the appellants.

6. Our attention has been invited by the learned counsel for the respondent to a decision of this Court in -- 'Har Prasad v. Budh Singh', AIR 1949 All 752 (A), where it was pointed out that the Civil Court has no jurisdiction to determine an objection claiming the benefit of Section 17 (1) (a), Debt Redemption Act, and that by virtue of Rule 4, Debt Redemption Act Rules, the jurisdiction vests solely in the Collector and the civil Court has no jurisdiction in such matters. In our opinion, the law has been correctly laid down in the case cited above. This view is also supported by a decision of the Division Bench of the Lucknow Bench of this Court : -- 'Jitendra v. Ballabh Das', AIR 1950 All 94 (B).

7. In our opinion, the objection filed by the appellants in the Court below was not maintainable and, as such, it should have been returned for presentation to the proper Court.

8. Accordingly we allow this appeal, set aside the order of the Court below and send back the case to the Court below with a direction that the objection filed by the appellants shall be returned to them for being presented to the proper Court.

9. The respondent is, however, entitled to costs of this appeal.