

Jagdish Singh And Anr. vs Mulaim Singh And Ors. on 7 February, 1950

Equivalent citations: AIR1950ALL529, AIR 1950 ALLAHABAD 529

JUDGMENT

Walli Ullah, J.

1. This is an appeal by Jagdish Singh and Raghuraj Singh who were appellants before the learned District Judge. On an office report to the effect that the memorandum of appeal was insufficiently stamped, they were directed to pay the the deficient court-fee within a certain period of time. It appears that the office of the learned District Judge reported that there was a deficiency in court-fee to the extent of Rs. 17-13-0 as it was of the view that the appeal was directed against an order passed under Section 11, Encumbered Estates Act, which under Sub-section (4) of that section has to be deemed to be a decree of a civil Court.

2. I have gone through the order passed by the learned Special Judge, Second Grade, against which the appeal was filed in the Court of the learned District Judge. The application made by the appellants in the Court of the Special Judge in substance prayed that they might be included in the array of the applicants under Section 4, Encumbered Estates Act, inasmuch as two-thirds of the property shown in the original application and published as liable for the creditor's claim belonged to them. This application was dismissed as it was held that the proceedings under the Encumbered Estates Act so far as the Court of the learned Special Judge was concerned had come to a close and, therefore, no action could be taken under Order 1, Rule 10, Civil P. C. Further it was held that the application did not fall within the purview of Section 11, Encumbered Estates Act. In this view of the matter, the application was rejected.

3. The question, therefore, that arises for determination is whether an appeal directed against such an order passed by the learned Special Judge is to be deemed to be an appeal against a decree of the civil Court within the meaning of Sub-clause (4) of Section 11 of the Act. The learned District Judge apparently was of the opinion that the appeal was an appeal against a decree of a civil Court, within the meaning of sub clause mentioned above. It seems to me, however, that these was no question of an order being passed on an objection filed under Section 11, Encumbered Estates Act. The application made by the appellants appears to have been an application for impleading them as landlord, applicants in the proceedings under the Encumbered Estates Act. Such an application is not really an application putting forward any claim to the property which was included in the application and also in the publication of the notice in the Gazette as the property of the landlord-applicants, liable to attachment, sale or mortgage in satisfaction of the debts of the applicants. This appears to have been an application of a miscellaneous character praying that the applicants' name might also be set down as landlord-applicants in the proceedings under the

Encumbered Estates Act. It seems to me clear that the order which was passed by the learned Special Judge on this application was not an order which determined the claim of the applicants to any part of the property which was included as the landlord applicants' property in the original application. It could not, therefore, be deemed to be a decree of the civil Court of competent jurisdiction within the meaning of Sub-clause (4) of Section 11, Encumbered Estates Act. The appeal against such an order is not, therefore an appeal against a decree of the civil Court and as such is not liable to a higher court-fee as was demanded by the learned District Judge.

4. The appeal is accordingly allowed with costs and the order of the learned District Judge dated 6th September 1945, demanding a higher court-fee is set aside. The result, therefore, is that the memorandum of appeal filed in the lower appellate Court must be deemed to be sufficiently stamped.