

Ram Lakhan vs Sumesar Rai on 22 April, 1952

Equivalent citations: AIR1952ALL861, AIR 1952 ALLAHABAD 861

JUDGMENT

Mushtaq Ahmad, J.

1. This is a decree-holder's appeal and it raises a highly interesting point.
2. On 17th January 1942, a final decree for sale under Order 34, Rule 5, Civil P. C., was passed in favour of the appellant. On 22nd July 1947, the Collector passed an order granting a self-liquidating mortgage under Section 17, Proviso 3, to the appellant for a period of 20 years in part satisfaction of the decree. The amount due under the final decree was Rs. 2048-15-0, whereas the amount for which this mortgage was granted was only Rs. 1446-4-0 (not Rs. 1464-4-0 as mentioned in the order of the execution court) in respect only of protected land. We do not know whether such land only was covered by the mortgage or whether it included any other class of property also.
3. On 31st August 1948, the appellant filed an application for execution of the decree in respect of the unpaid portion of the money as against some other properties of the judgment-debtor. He alleged that a part of the property on which the self-liquidating mortgage had been granted had gone out of his possession, and this may have been the reason for his seeking to recover the remaining amount by execution. This allegation of the decree-holder was found to be false, and we are no more concerned with it.
4. The judgment-debtor objected to the application for execution on the grounds that the decree-holder had no right to make such an application after he had obtained the self-liquidating mortgage referred to above and that he had no right to proceed against properties other than that covered by that mortgage. Both the Courts below allowed this objection, and the decree-holder has challenged the order of the lower appellate Court by this appeal.
5. The Courts below relied on the provisions of Section 21, U.P. Debt Redemption Act. This section provides:

"Notwithstanding anything contained in Rule 6 or Rule 8-A of Order 34 of the Schedule 1, Civil P. C. 1908, where in a suit based on a loan secured by a first mortgage a decree for sale has been executed and the net proceeds of the sale of the mortgaged property are found insufficient to pay the amount due to the plaintiff or to the defendant, as the case may be, no decree shall be passed for the balance due to such plaintiff or defendant, as the case may be, and if any decree for such balance has been passed before the commencement of this Act, it shall be deemed to have been satisfied."

Learned counsel for the appellant has challenged the orders of the Courts below on the ground that the above section did not apply in the present case for two reasons :

(1) that the decree for sale in this case had not been executed, and (2) that the mortgaged property not having been actually sold it could not be said that the proceeds were insufficient to pay the amount due.

6. He contends that unless both of these two conditions were present there was no bar to the mortgagee obtaining a decree for the balance of the amount or, where he had obtained such a decree, to his executing the same in the manner prescribed by law. The question to be deter-

mined, therefore, is whether in the present case it can be said that the decree for sale had been executed and the mortgaged property had been sold, the proceeds being found insufficient to satisfy the full amount of the decree.

7. There is no doubt a method prescribed in the Code for execution of a decree on a mortgage. That method, it is true, was not followed in the present case. Another course which is prescribed in the U.P. Debt Redemption Act was, however, pursued, and it took the form of granting a self-liquidating mortgage to the appellant. The question is whether this procedure amounted in law to an execution of the mortgage decree. Section 16 of the U.P. Debt Redemption Act prescribes the method for execution of a decree against a land of the agriculturist. Under this section the Government framed a rule to the following effect :

"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."

8. It is thus in the course of execution of a decree by the civil Court that the record is transferred to the Collector who carries out certain proceedings in that behalf as prescribed in the Act. One of the modes prescribed is that mentioned in Section 17 of the Act under proviso 3 under which the Collector grants a self-liquidating mortgage for a period of not more than 20 years to the decree-holder in satisfaction either of the whole or part of the amount due to him. Section 20(2) provides:

"When a decree is executed by the grant of a mortgage under the provisions of the second (now third) proviso to Sub-section (1) of Section 17, the Court shall grant a certificate of mortgage with such particulars as may be prescribed and shall follow the procedure laid down in Sub-section (2) of Section 89, Indian Registration Act, 1908, as if such "such certificate was a certificate of sale of immovable property....."

9. The opening words of this provision would clearly show that the grant of a mortgage under Section 17 of the Act is really the execution of the decrees for the satisfaction of which the same is granted. There can thus be no doubt that, where a mortgage has been granted by the Collector in the course of the execution of a decree sent to him for execution, the transaction only illustrates one of

the forms of the execution of the decree, and the learned counsel for the appellant was not right in saying that in this case the mortgage decree had not been executed in spite of the self-liquidating mortgage granted by the Collector on 22-7-1946.

10. As regards the second point that there has been no sale of the mortgaged property and therefore no question of the proceeds having been found insufficient, Sub-section (2) of Section 20, quoted above, itself furnishes a positive answer. It provides that the Court after granting a mortgage under Section 17 shall grant a certificate of mortgage "as if such certificate was a certificate of sale of immovable property". This must mean that the mortgage granted by the Collector under Section 17 takes the place of a completed execution proceeding which actually terminates the proceeding and furnishes evidence of the satisfaction of the amount due to the decree-holder at the time. Such a transaction is meant in all essentials to be equivalent to a sale in execution. But just as a sale in execution brings the proceedings in execution to a successful close, so does a mortgage granted by the Collector under the Debt Redemption Act, bring the proceedings in execution to an end. I am, therefore, definitely of the opinion that in this case not only the decree for sale was executed but also the mortgaged property was sold within the meaning of the terms of Section 21 of the Act.

11. If this is so, then no difficulty remains with regard to the question whether the decree-holder is entitled to recover the remaining amount of the decree. Section 21 is positive that in a case like this he is not to be permitted to sue for the unpaid portion of the money, and it further neutralises any decree that the creditor may have obtained for that portion. The meaning of this must be that after the Collector has granted a self-liquidating mortgage, there is a complete adjustment of the decree and nothing further remains to be recovered.

12. Mr. Rajeshwari Prasad, holding the brief of Mr. S.S. Verma, today further argued with great vigour and lucidity that, whatever might be the legal position otherwise, there was no bar to the decree-holder seeking to recover the unpaid portion of his money as against properties other than the protected land to which alone the self-liquidating mortgage in this case was confined. The real point is not the source from which the decree-holder has to recover the amount of his decree. The crucial question is whether anything in addition to the amount recovered under the self-liquidating mortgage remains due to the decree-holder at all which he can recover from any other source. In cases in which Section 21 in its terms applies the decree-holder cannot even sue for the unpaid portion of the money. This, on the face of it, means that the mortgage granted by the Collector satisfied the entire decree held by the creditor and that nothing further remained payable by the judgment-debtor. Having already held that Section 21 applied to the present case, I am bound to hold that the decree-holder was not entitled to recover any sum beyond the amount of his self-liquidating mortgage. If he was not so entitled, he could not by parity of reasoning, also apply for execution of a supposed decree to recover a supposed amount. The application made by him on 31-8-1948 was, therefore, quite misconceived and incompetent, and the Courts, below were perfectly right in taking that view.

13. There is thus no force in this appeal and I dismiss it with costs.

14. Leave to appeal to a Division Bench is granted.