

Radhey Lal And Anr. vs Hausila Bux Singh And Ors. on 6 February, 1952

Equivalent citations: AIR1953ALL379, AIR 1953 ALLAHABAD 379

JUDGMENT

Malik, C.J.

1. This is an appeal by Radhey Lal and Ram Lakhan Lal against an order passed by the Special Judge, First Grade, Bahraich, rejecting an application under Section 11, Encumbered Estates Act, by the appellants claiming that they had become owners of the property in suit and the landlord-applicants were no longer owners of the same. There was a decree for money in favour of the appellants against the landlord-applicants and in execution of the decree the question arose of transfer of some land belonging to the landlord-applicants. On 30-1-1936, an order was passed under Section 5, Regulation of Sales Act (20 of 1934), the decree-holders having exercised the option of realising the decree by sale of the agricultural-land. The Assistant Collector passed an order on 30-1-1936, in those terms :

"I have examined the sale statement. The judgment-debtor did not turn up in spite of sufficient service. The decree-holders want to purchase 70.83 acres for Rupees 12,752-8-8 in full satisfaction of their decree. I accept the application of the decree-holders and I transfer 70.83 acres of land in full satisfaction of the decree under Section 5, Regulation of Sales Act. Inform the Tahsildar for necessary action."

After this order, on 6-2-1936, the judgment-debtors applied under Section 4, Encumbered Estates Act, and the order under Section 6 transferring the case to the Special Judge was passed on 16-3-1936. On 28-3-1936, a sale-deed pursuant to the order dated 30-1-1936, was executed and on 17-4-1936, it was registered.

2. The question, therefore, is whether the order dated 30-1-1936, effected a transfer of title in the property from the judgment-debtors to the creditors; if so the subsequent order of 16-3-1936, under Section 6, Encumbered Estates Act, could not affect the same. In case, however, the order of 30-1-1936, did not effect a transfer of title in the property then the landlord-applicants were still the owners of the property on 16-3-1936, and all subsequent proceedings relating to the transfer and the execution of the decree should have remained stayed under Section 7 of the Act.

3. Learned counsel for the appellants has urged that the order dated 30-1-1936, was intended to effect a transfer and did, as a matter of fact, transfer the interest in the property. The point is, however, covered by series of decisions of the Allahabad High Court and the Oudh Chief Court. The two cases mentioned in the judgment of the lower Court are: Ram Chandra Rai v. Chandi Prasad, A.

I. R. 1942 ALL 224 and Noor Mohammad v. Ikram Husain, 1946 Oudh App. 193. Both these cases clearly cover the point. There are a number of other cases which learned counsel have cited. It is not necessary for us to give a reference to them. It is, however, admitted that the views of the High Court and that of the Chief Court were the same and both the Courts have consistently held that an order under Section 5 did not effect a transfer of interest in the property:

4. The provisions of the Act when carefully examined lead to the same conclusion. Section 5, U. P. Regulation of Sales Act, does not provide that there shall be an automatic transfer of interest by an order under Section 5. It only lays down that the Collector shall transfer to the decree-holder the agricultural land or the amount of the agricultural land determined in accordance with Section 3 (2) in full satisfaction of the decree. The transfer has to be effected in accordance with the provisions of law. That this is the correct view is made abundantly clear by the proviso to Section 9, Regulation of Sales Act, the relevant portion of which is as follows :

"Provided that in all cases in which the Collector has given the option mentioned in Section 4 and the decree-holder has elected under Clause (b) of the section to have the sale postponed the provisions of Sections 5 and 7 of the Act shall continue to have effect until the transfer of land under Section 5 has been completed."

The words "a transfer of land under Section 5 has been completed" are significant and go to show that something more than a mere order under Section 5 is necessary to complete the transfer.

5. The result, therefore, is that in spite-of the order passed on 30-1-1936, the title in the property had not been transferred and the appellants had remained as creditors of the landlord-applicants on the date the order under Section 6, Encumbered Estates Act, was passed.

6. The order passed by the lower Court is correct. The appeal has no force and is dismissed with costs.

7. The appeal having been dismissed the stay application is also dismissed and the order for the ad interim stay is discharged.