

Kashi Prasad vs Padamjit Singh And Anr. on 9 April, 1951

Equivalent citations: AIR1953ALL557, AIR 1953 ALLAHABAD 557

Author: Ghulam Hasan

Bench: Ghulam Hasan

JUDGMENT

Ghulam Hasan, J.

1. This appeal by the decree-holder has arisen in the following circumstances

2. In 1943 Raja Sir Daljit Singh, the father and grand-father of the respondents 1 and 2 respectively entered into an agreement with the appellant, Pt. Kashi Prasad, for sale of certain villages to him. The Raja did not fulfil his agreement, whereupon Pt. Kashi Prasad filed a suit in 1944 for damages to the extent of Rs. 43,251/13/4 only. This amount included the earnest money which had been paid by Pt. Kashi Prasad to the Raja. On 1-6-1945, the suit was decreed for Rs. 25,000/- only. On 5-1-1948, the decree-holder applied for execution of the decree by sale of the right, title and interest of the judgment-debtors in three villages Andhi, Bechiya Abadi and Balipur. The judgment-debtors objected that the decree could not be executed in view of Section 7, U. P. Encumbered Estates Act. It appears that Raja Daljit Singh applied on 16-10-1935, for relief under the provisions of the U. P. Encumbered Estates Act. The properties including the villages in dispute were gazetted on 23-1-1937 under Section 11 of the Act. The final award (Ext. 1) was passed by the Collector on 15-3-1947. Three main issues were framed by the Execution Court. It was held that the property in suit was shown in the proceedings under the Encumbered Estates Act and the provisions of the Act were applicable to it. It was also held that the decree-holder obtained the decree on the basis of a private debt against the Judgment-debtors, but he could not proceed against the said property of the judgment-debtors in view of Section 7, Sub-sections (2) and (3). The result of the findings was that the villages in question could not be attached and sold in execution of the decree. Against this order the present appeal has been filed by the decree-holder.

3. The points which were decided against the decree-holder by the Court below have been reiterated before us. As regards the first contention that the decree is not a debt within the meaning of Section 2, Sub-s. (a) of the Encumbered Estates Act, it would be sufficient to say that the present decree clearly comes within the definition of the word "debt". Debt, according to Section 2 (a), includes any pecuniary liability except a liability for unliquidated damages. It is true that the claim originally put forward by the decree-holder was one which might be called a claim for unliquidated damages, for

he not only asked for the refund of the earnest money advanced by him but also claimed damages occasioned by the breach of the agreement. The decree, however, was for Rs. 25,000/- only which is an ascertained sum. The decree is undoubtedly a pecuniary liability and excludes the liability for unliquidated damages. We hold, therefore, in agreement with the view of the Court below that the decree is a debt within the meaning of Section 2 (a) of the Act.

4. As regards the second contention, we are equally clear that the provisions of Section 7 (3) prevent a decree-holder from executing the decree. Section 7 (1) (a) (b) relates to proceedings and suits in respect of debts incurred before the passing of the order by the Collector under Section 6, but Sub-sections (2) and (3) relate to the decree obtained on the basis of a private debt incurred by the landlord after the passing of the aforesaid order. Sub-section (3) which is material reads as follows:

"After the passing of the order under Section 6 and until the Collector has declared in accordance with Section 44 that the landlord has ceased to be subject to the disabilities of this Sub-section or until the passing of the order by the Special Judge referred to in Sub-section 2, Section 44, no decree obtained on the basis of any private debt incurred after the passing of the order under section 6 shall be executed against any of the landlord's proprietary rights in land mentioned in the notice published under Section 11 and the landlord shall not be competent, without the sanction of the Collector, to make any exchange or gift of, or to sell, mortgage or lease those proprietary rights, or any portion of them."

A plain reading of Sub-section (3) shows that the sub-section contemplates that a decree cannot be executed against the landlord's proprietary rights in land mentioned in the notice published under Section 11 between the period of the passing of the order under Section 6 and the making of the declaration by the Collector in accordance with Section 44 that the landlord has ceased to be subject to the disabilities of the Sub-section or until the passing of the order by the Special Judge referred to in Sub-section (2), Section 44. The section also imposes the disabilities upon landlord to make any exchange or gift of, or to sell, mortgage or lease his proprietary rights, or any portion of them in the land without the sanction of the Collector. A reference to Section 44 will show that the disabilities of the landlord imposed by Sub-section (3) of Section 7 cease (1) "(a) when the debt has been liquidated under Section 23 or Section 24;

(b) when a mortgage has been granted under Section 25;

(c) when the amount ordered to be paid in instalments under Section 27 or Section 28 has been paid in full or realized as an arrear of land revenue."

and the Collector is bound by the section to make a declaration to that effect. Admittedly no declaration has yet been made. But, apart from that, we are not concerned in the present case with the removal of the disabilities. It is urged before us that the liquidation scheme has been completed by the Collector and instalments are being realised by the Government along with the Government revenue from the judgment-debtors who are in possession of the property. The learned counsel contends that he desires to sell the right, title and interest of the judgment-debtors in the property

such as it is and has no intention to interfere with the scheme of liquidation proposed by the Collector. All that he desires is that when he purchases such an interest he should be allowed to pay instalments in the same manner as the judgment-debtors themselves are required to pay as they are a charge on the property. But to allow him to do so would be to execute the decree which is expressly prohibited by Sub-section (3). It is not possible by reason of the provisions of that Sub-section to substitute the name of the decree-holder in place of the judgment-debtors as desired by the former to enable him to pay the instalments, for Sub-s. (3) fixed a definite period of time, namely, the passing of the order under Section 6 and the declaration by the Collector under Section 44 within which no decree obtained on the basis of any private debt incurred after the passing of the order under Section 6, such as the present decree, can be executed against any of the properties of the landlord mentioned in the notice published under Section 11. Unlike Clauses (a) and (b) of subsection (1) which forbid the pending proceedings to be continued or a fresh suit or other proceedings to be instituted in respect of the debts incurred by the landlord before the passing of the order under section 6, Sub-s. 3 creates no bar against the institution of the suit but it imposes a definite disability upon the execution of the decree when obtained to execute it during a specified period. Sub-section (3) does not say that the decree can be executed subject to the rights of the decree-holder. We accordingly hold in agreement with the view taken by the court below that the present decree is not executable. We are informed that the villages Andhi and Bechiya Absdi have already been sold to certain creditors under Section 28 of the Encumbered Estates Act and in respect of the other village instalments have been fixed.

5. The result is that the appeal fails and is accordingly dismissed with costs.