Narain (Dead) And After Him His Son ... vs Faqir Chand on 21 September, 1954

Equivalent citations: AIR1955ALL22, AIR 1955 ALLAHABAD 22

JUDGMENT

Malik, C.J.

1. A mortgage deed without possession was executed by the applicant in favour of the decree-holder opposite party, Faqir Chand, on 2-2-1926. A suit was brought on this mortgage in the year 1939 and a decree obtained on 25-9-1939. On 28-1-1941, an application was made under Section 8, U. P. Debt Redemption Act 13 of 1940 for amendment of the decree. On 19-4-1941, the decree-holder made a declaration that the decree shall not be executed against the land, agricultural produce or person of the agriculturist. On the declaration having been made the Court refused to amend the decree. That order was affirmed by the learned Civil Judge and this civil revision was filed by the judgment-debtor under Section 115, Civil P. C. It was referred by a learned single Judge to a Division Bench and the Division Bench has referred the following question of law for decision by a larger Bench:

> "Whether or not a decree recoverable from an agriculturist can be amended under the provisions of the U. P. Debt Redemption Act if the creditor declares that such decree shall not be executed against the land, agricultural produce or person of such agriculturist even though the decree is, for some reason, not executable against the land, agricultural produce or person of the agriculturist?"

In other words, whether a declaration under Section 4 can be made by a decree-holder only in a case where he can proceed in execution of the decree against the person of the judgment-debtor or against his land or agricultural produce or whether such a declaration can also be made in a case where, for some reason, the decree was not executable against the land, agricultural produce or person of the judgment-debtor.

2. Learned counsel has urged that the Debt Redemption Act was concerned with and wanted to save the 'land' belonging to an agriculturist, which was defined in Section 2(3) as meaning land in a mahal in the Uttar Pradesh but not including land occupied by buildings or appurtenant thereto or land within the limits of any municipality, cantonment or notified area; the 'agricultural produce', which was defined in Sub-section (2) of Section 2 as meaning agricultural produce of any agriculturist raised by him or by his servants or by labour hired by him and including crops, whether standing or gathered, and the fruit and flowers of trees and plants; and the 'person of the agriculturist'; that if, therefore, there was no question of saving land or agricultural produce or the person of the agriculturist then there was no point in asking the decree-holder to make a

declaration.

If this argument is accepted one would except that to a case where land, agricultural produce or person of a judgment-debtor is not in a jeopardy and cannot be proceeded against in execution of a decree the Act will not be at all applicable. The argument of Mr. Jadish Swarup, however, is that in such a case the decree-holder cannot prevent the decree being amended under the Act, while where land, agricultural produce or the person of the judgment-debtor could be proceeded against in execution, the decree-holder can prevent the amendment of the decree by giving a declaration that he will not proceed against land, agricultural produce or person of the agriculturist.

3. In the case before us, the suit was filed more than six years after the mortgage debt had become payable. The personal remedy was, therefore, barred. The property mortgaged, the learned counsel has informed us, was house property and, therefore, it could not be included in the definition of the words "land or agricultural produce".

4. Learned counsel has urged that Sub-section (S) of Section 4 should be applied only to a case where the decree was 'recoverable from an agriculturist', meaning where a simple money decree had been passed against an agriculturist or a decree under which he was personally liable and not to a decree passed on the basis of a mortgage for sale of the mortgagee property specially where no personal decree under Order 34, Rule 6 could be passed against the judgment-debtor by reason of lapse of time. Reliance is placed on the definition of 'loan' and on the decision in -- 'Mt. Ketki Kunwar v. Ram Saroop', AIR 1942 All 390 (PB) (A). The word 'loan' means (see Section 2(9)(I) an advance an cash or kind made before 1-6-1940, (2) recover-able from an agriculturist or a workman (3) or from any such person and other persons jointly, (4) or from the property of an agriculturist or workman. The rest of the section need not be quoted as it is not relevant for our purpose.

Then the proviso is to the effect that an advance recoverable from an agriculturist or from an agriculturist and other persons jointly shall not be deemed to be a loan for the purposes of the Act unless such advance was made to an agriculturist or to an agriculturist and other persons jointly. In -- 'Ketki Kunwar's case (A)', the learned Judges pointed out that the proviso applied only to a case where the advance was recoverable from an agriculturist or from an agriculturist and other persons jointly and it did not apply to a case where the advance was recoverable from the property of an agriculturist or from a workman. 'Ketki Kunwar's case (A)' was followed in another Pull Bench case of this Court in -- 'Surendra Nath v. Naraini Devi', AIR 3951 All 69 (B).

It came up for consideration before the Supreme Court in -- 'Girjadharji v. Lachmanji Panth', AIR 1952 SC 218 (C). But their Lordships did not decide the point and merely observed that it was by no means free from doubt. It is not necessary for us in this case to consider whether -- 'Ketki Kunwar's case (A)' was rightly decided. The learned Judges analysed the definition of the word 'loan', divided it into various sub-heads, and pointed out that the proviso applied only to some of those parts of the main definition and not to others. It was, however, not held in -- 'Ketki Kunwar's case (A)' that wherever in the Act the words "recoverable from an agriculturist" occur it must be interpreted to mean that the debt must be recoverable from the person of the agriculturist.

As a matter of fact in Section 4(3) the words are "decree recoverable from an agriculturist" and not an "advance recoverable from an agriculturist". The words "recoverable from an agriculturist" are not terms of art and it cannot be said, therefore, that they were used in a special sense wherever they occur in the body of the Act. An examination of the provisions of Section 4 would show that this contention is untenable. Sub-section (1) of Section 4 deals with a declaration made in the plaint before the suit is instituted. Sub-section (2) deals with a case where a suit was pending on the date of the commencement of the Act and a declaration had to be made in that case at any time before the decision of the suit. Sub-section (3) applies to cases where a decree had already been passed and a declaration had to be made at the time of the execution of the decree. The three sub-sections would, therefore, ordinarily be deemed to be of equal amplitude. Sub-section (1) is in these terms: "The provisions of this Act shall not apply to a suit for the recovery of a loan from an agriculturist where the creditor declares in accordance with the provisions of Sub-section (2) that if a decree is passed in his favour either for the whole or part of the claim such decree shall not be executed against the land, agricultural produce or person of such agriculturist." The word 'loan' in this sub-section must mean loan as defined in Sub-section (9) of Section 2, and it would, therefore, include not only an advance recoverable from an agriculturist but recoverable from an agriculturist and another jointly or recoverable from the property of an agriculturist. The same interpretation must be given to the provisions of Sub-section (2) of Section 4. There was, therefore, no reason why Sub-section (3) should apply only to a case where there was a personal decree and not a decree recoverable from the property of an agriculturist.

The word 'recoverable' can easily be replaced by the word 'realisable' in Section 4 and the learned counsel has conceded that if 'recoverable' is replaced by the word 'realisable' then his argument must fail. Section 8 of the Debt Redemption Act provides for amendment of decree in these words:

> "Notwithstanding the provisions of any decree or of any law for the time being in force, an agriculturist or a workman liable to pay the amount due under a decree to which this Act , applies passed before the commencement of this Act, may apply to the civil Court which passed the decree or to which the execution of the decree has been transferred, for the amendment of the decree."

The expression 'decree to which this Act applies' has been defined, in Section 2(6) as a decree passed in 'a suit to which this Act applies'. And 'a suit to which this Act applies' have been defined in Section 2(17) as a suit for the recovery of a 'loan'. Section 8 would, therefore, clearly apply not only to a personal decree against an agriculturist but to any decree passed against an agriculturist for the recovery of a 'loan' as defined in Section 2(9) and whether the money is realisable from his person or from his property does not seem to matter. Section 4, therefore, should apply to all cases to which Section 8 is applicable.

5. The argument of the learned counsel is that since the decree could not be executed against land, agricultural produce or person of an agriculturist, no declaration can be made that the decree-holder will not proceed against land, agricultural produce and person of the agriculturist inasmuch as he cannot proceed against them in any case and such a declaration will therefore be meaningless. It is true that the decree being a mortgage decree and the personal remedy being barred, the decretal

amount can be realised only from the house mortgaged. But the judgment-debtor being an agriculturist he can claim, and it has been admitted by the learned counsel that he has a right to claim, that the decree be amend-ed under Section 8.

The language of Section 8, as we have said above, makes it abundantly clear that the amount due under the decree being recoverable from the property of the agriculturist, he can apply for amendment of the decree and there seems to be no reason why in such a case the decree-holder should not be allowed to avail himself of the provisions of Section 4 and make a declaration. The section does not provide that such a declaration can only be made where a decree can be executed against land, agricultural produce or person of such an agriculturist.

No doubt in a case where a person has no right to proceed against certain property, it appears to be meaningless for him to say that he will not proceed against it but law is not always logic and there is no reason why the decree-holder should be in a worse position when land, agricultural produce or person of an agriculturist is not in jeopardy, when those are the three things that the Act intends to protect. This view was also taken by a Bench of this Court in -- 'Karam Husain v. "Muhammad Khalil', AIR 1946 All 509 (D), and in -- 'Inder Singh v. Bishambhar Sahai', AIR 1952 All 635 (E), and by a Bench of the Oudh Chief Court (as it then was) in -- 'Narain Lal v. Kanhaiya Lal', AIR 1945 Oudh 19 (F).

6. Our answer to the question, therefore is: "That even if the decree is not executable against land, agricultural produce or person of the agriculturist, the decree-holder is entitled to give a declaration under Section 4 of the Debt Redemption Act and on such a declaration being given, the provisions of the Debt Redemption Act will not be applicable and the decree can no longer be amended."