

Bhagwan Dat And Ors. vs Jokhan And Ors. on 30 July, 1951

Equivalent citations: AIR1952ALL84, AIR 1952 ALLAHABAD 84

JUDGMENT

Misra, J.

1. This is a reference by the Munsif, North, Sultanpur, under Section 289, U. P. Tenancy Act. The proceedings before the learned Munsif arose out of an application for redemption of a mortgage made under Section 12, Agriculturists' Relief Act to the Sub-Divisional Officer, Kadipur. The parties were at issue 'inter alia' on two questions:

1. Whether the mortgagors are under proprietors of the land in suit.
2. Are the opposite-parties Nos. 1, 2 and 7 estopped from denying the applicants' title as under-proprietors.

The pleas which formed the basis of the aforesaid issues related to proprietary rights in the properties covered by the mortgage and the Sub-Divisional Officer purporting apparently to act under Section 286, U. P. Tenancy Act, submitted the record to the Court of the learned Munsif for determination of the controversy. In the statement of reasons which necessitated the reference to the High Court, it is said that Section 286, Tenancy Act did not apply to proceedings for redemption under the Agriculturists' Relief Act and that the remittance to the Civil Court of the issues relating to proprietary rights was unauthorised inasmuch as the jurisdiction which the Collectors or the Assistant Collectors exercise in redemption proceedings is not that of a Revenue Court which alone is competent to send to the Civil Courts for decisions an issue relating to such matters arising in pending suits or proceedings. The question submitted to this Court by the learned Munsif is formulated thus :

"When an application under Section 12, Act XXVII of 1934 is instituted in the Court of the Collector under Section 10 of the said Act, and a question regarding proprietary title arises in that proceeding, has that question to be decided by the Collector, or is the Collector competent to remit an issue or issues regarding proprietary title to the Civil Court and is it mandatory for the Civil Court to give a finding or findings on the issue or issues so remitted."

2. On this reference coming before me, the learned gentlemen at the Bar who represent the parties frankly agreed that Section 286, U.P. Tenancy Act has no application to redemption proceedings, that the Assistant Collector was bound under the law to decide for himself all points which arise for determination before him and that the procedure adopted by him in remitting the two issues to the

Civil Court was unwarranted. That indeed is the true legal position on a plain reading of the provisions embodied in Section 286, U. P. Tenancy Act. The section lays down:

" 'Procedure when plea of proprietary right raised' -

1. In any suit or proceeding in a revenue Court a question of proprietary right in respect of the land which forms the subject-matter of the suit or proceedings is raised, and such question has not previously been determined by a Court of competent jurisdiction, the revenue Court shall frame an issue on the question of proprietary right and submit the record to the competent civil Court for the decision of that issue only :

'Explanation I--A plea of proprietary right which is clearly untenable and intended solely to oust the jurisdiction of the revenue Courts shall not be deemed to raise a question of proprietary right within the meaning of this section.

'Explanation II'--A question of proprietary right does not include the question whether land is sir or khudkasht.

2. The civil Court, after re-framing the issue, if necessary, shall decide such issue only and return the record together with its finding thereon to the revenue Court which submitted it.

3. The revenue Court shall then proceed to decide the suit, accepting the finding of the civil Court on the issue referred to it.

4. An appeal from a decree of a revenue Court passed in a suit in which an issue involving a question of proprietary rights has been decided by a civil Court under Sub-section (2) shall lie to the civil Court which having regard to the valuation of the suit, has jurisdiction to hear appeals from the Court to which the issue of proprietary title has been referred."

Three things must occur before a revenue Court can act under that section :

1. A question of proprietary right must be raised by the parties in respect of the land in dispute and the pleas in that regard must be tenable pleas.

2. The question must arise in a suit or proceeding which under the Act is placed exclusively within jurisdiction of the revenue Court, and

3. The controversy should arise in a revenue Court and that Court should be incompetent to deal with it.

3. There is no doubt that in the present case the first condition is fulfilled. It is equally obvious, however, that the other two conditions are absent. The question arises here in redemption proceedings under Chapter III Agriculturists' Relief Act (U. P. Act XXVII of 1934) and the proceedings are not exclusively reserved by the U. P. Tenancy Act for determination by revenue Courts. The powers exercisable by the Collector or the Assistant Collector in such cases is conferred by Section 10 of the enactment of 1934. Normally the Legislature confers jurisdiction in redemption proceedings under Chapter III on Courts of Civil jurisdiction but in cases where the principal money does not exceed Rs. 500/-, the Collector is deemed to be a Court within the meaning of the Act and he is enjoined by Section 16 to hold an inquiry for the purpose of determining whether or not the applicant is entitled to redeem the mortgage and whether the money deposited by him is sufficient. There is no provision in the Act for delegation of the inquiry to any other tribunal. It would, therefore, seem obvious that the provisions of Section 286, U. P. Tenancy Act cannot be imported in the Act of 1934. Indeed under Section 27 of the Act it is the provisions contained in the Code of Civil Procedure in regard to suits which are made applicable to all proceedings under Chapter III. It is also significant that the orders passed by the Collector or the Assistant Collector are executable in the manner prescribed for civil Court decrees. In conferring jurisdiction upon Collectors and Assistant Collectors, the Legislature confers special jurisdiction on those officers. While acting, therefore, under the provisions of Section 10, Agriculturists' Relief Act they cannot be deemed to act as revenue Courts or to possess the powers conferred on such Courts under Section 286, Tenancy Act. I may mention that neither under the Agriculturists' Relief Act nor under the Code of Civil Procedure there is any warrant for remitting an issue or issues of proprietary title to Courts other than those entrusted to decide redemption cases or for the simultaneous exercise of jurisdiction by another Court while the case is pending except by way of appeal or revision in appropriate cases. Section 25, Agriculturists' Relief Act may in this regard be usefully looked into. It reads thus:

"No suit shall be brought in any Court for any relief which can be obtained by an application under this chapter."

4. In view of what has been said above, the reference must be answered as follows:

(a) Questions regarding proprietary title arising in the Court of Collectors or Assistant Collectors in applications under Section 12, Agriculturists' Relief Act must be determined by those Courts as Courts of first instance;

(b) In 'proceedings under Chapter III Agriculturists' Relief Act, Collectors and Assistant Collectors cannot remit to civil Courts for determination of issues which may arise before them on the pleadings of parties whether such issues relate to proprietary title or otherwise and

(c) The Civil Court has no jurisdiction in such cases to inquire and record its findings on the issues remitted as aforesaid.

5. Before I part with this case, two incidental points which also arose for consideration may also be mentioned :

1. Some of the opposite parties, namely, Nos. 2, 5, 6, 12 and 13 appear to have died during the pendency of the reference in this Court. The applicants have not cared to bring the legal representatives of the aforesaid persons on the record & it was urged, therefore, on behalf of the creditors that the redemption proceedings must be deemed in the circumstances to have automatically abated. I am informed that the deceased opposite parties are properly represented by the surviving creditors on the record and if this is correct the ground upon which the objection is based disappears.

2. I am somewhat doubtful about the competency of this reference under Section 289, U. P. Tenancy Act because the language of that section is not wide enough to cover the present case. I have, however, answered the question sent up by the learned Munsif because I am not able to say definitely without fuller examination that the reference falls outside the scope of Section 289. The question formulated is answered as indicated above.

6. The case will go back to the Court of the learned Munsif for being returned to the Sub-Divisional Officer, Kadipur, in order that it may be disposed of by him according to law.