

Sujan Singh And Ors. vs Lochan Singh And Ors. on 15 July, 1953

Equivalent citations: AIR1953ALL756, AIR 1953 ALLAHABAD 756

JUDGMENT

Agarwala, J.

1. An application under Section 4, Encumbered Estates Act was made by Thakur Sujan Singh and his sons on 17-4-1936, and a written statement was filed by them before the Special Judge on 16-8-1936. In this written statement they claimed the property in dispute in the present proceedings to belong to them. In due course notices under Section 9 were published on 23-12-1936. A claim under Section 11 of the Act was filed by Srimati Dhan Kunwar in respect of the property in dispute on the allegation that the property originally belonged to Kehri Singh, her husband, that upon his death it was inherited by her as a Hindu widow, that it was sold in execution of a decree against her and purchased 'benami' by Girwar Singh, father of Sujan Singh, appellant, that she paid the auction price and that she had been throughout in possession of the property.

Before the objection could be decided Smt. Dhan Kunwar died on 12-10-1940, leaving Lochan Singh, a reversioner of Kehri Singh. On 26-10-1940, Lochan Singh filed a claim before the Special Judge and his case was that in addition to the ground taken by Smt. Dhan Kunwar that the property was purchased 'benami' by Girwar Singh, there was another ground on which his claim should be decreed, namely, that Smt. Dhan Kunwar was merely a life estate holder, and even if Girwar Singh purchased anything, he purchased merely the life estate of Dhan Kunwar, and his right came to an end on the death of Smt. Dhan Kunwar and the property reverted to the reversioner of Kehri Singh, that is, Lochan Singh claimant.

Sujan Singh and his sons' reply was that Smt. Dhan Kunwar had become unchaste during the lifetime of her husband, and, therefore, did not inherit the property under the Hindu law, but that since she remained in possession of the property for over 12 years, she acquired an absolute interest therein and in execution sale against her the absolute interest in the property was purchased by Girwar Singh. Sujan Singh also pleaded that Lochan Singh, in any case, had no 'locus standi' to come in and file an objection under Section 11, Encumbered Estates Act, because he had no title to the property on the date of publication in the gazette under Section 9. It may be mentioned that Lochan Singh's claim having been made more than three months after the notice had been published in the Gazette under Section 9, he made an application for the extension of time on the ground that he could not have made the objection earlier. This application was allowed by the learned Special Judge.

Ultimately he also allowed the claim of Lochan Singh and declared that the property in dispute was not liable to be attached and sold in satisfaction of the claims against Sujan Singh and others--landlord-appellants before us. Sujan Singh and others have now come up in appeal against his order and the only question raised by the learned counsel for the appellants is that Lochan Singh could not maintain an independent claim in the Court below. The contention of the learned counsel is that in order to maintain a claim under Section 11 the claimant must be entitled to the property on the date of the publication of the notice under Section 9, and that any person who was not so entitled cannot file an objection under Section 11, though he may file a separate suit to establish his right to the property. Section 11 runs as follows:

"11 (2) Any person having any claim to the property mentioned in such notice shall within a period of three months, from the date of the publication of the notice in the official gazette make an application to the Special Judge stating his claim and the Special Judge shall determine whether the property specified in the claim, or any part thereof, is liable to attachment, sale or mortgage in satisfaction of the debts of the applicant."

Learned counsel says that the words "within a period of three months" is a period of limitation and shows that the objector must have a subsisting claim on the date when the period of limitation commences to run, and that, therefore, any person who had no such right on that date, is not entitled to maintain an objection under that section. In our opinion, this contention is not sound. The section does not say that the claimant must have a right on the date on which a notice under Section 9 is published in the official gazette. All that the section requires is that the claim to be made before the Special Judge must be filed within a period of three months from the date of the publication of the notice. There is neither reason nor authority for reading into the section something that is not there.

The object of the section is that the Special Judge may determine what properties belonging to the landlord-applicant are available for the satisfaction of the claims against him. If the landlord-applicant had a claim to a particular property on the date on which his application under Section 4 of the Act is transferred to the Special Judge, but his title is lost before the Special Judge makes a declaration under Section 11, it is obvious that the property ceases to be available for the satisfaction of the claims against him.

No doubt, the landlord-applicant's title to any property which belonged to him on the date on which his application under Section 4 of the Act was transferred by the Collector to the Special Judge cannot cease by transfer 'inter vivos' because that is prohibited under Section 7. But his title to the property may cease in other ways. For instance, if his title was not absolute but limited in duration of time, or was subject to defeasance upon the happening of a contingency, the time may well expire, or the contingency may happen after the aforesaid date. It is conceded that the person, who thus obtains title to the property may file a suit for the declaration of his title and the property will then not be available for the satisfaction of the claims against the landlord-applicant. There is no reason why the simpler and more expeditious remedy provided by Section 11 be not available to the claimant.

2. There is no force in this appeal. It is dismissed with costs.