

Mt. Jageshara vs Achchaibar And Ors. on 28 November, 1951

Equivalent citations: AIR1952ALL693, AIR 1952 ALLAHABAD 693

JUDGMENT

Mushtaq Ahmad, J.

1. These are appeals each by the defendant in a different suit, the same being for redemption of a mortgage. The plaintiffs in the suits were the same, though the defendants were different.
2. The suit giving rise to the appeal first mentioned was No. 629 of 1946, of the Court of the Munsif, Mirzapur, in respect of a usufructuary mortgage dated 13-11-1927, made by the plaintiffs in favour of the defendant for Rs. 900, the property mortgaged being shops. The suit giving rise to the appeal mentioned later was No. 630 of 1946 of the same Court in respect of a usufructuary mortgage dated 16-5-1925, made by the plaintiffs' father in favour of the defendant for Rs. 1000, the property mortgaged being a house.
3. Prior to the filing of these suits the plaintiffs had applied for redemption under Section 12, U. P. Agriculturists' Relief Act in the case of each mortgage, but the applications were dismissed on the finding that the plaintiffs were not agriculturists within that Act.
4. In the present suits the plaintiffs claimed to be agriculturists under the U. P. Debt Redemption Act and on that allegation alleged that, while the later mortgage of 1927 had been fully discharged, only a sum of Rs. 72 had remained due under the earlier one.
5. The defence taken was that the plaintiffs were not agriculturists and, therefore, not entitled to the benefits of the Act just mentioned, and that the entire mortgage money under each of the bonds was still payable. In their written statement in each case the defendants made a declaration under Section 4 of this Act to deprive the plaintiffs of the privileges thereof.
6. The trial Court, holding that the plaintiffs were not agriculturists, being only plot proprietors decreed each of the suits on payment of the entire mortgage money. On appeal by the plaintiffs this decree was modified on the finding that the plaintiffs were agriculturists under the Debt Redemption Act, and it was held that, while the mortgage of 1927 had been fully paid off, only Rs. 56/10/- were due under the earlier mortgage of 1925. The suits were, therefore, decreed without the plaintiffs having to pay anything on the later mortgage and on their paying only Rs. 56/10/-under the earlier mortgage.
7. The main point argued by Mr. Jagdish Swarup, learned counsel for the defendants, in each appeal was that the plaintiffs were not agriculturists within the meaning of the Debt Redemption Act. If they were not, as held by the trial Court, surely the decrees passed by that Court in the two suits

were correct. If they were, by parity of reasoning the decrees passed by the lower appellate Court were right. The question depends entirely on the interpretation of the Word "agriculturist" as defined in this Act. Section 2, Sub-sections (i) and (ii) provides :

"In this Act unless there is anything repugnant in the subject or context,--

(1) subject to the provisions of the following sub-sections, all words and expressions which are defined or explained in the United Provinces Land Revenue Act, 1901, or the United Provinces Tenancy Act, 1939, shall have the meanings assigned to them therein.' "(3) 'agriculturist' means a proprietor of a mahal or of a share in or a portion oil a mahal or a tenant."

8. The controversy has ranged round the construction of the words used in the last sub-section, it being admitted that the word "mahal" must be understood in the sense in which it has been defined in the Land Revenue Act, as provided by Sub-section (1). Applying the definition in Sub-section (3), the trial Court held, as I have already mentioned, that the plaintiffs were not agriculturists, while the lower appellate Court was of the opinion that they were. It in a common ground that the plaintiffs claim the status of agriculturists under this Act only as the proprietors of certain miscellaneous zamindari plots. They do not claim either to be the proprietors of a mahal or of a share in a mahal, nor do they claim to be agriculturists by virtue of their being tenants.

The controversy, therefore, resolves itself into the short question, whether the plaintiffs, merely as plot proprietors, could be regarded as proprietors of a share in a portion of a mahal. The difference between the standpoints which have been put before me respectively by the learned counsel for the parties and which had been adopted by the Courts below is rather fine. Learned counsel for the defendants-appellants argued that, before the plaintiffs could be agriculturists within this Act, they had to be the proprietors of at least a share in a mahal or a share in a portion of a mahal. By the learned counsel for the plaintiffs-respondents it was urged that it was enough if the plaintiffs were found to be the proprietors of a portion of a mahal.

The argument thus ranged round the question whether the plaintiffs, to be agriculturists, had to be at least the proprietors of a 'share' in a portion of a mahal or it was enough if they were found to be the proprietors of a 'portion' of a mahal, which expression might be synonymous with a specified area of a mahal or a plot or plots situated in a mahal.

9. In the first place, the position of the words used in Sub-section (3) leaves no doubt that the appellants' contention in this behalf is right. If the respondents' argument was correct and it was enough for the plaintiffs, to be agriculturists, merely to show that they were proprietors of a portion of a ntahai, the words "portion of a mahal" would have immediately followed the first preposition 'or' after the word 'mahal' in the sub-section, and not occurred where they are actuality found, In the second place, if a mahal carries certain incidents, every portion of it must also possess the same. The term 'mahal' is defined in Section 4 (4), Land Revenue Act as :

"(a) any local area held under a separate engagement for the payment of the land revenue; Provided that,

(i) if such area consists of a single village or portion of a village, a separate record of rights has been framed for such village or portion;

(ii) if such area consists of two or more villages or portions of villages, a separate record-of-rights has been framed either for the entire are, or for each of the villages or portions of villages included therein.

(b) any revenue free area for which a separate record-of-rights his been framed;

(c) for such purposes as the Provincial Government may determine any grant of land made heretofore or hereafter under the waste land rules, and

(d) any other local area which the Provincial Government may by general or special order declare to be a mahal."

The incidents mentioned in these provisions as characteristic of a mahal must, from the nature of things, be true also of a portion of it. For instance, if an area, to be a mahal, must be held under a separate engagement for the payment of land revenue, every portion of it must necessarily be covered by that engagement for that purpose. Again, there must be a separate record-of-rights relating to the mahal and, therefore, relating to every portion of it. It in nobody's case that the miscellaneous plots held by the plaintiffs in these cases are embraced by the engagement relating to the mahal, under which the liability for land revenue was fixed or that there was any separate record-of-rights in respect of them. They cannot, therefore, be taken to be a "portion of mahal" within the meaning of Section 2 (3), Debt Redemption Act. This position is confirmed by the definition of the word "partition" in Section 106, Land Revenue Act. That is, "'Partition' means the division of a mahal or a part of a mahal into two or more portions, each consisting of one or more shares,"

The word "portion" in this section must be taken in the same sense in which it is used in Section 2 (3), Debt Redemption Act, and, as in Section 106, Land Revenue Act, a portion of a mahal must itself be a part of the mahal, the same should be the case under Section 2 (3), Debt Redemption Act also, That is to say, the portion in question also must carry the incidents belonging to the larger unit, that is, the mahal itself, as would be the case where a mahal is divided into pattis. On the ether hand, where in all essentials the miscellaneous plots are detached from the mahal in the sense that they are neither covered by the engagement under which the mahal itself is held for the payment of land revenue and there is also no separate record-of-rights in respect thereof, such plots cannot come within the ambit of a mahal but form a different area altogether. Viewed in this light, the terms of the definition in Section 8 (3) of this Act must put agriculturists under the Act under three categories :

(1) the proprietor of a mahal, (2) the proprietor of a share in a mahal, and (3) the proprietor of a share in a portion of a mahal.

10. There can be no fourth class of the proprietor of a portion of a mahal as contradistinguished from the proprietor of a share in, or portion of a mahal. If this fourth category could also be brought within the ambit of the definition and, further, if miscellaneous zamindari plots could be taken as a "portion of a mahal", the plaintiffs could Certainly be taken as agriculturists within the Act. I have already said that neither there can be any such fourth category nor can the proprietor of mere miscellaneous plots be held to be the proprietor of a share in, or a portion of, a mahal. For all these reasons I have come to the conclusion that the lower appellate Court was wrong in reversing the finding of the trial Court that the plaintiffs were not agriculturist under the U. P. Debt Redemption Act.

11. Accordingly I allow these appeals in part, modify the decrees of the lower appellate Court in the two suits, and restore those of the Court of first instance with costs to the defendants-appellants throughout. The plaintiffs-respondent are allowed six months' time from today to deposit the mortgage money in each case in Court, if the same was not paid or deposited within the period allowed by the trial Court.

12. Leave to appeal to a Bench is granted.