

Ahmad Zaki And Ors. vs L. Shyam Lal on 13 September, 1950

Equivalent citations: AIR1951ALL576, AIR 1951 ALLAHABAD 576

ORDER

1. This application arises out of an order of the learned Additional Civil Judge, Unao, dismissing an application under Section 8, U. P. Debt Redemption Act, for amendment of the decree passed against the applicants on the ground that since the proceedings were taking place under the U. P. Encumbered Estates Act, the decree in question had become subjudice and could not be amended under Section 8, Debt Redemption Act. We have heard the learned counsel for the parties and we cannot uphold this view. Until the decree is superseded by the Special Judge Under section 14, Encumbered Estates Act, it remains a decree under which a certain amount is due from the judgment-debtor. This, however, is not the only provision of law with which we are concerned in disposing of this application.

2. Section 7 (1) (b), Encumbered Estates Act provides that, "no fresh suit or other proceedings other than an appeal, review or revision against a decree or order shall, except as hereinafter provided, be instituted in any civil or revenue Court."

It also provides that if such a proceeding has commenced it will be deemed to be a proceeding pending at the date of the order forwarding the application to the Special Judge and, in that case, it shall be stayed. By reason of this provision an application Under section 8, U. P. Debt Redemption Act, which must undoubtedly be held to be a proceeding with regard to the debt, was required to be stayed. The only question is whether this provision militates against provisions of Section 8, Debt Redemption Act.

3. Section 8 provides that:

"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 decrees or to which the execution of the decree has been transferred, for the amendment of the decree by reduction according to the provisions of this Act of the amount due under it, and on receipt of such application the Court shall, after notice to the opposite party, calculate the amount due from the applicant in accordance with the provisions of Sections 9 and shall amend the decree accordingly."

This provision gives the judgment-debtor a substantive right to get his decree amended. Any law which directs the postponement of a decision by necessitating a stay order being passed does not defeat the right but only provides that the matter should be decided not immediately but after the happening of a particular event. Section 7 (1) (b), Encumbered Estates Act, does not, therefore, defeat the right conferred by Section 8 : it only postpones it so long as one of the contingencies

provided for by the" Encumbered Estates Act i. e., the quashing of proceedings under that Act or the liquidation of the debts under the Act, takes place. That being so, the direction contained in Section 7 (1) (b), Encumbered Estates Act, must have the effect given to it.

4. Provisions for amendment of decrees were also contained in the U. P. Agriculturists' Relief Act : vide Sections. 3, 5 and 30 of that Act. It was held that Section 7 (1) (b), Encumbered Estates Act, covered cases relating to amendment of decrees under the Agriculturists' Relief Act and such proceedings had to be stayed: vide Mohammad Husain v. Nageshwar Prasad, 1940 O. W. N. 1293 : (A. I. R. (28) 1941 Oudh 193). It is true that the provisions of the Debt Redemption Act and the Agriculturists' Relief Act are not identical, since, in the latter Act, there is no provision corresponding to the words: "Notwithstanding the provisions of any decree or any law for the time being in force." These words, however, make no difference because, as has already been pointed out, the provisions of Section 7 (1) (b), Encumbered Estates Act, do not negative the right of amendment, granted by Section 8, Debt Redemption Act. It is not, therefore, a provision which militates against the provisions of the latter section and is not hit by the words quoted.

5. In this connection it will not be out of place to notice that the Legislature did not contemplate that a debtor should get advantage both of the Encumbered Estates Act and the Debt Redemption Act. Section 8 is only applicable to enable a Court to amend "a decree to which this Act applies." This expression is defined in Section 2 (6), as a decree passed "in a suit to which this Act applies." That expression is defined in Section 2 (17) and the definition makes it clear that it "does not include proceedings under the provisions of the United Provinces, Encumbered Estates Act, XXV [25] of 1934." Thus a decree passed in such proceedings cannot be amended, which means that the landlord debtor having taken advantage of the Encumbered Estates Act cannot take any further advantage under the provisions of the Debt Redemption Act.

6. The provisions of Section 7 (1) are not arbitrary. What Section 14 (2), Encumbered Estates Act, requires the Special Judge to do is to determine the amount due from the landlord "on the date of the application Under Section 4." No amendment made to a decree after the date of the application much less an amendment made under a law which was not even in force at the date of the application can be taken into account in determining the amount due, at the date, and such proceedings as proceedings for amendment will be wholly infructuous so long as the proceedings under the Encumbered Estates Act are pending.

7. Further support is lent to this view by the fact that under the provisions of Section 4 (3), Encumbered Estates Act, if a person applied under the Agriculturists' Relief Act for the amendment of a decree the period during which that application remained pending was to be excluded from the period of 1 year prescribed by Section 4 (1) for making applications under the Act. This was obviously with a view to have the amendment made before the application was made so that the amended decree could have effect given to it in determining the amount Under Section 14 (2) of the Act.

8. The result, is that this application must be allowed and the order of the learned Additional Civil Judge dismissing the application Under Section 8, U. P. Debt Redemption Act, must be set aside. In

its place will be substituted an order directing stay of proceedings on the application for amendment of the decree. In the circumstances each party will bear his own costs of both the Courts.