

## Deputy Commissioner Kheri vs Kamta Prasad And Ors. on 2 February, 1953

**Equivalent citations: AIR1954ALL101, AIR 1954 ALLAHABAD 101**

### JUDGMENT

Mukerji, J.

1. These are five connected execution first appeals. All the five appeals have been preferred by the decree-holders and the judgment-debtors are the respondents in all the five appeals. The point for determination in these appeals is the same. Consequently we propose to decide all the appeals by this common judgment.

2. The facts giving rise to these appeals briefly put are these : On 22-12-1932, a decree was passed on a compromise in favour of the appellants, Ahmadi Begam and Muzaffar Husain against six judgment-debtors namely, 1, Rup Kuer, 2. Kamta Prasad, 3. Ambika Prasad, 4. Sunder Lal 5. Kashi Prasad and 6. Beni Madho. The compromise decree was in respect of a debt due under mortgage deed dated 16-9-1919. The main terms of the compromise decree were (1) that the entire money would be payable in twelve equal instalments--the instalments were to be paid annually, the first being payable in December 1933. The second term of the compromise was that in default of two consecutive instalments the decree-holders would be entitled to get the proprietary possession over the property in execution of the decree. The first instalment apparently was paid in time but there was a default in respect of the second instalment. Consequently the decree-holders put their decree into execution in order to obtain possession over the property.

3. While this second execution application was pending, a kind of second compromise was entered into and this was done on 25-7-1935. This compromise was in the nature of an extension of time granted to the judgment-debtors to make the payment which they had failed to make under the terms of the first compromise. By this compromise time for the payment of the second instalment in respect of which there had been a delay was extended up to 21-12-1935, and it was also provided for, that in the event of this instalment not being paid within that time, the decree-holders were to be entitled to get proprietary possession.

4. On 21-12-1935, it appears that Mst. Rup Kuer, one of the judgment-debtors, applied under Section 4, Encumbered Estates Act. In the schedule of the properties she showed the property in respect of which execution had been sought as her property. On 9-1-1936, the Collector made an order under Section 6, Encumbered Estates Act on the application of Mst. Rup Kuer and the application was thereafter forwarded to the Saecial Judge for disposal. On 5-2-1937, the decree-holder, Ahmadi Begam, who had put the decree into execution on her behalf and also on behalf of her co-decree-holder, preferred objections and she claimed that the property which was

the subject-matter of the compromise decree could not be treated as the property of the judgment-debtor applicant. On 1-8-1938, these objections of Ahmadi Begam were dismissed by the Special Judge. The Special Judge held that the decree-holder could not claim the property in dispute as his property under the compromise decree.

An appeal was preferred against this decision. The appeal was allowed 'ex parte'. The point that was agitated before the appellate Court was that the objections in respect of the property were time-barred. The learned District Judge who heard the appeal expressed the opinion that the appeal succeeded since limitation commenced to run from 22-12-1934 the date when there was a default in respect of two consecutive instalments. Whether this decision of the learned Judge is right or wrong is not for our consideration nor do we think that this decision in any manner affects the question which has arisen for determination before us. An application for rehearing of the appeal was made on 18-1-1940, but the learned District Judge dismissed that application on the 18-10-1940. An appeal was preferred on 19-12-1940, against that order and that too was dismissed on 1-3-1945.

5. On 11-1-1943 the Collector made an award under the Encumbered Estates Act. On 11-5-1945, Ahmadi Begam made a fresh application for execution -- Execution Case No. 35 of 1945 and another application was made on 14-8-1945 Execution Case No. 56 of 1945. This second application was necessitated because in the original application the names of all the judgment-debtors had not been included. Objections were preferred to this execution application on the ground that this execution application was barred by time, having been made more than 3 years after the last step-in-aid of execution. The execution Court took the view that the application was barred by time and that the decree-holders were not entitled to exclude any period under Section 15, Limitation Act. It further held that Section 7(b), Encumbered Estates Act did not apply to the case and consequently the time taken by the proceedings in the Court of the Collector and the Special Judge could not be excluded.

6. The only question which was argued by the learned counsel for the parties, at length, in these appeals was whether by virtue of Section 7, Encumbered Estates Act the decree-holders could claim an exclusion of the time taken by the Encumbered Estates Act proceedings having in view the provisions of Section 44(3), Encumbered Estates Act.

7. Section 44(3) is in these words:

"Notwithstanding anything contained in the Limitation Act or in any other law for the time being in force, in computing the period of limitation prescribed for any application for execution of any decree stayed under Sub-sections (2) and (3) of Section 7 the period from the date of decree referred to in those subsections up to the date of the declaration under Sub-section (1)" of this section or the order of the Special Judge referred to in Sub-section (2) shall be excluded."

8. It was argued on behalf of the appellants that the period from 9-1-1936, the date when the Collector passed an order under Section 6, to 11-1-1943, when the Encumbered Estates Act proceedings terminated, should be excluded under Section 15, Limitation Act read with Section 7(b), Encumbered Estates Act. It was argued on behalf of the respondents that Section 7 had no

application to the present case. The executing Court was also of the same opinion. It, therefore, becomes necessary for us to see whether Section 7 applies to the facts and circumstances of this case or not.

9. The material portion of Section 7 runs as follows :

7(1) "When the Collector has passed an order under Section 6, the following consequences Shall ensue:

(a) "All proceedings pending at the date of the said order in any civil or revenue Court in the United Provinces in respect of any public or private debt to which the landlord is subject, or with which his immovable property is encumbered ..... shall be stayed, all attachments and other execution process issued by any such Court and then in force in respect of any such debt shall become null and void, and no fresh process in execution shall, except as hereinafter provided, be issued."

(b) "No fresh suit or other proceedings other than an appeal, review or revision against a decree or order, or a process for ejectment for arrears of rent shall, except as hereinafter provided, be instituted in any civil or revenue Court in the United Provinces in respect of any debts incurred before the passing of the said order ....."

The learned Judge was of the view that Section 7 (1)(a) did not apply to the case because that section prohibited institution of suits or proceedings in respect of "debts" and that the execution application in his view was not a proceeding in respect of a "debt". In support of the applicant the decision in -- 'Hulas Singh v. Data Ram', AIR 1943 All 291 (A) was also cited before the learned Judge but in his view that decision did not apply to the facts and circumstances of the case before him. In this case Iqbal Ahmad C. J. and Dar J. held that Section 15, Limitation Act applied to cases in which institution of a suit had been directly or indirectly stayed by an order of a Court. Further they held that Section 15, Limitation Act would be applicable to cases where a creditor was debarred from instituting suits against his debtor because an order under Section 6, Encumbered Estates Act had been made on an application filed by that debtor under Section 4 of the Act.

10. In our judgment the question which really arises for determination in this case is whether Section 7, Encumbered Estates Act was applicable to this case or not. The property in respect of which execution had been sought was a property which undoubtedly was encumbered in respect of a debt incurred before the passing of an order under Section 6. Rup Kuer who was one of the co-judgment-debtors had applied under the Encumbered Estates Act, as we have noticed earlier. An order under Section 6 had been made on 9-1-1936. Therefore, in our judgment after 8-1-1936 no fresh process in execution could be taken against her immovable property. Under the compromise decree of 22-12-1932 and also under the compromise of 25-7-1935 the debt due from Rup Kuer and her co-judgment-debtors which was secured by mortgage could only be recovered from the property against which execution had been sought by delivery of possession by the decree-holders.

Therefore, in our judgment it could not be argued that the immovable property of the landlord was not encumbered in respect of a debt and that execution was not being sought in respect of such a debt. It was further argued by learned Counsel for the respondents that on the terms of the compromise it must be held that when the decree-holders get the right to possess the property, on account of the default clause, the debt was wiped off. In our view this contention was not sound for the simple reason that so long as the decree-holders did not get the property which had been earmarked for the satisfaction of the debt the debt remained.

11. The Encumbered Estates Act was pass-ed by the Legislature to give relief to a certain class of debtors. It was also the intention of that Act to place the entire indebtedness and the entire property of debtor available in the hands of the Special Judge and the Collector for purposes of liquidation. Other Courts were debarred from dealing either with the question of the indebtedness or the question of the liquidation of the debts of such a debtor. A Bench of this Court in -- 'Mt. Chandeshwari Kuar v. Vireshwar Banerji', AIR 1948 All 317 (B) held that if the fate of a suit or proceeding in respect of which the stay is sought is linked with and determined or affected by the proceedings before the Special Judge, it is incumbent on the Court to stay them.

The suit out of which the aforementioned revision arose for decision before the High Court was instituted by the sons of one Panchanan Banerji on 5-10-1938, for possession of certain properties and for the recovery of a certain amount as damages. The cause of action of the suit was the alleged act of dispossession caused by Chandeshwari Kuar who had usufructually mortgaged the properties to Panchanan Banerji. Before the suit by Panchanan Banerji's heirs an application under Section 4, Encumbered Estates Act had been presented by Mst. Chandeshwari Kuar. Chandeshwari Kuar, therefore, made an application before the learned Civil Judge for the stay of the suit under Section 7(1) (b), U. P. Encumbered Estates Act but the learned Judge was of the opinion that the section did not apply to the circumstances of the case before him and he, therefore, refused to stay the suit.

It was contended on behalf of the applicants before the High Court that the suit which was instituted by the sons of Panchanan Banerji was in respect of a debt which 'inter alia' was the subject-matter of the application presented under Section 4, Encumbered Estates Act. The Bench held that Section 7(1) (b) was general in its terms and that having in view the fact that the U. P. Encumbered Estates Act was a remedial statute providing for the relief of a particular class it should be construed so far as they reasonably admit so as to secure that the relief contemplated by the statute shall not be denied to the class intended to be relieved. They, therefore, were of the opinion that the suit filed by the sons of Panchanan Banerji should have been stayed under the provisions of Section 7(1)(b).

12. Reliance was placed by learned counsel for the respondents on a decision in -- 'Mt. Champa Devi v. Mt. Asa Devi', AIR 1938 All 8 (C). In that case Iqbal Ahmad and Allsop JJ. held that Section 7(1) (b) is confined in its operation to suits in respect of any debts incurred before the passing of the order by the Collector under Section 6 of the Act and has no application to suits for possession of immovable property. They further held that a claim for mesne profits was not a claim in respect of a debt within the meaning of Section 7(1) (b). We are in respectful agreement with the view expressed in that case. In that case the learned Judges found that Asa Devi claimed possession of immovable properties and that her claim to such possession was in no way connected with any debt as denned

within the meaning of the Encumbered Estates Act and consequently they were of the opinion that such a suit could not be stayed under the provisions of Section 7(1) (b) of that Act.

In our judgment, therefore, this case has no application to the facts of the case before us. Reliance was also placed on a decision in --'Mukand Sarup v. Krishna Chandra', AIR 1938 All 86 (D). This case arose out of a suit filed for possession and for mesne profits as also in respect of the recovery of a debt. So far as the reliefs in respect to the suit for possession and mesne profits were concerned the Bench held that a stay could not be granted. In respect to those reliefs which were in respect to the claim for the debt the Bench held that relief could be granted under Section 7 qua that relief and the suit in respect to that relief was stayed. This case, if anything, supports the view that we have taken.

13. Learned Counsel for the respondents drew our attention to several other cases, but we do not consider it necessary to notice them for in our opinion those cases were of no assistance in determining the question before us.

14. In our opinion, therefore, the decree-holder could not by virtue of Section 7, Encumbered Estates Act make an application for execution during the period that the Encumbered Estates Act proceedings were pending, that is, between the period commencing from 9-1-1936, to 11-1-1943, and that this period had to be excluded in computing the period of limitation. That being the position the execution application which was made by the decree-holder on 11-5-1945, was not beyond time.

15. We therefore allow these appeals, set aside the order of the execution Court and send back the cases for the determination of the other objections which there may still remain for decision. We direct that the appellants shall have their costs of the appeal from the respondents in each case.