

Krishna Pal Singh And Anr. vs Mt. Babban on 12 November, 1951

Equivalent citations: AIR1952ALL227, AIR 1952 ALLAHABAD 227

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This case has been referred to a larger Bench by reason of a conflict of opinion between a decision of the Oudh Chief Court in Ram Dat v. Suraj Bux, 1948 Oudh W. N. 13 and of the Allahabad High Court in Bam Ban Bijai Prasad Singh v. Sarjoo Singh, A. I. R. (34) 1947 ALL. 188. After having been given the facts, however, we are of opinion that the point does not arise and this appeal must fail on another ground.

2. A short pedigree will be helpful in understanding the facts of the case. It runs as follows:

UMED SINGH _____ | _____
| | Sheoraj Singh(died)=Tejo Kuar Chandrapal Singh | (pre-deceased Sheoraj |
Singh)=Indrana Kuar _____ | _____ | | Rampal
singh(died unmarried) Shyam Kaur | Krishnapal Singh The property belonged to a
joint family consisting of Umed Singh, Sheoraj Singh and Chandrapal Singh. Umed
Singh died and then Chandrapal Singh died with the result that Sheoraj Singh was
left as the sole surviving owner of the property; but the name of Indrana Kuar, widow
of Chandrapal Singh, was mutated over half of the property by way of consolation On
Sheoraj's death, the property came to his son Rampal Singh but, Rampal Singh
having died while he was a minor, the property came to his mother, Smt. Tejo Kuar.
In 1934, Smt. Tejo Kuar and Smt. Indrana Kuar surrendered the estate to Smt.
Shyam Kuar, daughter of Sheoraj Singh Shyam Kuar applied under the Encumbered
Estates Act and, on her death, her son Krishnapal Singh's name was brought on the
record. Before this surrender, however, in the year 1933 Smt. Tejo Kuar and Smt.
Indrana Kuar had executed a deed of sale of 15 bighas of land in favour of Smt.
Babban in village Samdaha, district Unnao. Smt. Shyam Kuar, in her application
under the Encumbered Estates Act, included the whole of the property and did not
exclude the portion sold to Smt. Babban The usual publications in the gazette were
made and Smt. Babban did not file any objection under Section 11, Encumbered
Estates Act. The Special Judge, in due course, sent to the Collector a list of the

properties in accordance with the provisions of Section 19, Encumbered Estates Act and on 12-12-1943, the Collector passed the final award. The Collector did not, however, attach, sell or mortgage the property but fixed instead instalments for the payment of the debts.

3. In the year 1945, Krishnapal Singh and Smt. Tejo Kuar filed a suit, out of which this second appeal has arisen, for possession of the property sold to Smt Babban in the year 1933. It was claimed that the sale-deed was executed without consideration and there was no legal necessity for the transfer of the property and Smt. Babban was, therefore, not the owner of it. A further point was raised that as Smt. Babban had not filed any objection under Section 11 of the Act, her rights in the property had come to an end and she could no longer claim to have any title in the property. The plaintiffs thus claimed possession over the property by dispossession of Babban.

4. The lower appellate Court has held that the sale was for consideration and for legal necessity and it was thus a valid sale. It is, however, urged that, by reason of the fact that Smt Babban did not appear in the proceedings under the Encumbered Estates Act and did not file objections under Section 11 of the Act, her title in the property had ceased and the plaintiffs were entitled to claim it.

5. It is not necessary in this case to consider what rights Smt Babban has in the property in suit. The plaintiffs having come to Court for possession of the property, it is for them to prove their title. On the findings arrived at by the lower Court, the sale-deed executed by Smt Tejo Kuar and Smt. Indrana Kuar was valid and the property had, therefore, passed to Smt Babban. The plaintiffs cannot, therefore, rely on their original title and claim the property. It is not clear to us how the plaintiffs can claim that, by reason of anything done under the Encumbered Estates Act, the plaintiffs' title in the property had revived so that they were entitled to claim back possession of the same. It may be that Smt. Babban, by reason of her not having put any objections under Section 11(2), Encumbered Estates Act, was no longer entitled to object to the attachment, sale or mortgage of the property in satisfaction of the debts of the applicant in accordance with the provisions of the Encumbered Estates Act, a point on which we are not expressing any opinion, but, by reason of Smt. Babban not having raised any objection, the plaintiffs cannot automatically become the owner of the property and become entitled to get back possession thereof. We have already said that the Collector has not proceeded yet to attach, sell or mortgage the property in question. When the Collector decides to proceed against this property the rights of the creditors of the landlord-applicant and Smt Babban may then have to be decided; but so far as the plaintiffs are concerned, there appears to be nothing in the Encumbered Estates Act which would give them a right to claim possession over the property. We may illustrate this point further by an example; The property of the son is, under certain circumstances, liable to pay the debt of the father and if the father has applied under the Encumbered Estates Act and has shown the son's property as liable to sale, merely because the son has not raised any objection to the sale, the son's property does not become the property of the father. In such circumstances, it may be possible to urge that the son not having raised any objection, he cannot object to the sale of the property to satisfy the father's debt. It has been urged on behalf of the plaintiffs that, by reason of the fact that Smt. Babban did not raise any objection, her right, title and interest in the property had ceased and the right, title and interest of the plaintiffs, the original transferors, had revived. As we have already said, the utmost that can happen

in these circumstances is that the person, who should have objected but had not objected, might be held to be debarred from objecting to the attachment, sale or mortgage of the property in satisfaction of the debts of the landlords applicants, on which point we are not expressing any opinion.

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

7. The stay order is discharged.