

Ram Lakhan Lal vs Jagdambika Pratap Narain Singh And Ors. on 25 September, 1950

Equivalent citations: AIR1952ALL353, AIR 1952 ALLAHABAD 353

JUDGMENT

Agarwala, J.

1. This is a co-debtor's appeal arising out of a suit under the Encumbered Estates Act proceedings.
2. Rudra Pratap Singh, respondent 2, made an application under Section 4, E. E. Act, on 18-4-1936. On the same date, the Collector transferred this application to the Special Judge under Section 6 of the Act. On 27-11-1936, the Court of Wards on behalf of Raja Jagdambika Pratap Narain Singh, respondent 1, preferred a claim for arrears of rent due to him as a superior proprietor against the applicant Rudra Pratap Singh who was an under-proprietor. Arrears claimed were of two villages, Jolahapur and Hariharpur Balia for the years 1338 to 1341F. The application of Rudra Pratap Singh was dismissed on the ground that he had not impleaded his sons and grandsons in his application. But it was later on restored. When it was restored, respondent 1 put in another claim claiming the sum due to him as had already been shown in the previous claim. Subsequently respondent 1 gave up his claim with regard to village Jolahapur and confined the claim with regard to village Hariharpur Balia only in respect of two years, 1340 and 1341P.
3. The applicant Rudra Pratap Singh had certain co-sharers in his under-proprietary right and one of them was Jangjit whose property had passed to Ram Lakhan Lal appellant under a foreclosure decree. Ram Lakhan's name was shown in the khewat as a co-sharer in the year 1343F.
4. The defence of Rudra Pratap Singh to respondent 1's claim was that in the year 1341F a Receiver had been appointed over the entire estate and that he had made collections so that it could not be said that any amount was due to the claimant unless the claimant produces the account of the receipts by the Receiver.
5. Ram Lakhan pleaded that the claim was barred by time, that he was not responsible because he became a co-sharer after the years in suit and that since a Receiver had been appointed over the property, who realised rents from tenants and other profits, it must be deemed that the amount claimed has been paid up.
6. The learned Special Judge held that the amount due to the claimant for the two years in dispute was Rs. 3049-0-6, that the burden of proving that the amount had been paid up was upon the applicant and his co-debtor's, which burden had not been discharged, that the fact that a Receiver

was appointed did not prove that the amount had been realised by him, that Ram Lakhan was liable for the arrears even for a period during which he was not a co-sharer by virtue of the provisions of Section 249 (2), U. P. Tenancy Act that the claim was not barred by time because Section 7 saved the claim from being barred. The Special Judge, therefore, passed a decree in favour of the claimant for specific amounts against the applicant Rudra Pratap Singh and his co-debtors.

7. Ram Lakhan Lal has come up in appeal to this Court. The applicant and his co-debtors have been impleaded as pro forma respondents.

8. Two points have been urged before me on behalf of the appellant. It is urged that the claim of respondent 1 was barred by limitation as against the appellant. Ram Lakhan Lal was impleaded in the proceedings in the Court below in the year 1942. It is urged that the claim for the years 1340 and 1341F., had become barred by time before Ram Lakhan Lal was impleaded. The claim for 1340F. fell due, as the lower Court has pointed out, on 8-6-33, the last date of Jeth in 1340F. The application under Section 4 was made on 18-4-1936 when the claim was within time. Under Section 7, E. E. Act, all claims against the landlord applicant are stayed:

"no fresh suite 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."

Under the proviso to Section 9 (5)(c) the operation of the statute of limitation is stayed from the date when the Collector passes an order under Section 6 till the date of the decision of the Special Judge specifying the liabilities of co-debtors under Section 9. There is, therefore, no force in the contention.

9. It has next been urged that although it was not proved that the amount claimed by respondent 1 had been actually paid off, the burden of proving that any amount remained due after realisations had been made by the Receiver was on respondent 1.

10. It appears that respondent 1 was a ward of the Court of Wards. The Court of Wards appointed a Receiver for the realisation of rent and profits of the estate. The exact date on which the Receiver was appointed is not known. It was alleged by the applicant Rudra Pratap Singh in his written statement that the Receiver remained in possession of the estate from 17-7-1933 to 30-9-1938. A witness Gur Saran Lal was examined by the applicant who swore that the Receiver had been appointed since 1341P. and remained in possession up to 1345F. There is no evidence to the contrary on behalf of the claimant at all. He does not appear to have denied the appointment of the Receiver at the time sworn to by Gur Saran Lal. It must, therefore, be taken for granted that from the beginning of 1341F, the Receiver was in possession of the estate and realised its rents and profits. The Court of Wards and its agent, the Receiver, are entitled to realise the entire rents and profits of the estate including those payable to the sub-proprietors as arrears of land revenue by virtue of Section 39, Court of Wards Act. The Court of Wards released the estate some time in the year 1838 and respondent 1 came into full possession of the estate. As the Receiver had power to realise the

rents and profits of the estate and the accounts of the estate must be either in possession of the Court of Wards or the claimant himself, it was the duty of the claimant to show how much was realised from the tenants and what amount was spent on account of revenue and other charges and it was only then that the claimant could claim the rent due to him as a senior proprietor. In the absence of the accounts, it could not be held that the amount due to the claimant was in fact due. It is clearly true that the burden of proving payment is upon the person alleging the payment. But in a case in which the claimant himself realises the rents due to the co-debtors, it is for the claimant to prove what he has realised and thus to show that the amount claimed by him as being due to him from the debtors is still due and has not been realised; the burden of proof in such a case is upon the claimant and not upon the debtors, and if the burden is not discharged, the law will presume that the amount claimed has been paid off.

11. But this presumption cannot be raised in respect of the arrears of rent for the year 1340F. in which there was no Receiver in possession of the estate. In the absence of any account, the presumption will extend to the Receiver realising the arrears due on the date on which he was appointed. But there is no proof on the record of the present ease that any arrears were due from the tenants for the year 1340F. Gur Saran Lal has stated that he was general attorney on behalf of Rudra Pratap Singh applicant, that he used to keep account of realisations and expenses incurred daily of all the villages and that these accounts used to be given to the applicant every year. He further stated that the rent for the year 1340F. was not paid by the applicant to the claimant. No accounts for the year 1340F. have been filed by the applicant or the appellant and there is no evidence to show that any arrears remained due at the end of the year 1340F. Consequently there can be no presumption that the Receiver realised any arrears of the year 1340F. The claim of respondent 1 should have therefore, been decreed for the year 1340F. only and not for the year 1341F.

12. It has been urged on behalf of Rudra Pratap, Singh respondent 2, that he is entitled to get the benefit of this finding, even though he has not appealed from the decree that was passed against him.

13. Under Order 41, Rule 4, Civil P. C. when the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants, may appeal from the whole decree and thereupon the appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.

14. Under Order 41, Rule 33, the Court is empowered to "pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection."

15. In *Bhutnath Deb v. Sashimukhi Brahmin*, A. I. R. (13) 1926 Cal. 1042 it was observed.

"The section should be given a broad and generous Interpretation in view of the fact that it is intended to secure consistency in the administration of justice and avoid

anomalies which may result if the Court is held to be helpless in giving effect to its own decision to the full extent; Where the rights of parties depend on the same obligation, e.g. contract, and where the Court finds that the contract is genuine or not genuine, it may give effect to its finding by holding all the parties liable under the contract or by exonerating all the parties who are sought to be made liable without consideration as to whether such parties are before it or not. But the power which the Court is vested with under this section must be exercised in the interest of and for the furtherance of justice as has been observed in the case of Gangadhar v. Barabashi Padihari, A. I. R. (1) 1914 Cal. 722 : 24 Ind Cas 208."

16. The judgment of the Court below proceeds upon a basis which is a common to all the co-debtors. The mere fact that it divided the liability of the co-debtors separately, in my opinion, does not take away the power of the Court to get aside the decree as a whole, where it finds that justice requires this to be done. In my opinion, this Court has power to modify or set aside the decree of the Court below not only to the extent to which it was against the appellant, but also as against all other co-debtors.

17. I, therefore, allow this appeal in part, and modify decree passed by the Court below by substituting the sum of Rs. 1549 0-3 in place of the sum of Rs. 3093- 0 6 wherever it occurs.

18. The parties shall receive and pay costs according to the success and failure in both Courts.