

Ram Kishun Ram vs Sheo Nandan Singh on 9 May, 1950

Equivalent citations: AIR1951ALL587, AIR 1951 ALLAHABAD 587

JUDGMENT

Agarwala, J.

1. This appeal is directed against an order passed in a proceeding under Section 11, Encumbered Estates Act.

2. Sheonandan Singh, the respondent, applied under Section 4, Encumbered Estates Act, and alleged that a one anna share in certain villages belonged to him. This property had been sold at an auction held as against him and had been purchased ostensibly in the name of one Raghunandan Singh. It appears that Baghunandan Singh had purchased this property for himself and his brother Jadonandan to the extent of one half and for one Radha Kishen to the extent of the other half. Jadonandan died and his share in the property was inherited by Raghunandan and his third brother Ram Kishen, the present objector appellant. Raghunandan has also died leaving certain grandsons who are no parties to the present proceedings. Ram Kishen made an objection under Section 11 of the Act claiming this entire one anna share of the property as belonging to him as a successor of Raghunandan. Sheonandan, the landlord applicant objected and claimed one anna share as belonging to him on the ground that the sale in favour of Raghunandan was in fact benami for him because he had paid the amount of the sale consideration. It has been found by the lower appellate Court that the case set up by Sheonandan that Raghunandan had purchased the property benami for him is untrue. Indeed this question had been decided in a previous suit which was filed by Sheonandan against Raghunandan and which was dismissed.

3. The Court below has further found that Raghunandan had purchased the property to the extent of one half as benamidar for Radha Kishun. The remaining six pies share was purchased by Raghunandan for himself and for Jadonandan. Jadonandan's share of 3 pies was inherited by Raghunandan and Ram Kishen to the extent of one half each. In this way Ram Kishen became the owner of one and a half pies share in the property. The lower appellate Court has, therefore, passed a decree declaring Ram Kishen to be owner of one and a half pies share in the property and dismissing the rest of his claim.

4. In this second appeal the question raised is whether the decree in the case should have been that Sheonandan is not the owner of the 6 pies share in dispute, or whether it should have been that Ram Kishen is the owner of one and a half pies share and not of the remaining $4\frac{1}{2}$ pies share, with the result that Sheonandan is to be considered to be the owner of $4\frac{1}{2}$ pies share.

5. Ordinarily, the claimant in proceedings under Section 11 is in the position of a plaintiff and has to prove his title to the property which he claims. But it is urged that the language of Section 11

suggests that what the Court has to find is:

"Whether the property specified in the claim, or any part thereof, is liable to attachment, sale or mortgage in satisfaction of the debts of the applicant." (the applicant meaning the landlord applicant).

It is urged that the decree should specify whether the landlord applicant has any right in the property and not whether the claimants has any right in the property. If the Court's duty is to determine whether the landlord-applicant has a title to the property, then it is obvious that the decree in the present case should be that the landlord has no title to the property and that the property specified in the claim is not liable to attachment, sale or mortgage in satisfaction of the debt of the landlord-applicant. But if, on the other hand, the Court has merely to determine whether the claimant has any title to the property, then the decree will be that the claimant Radha Kishun has a title to a 11/2 pies share in the property and the rest by implication will have to be declared as the property of the landlord-applicant. This is an anomalous position.

6. To my mind, in proceedings under Section 11, the underlying idea is to determine the extent of the property which is available to the creditors of the landlord-applicant and the Court is put under a duty to make this declaration. Normally, if there is no objection to the claim put forward by the landlord-applicant in respect of certain property, it will be declared to be his property without any further investigation. But when once the Court becomes cognizant of the fact that the property in fact does not belong to the landlord-applicant, will it still declare that the properties belong to him? The Court has to make this declaration under the provisions of Section 11 read with Section 19 (2) of the Act. I think the answer must be in the negative. The Courts exist for doing justice and I cannot say that it will be just to declare the property as belonging to the landlord-applicant when the Court has come to the conclusion that it does not. Therefore, it appears to me that, although a claimant under Section 11 is in the position of a plaintiff and normally he ought to fail when he cannot prove his own title to the property which he claims, yet in the special circumstances of the proceedings under the Encumbered Estates Act, I think the duty of a Court is to determine whether the property which has been made the subject-matter of the claim belongs to the landlord-applicant or not, and the moment it is found that it does not belong to him, it shall be excluded from the list that has to be prepared of the property belonging to him under Section 19 and this can only be done if a declaration is made to that effect in the decree passed under Section 11. I, therefore, consider that the decree passed by the Court below was incorrect.

7. I, therefore, allow this appeal, modify the decree passed by the Court below and declare that the property in dispute now claimed by Ram Kishen is not liable to attachment, sale or mortgage in satisfaction of the debtor of the landlord-applicant.

8. In the circumstances of the case, the parties shall bear their own costs of this appeal.

9. Leave to appeal under the Letters Patent is refused.