

## **Azhar Hasnain vs Muazzam Hasnain And Ors. on 20 January, 1950**

**Equivalent citations: AIR1950ALL435, AIR 1950 ALLAHABAD 435**

### **JUDGMENT**

1. This is an appeal by a claimant Under Section 11, U. P. Encumbered Estates Act against an order rejecting his claim on the ground that it did not amount to a claim to "the property" mentioned in the landlord's application under that Act.

2. From the written claim presented by the appellant on 8th August 1944, before the Special Judge it appears that the landlord-applicant was the mutwalli of the property in question under a deed of wakf-alal-aulad dated 2nd June 1915, and that the appellant was a beneficiary under the same. Having learnt that this property had been wrongly included in the schedule of properties of the landlord, the appellant filed the claim giving rise to the present appeal seeking the exemption of that property from attachment and sale in satisfaction of the landlord's debts.

The learned Special Judge, holding that the claim did not amount to a "claim to the property mentioned in such notice," rejected the same without going into the merits.

3. A preliminary objection was taken by the learned counsel for the respondents that no appeal lay against such an order. It was argued that, under Sub-section (4) of Section 11 of the Act, all orders passed under that section were to be deemed to be decrees of a civil Court of competent jurisdiction and that, as such, a regular first appeal only could be filed against the order of the Court below on payment of proper court-fees. On behalf of the appellant it was explained that a regular appeal could be filed only against an order 'under this section', that is, Section 11, and that this must be an order which has actually determined the question of the liability of the property covered by the claim to satisfy the landlord's debts, as mentioned in Sub-section (2) of the section. That Sub-section provides:

"Any person having claim to the property mentioned in such notice shall, within a period of three months from the date of the publication of the notice in the Official Gazette, make an application to the special Judge stating his claim and the Special Judge shall determine 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."

For an order Under Section 11 of the Act, which is to be deemed to be a decree, it is essential, not only as required by the definition of a decree but also by the language of Sub-section (2) that it must embrace a determination of the basic question whether the property is or is not liable to be attached and sold in satisfaction of the landlord's debts. In the present case, there was no such determination at all, as the claim was thrown out at the very threshold on the view that it did not amount to a 'claim to the property' within the meaning of Sub-section (2) of Section 11 of the Act. I think this

affords a complete answer to the preliminary objection which I, therefore, disallow.

4. Coining to the merits of the case, the decision of the appeal must turn upon a consideration of the question whether the claim preferred by the appellant did come within the purview of Section 11, U. P. Encumbered Estates Act. In the absence of any other pointer, I should think that, where the nature of the claim made invokes the power of a Special Judge to determine the question of the property being or not being attachable and saleable in clearance of the landlord's debts, it is a claim within the meaning of this section. The entire object of the appellant in laying a claim as a beneficiary on the assertion that the property was waqf under a specific deed was to obtain its immunity from all liability to satisfy the debts of the landlord. The claim did require the Court to determine that question, and there was nothing further wanting before the special Judge could exercise his jurisdiction in that behalf.

5. The crucial point, which must decide the matter, is the meaning of the term "property" in this section. That there was a claim to a certain right in a certain property is not disputed. The only question is whether the claim was to a property, that is to say, whether the claim not being to the corpus of the property was, nonetheless, a claim within the section. The meaning and scope of this word came in for consideration by a Bench of this Court in *Bans Gopal v. P. K. Banerji*, A. I. R. (36) 1949 ALL. 433 : (1949 A. L. J. 17) and on p. 436 the following passage occurs in the judgment:

"The word 'property' cannot be confined to the material object, it must include rights in and over that object. A person may have certain rights, e.g., leasehold or mortgagee rights over the property of another. These *Jura in re aliena* are also 'property' of the person who owns them, though the material object is owned by another. Again debts or actionable claims which are personal rights cannot be legitimately left out of the connotation of the word 'property.' "

6. The meaning, therefore, assigned to the word was wide enough to include all sorts of rights in rem and in personam in respect of any property. Any other view may involve grave injustice and thereby defeat the whole policy of this particular enactment which must be taken to be the liquidation of the debtor-landlord's debts from his property without touching the rights and interests of any other individual, whether a co-sharer in that property or a complete stranger. There seems to be nothing, either in the phraseology of Section 11 or anywhere in the general policy underlying this particular legislation, which would justify a limitation being put on the meaning of the word "property" as occurring in Section 11 of the Act.

7. Learned counsel for the respondents has called my attention to the cases of *Ganga Kant v. Mt. Girraj Kunwar*, A. I. R. (27) 1940 Avadh 437 : (16 Luck. 168) and *Sheo Prasad v. Mt. Parkash Rani*, A. I. R. (30) 1943 Avadh 164 : (18 Luck. 601). The former was a case of a claim made by a Hindu reversioner, where the landlord-applicant was a widow. It was held that such a claim could not invoke the jurisdiction of the special Judge Under Section 11, Encumbered Estates Act for the simple reason that a mere reversionary interest could not come within the meaning of a "claim to the property" in that section. In the latter case, the property in question was a decree held by the landlord-applicant. It directed the sale of a certain property. The claimant Under Section 11 in that

case claimed an interest in the property which was thus directed to be sold. The question was whether he was laying a claim to the decree itself, and the answer given was in the negative. Speaking respectfully, I am in entire agreement with the view taken in these cases; but I think that they do not lend any support to the respondents, on the point which I am at present considering. In the present case, the claim made by the appellant was to an interest in the property which was included in the schedule of the landlord's assets, and the claim did call upon the Special Judge to determine the question of that property being or not being liable to be attached and sold in satisfaction of the landlord's debts. I think there is an essential difference between this case and the facts of the two rulings I have just mentioned.

8. On a consideration of all the relevant aspects of the case. I have come to the conclusion that the Court below was wholly wrong in rejecting the appellant's claim as not covered by Section 11, U. P. Encumbered Estates Act. It was clearly embraced by that section and should have been treated as such.

9. Accordingly, I allow this appeal, set aside the order of the Court below and send the case back to that Court with the direction to decide the claim of the appellant on the merits according to law. Costs here and heretofore shall abide the event.