

# **Ziaul Haq And Ors. vs Lala Shankar Lal And Anr. on 14 July, 1953**

**Equivalent citations: AIR1954ALL32, AIR 1954 ALLAHABAD 32**

**Author: V. Bhargava**

**Bench: V. Bhargava**

## **JUDGMENT**

Malik, C.J.

1. This is an appeal against an order passed by the learned Special Judge, Second Grade, Saharanpur, entertaining an application under Section 9(5), U. P Encumbered Estates Act for apportionment of certain debts on payment of Rs. 50/- as damage within two weeks. The respondents are the creditors to whom the amount was due from the appellants and their father. An application under Section 4, U. P. Encumbered Estates Act was made on 30-3-1936, on behalf of Amanat Ali, the father, and his sons and, in that application, the amount due to the respondents was shown in the list of debts. On 12-8-1936, however, the sons made an application for permission to withdraw and thereafter the case under the Encumbered Estates Act proceeded on behalf of Amanat Ali alone. On 24-10-1939, Amanat Ali died and his four sons and two daughters were then brought on the record as his legal representatives and, in that capacity, they continued the Encumbered Estates Act proceedings.

Decrees in favour of the creditors were passed on 15-7-1941, and they were sent to the Collector for payment of the debts. It was after 15-7-1941, when the decrees had been passed, that the creditors, who had obtained those decrees against Amanat Ali and his sons, applied for execution of the decrees. The execution application was dismissed on the objection raised on behalf of the appellants that the debts had not been apportioned. The decree-holders thereafter filed an application for apportionment of the liability under Section 9(5). U. P. Encumbered Estates Act. This application for apportionment was made on 16-3-1944. An objection was taken that this application was "belated and it was entertained as we have already said on payment of Rs. 50/- as costs to the other side.

Against the order passed by the learned Special Judge, Second Grade, Saharanpur, there was an appeal and the learned District Judge of Saharanpur, who dismissed the appeal on 11-11-1944, relied on a decision of this Court in -- 'Molhar Singh v. B. Mahabir Prasad', Ex. First Appeal No. 188 of 1942, D/-3-4-1944 (A). This second appeal has been filed under Section 45(2-a), U. P. Encumbered

Estates Act. Sub-section (5) of Section 45 of the Act provides :

"45(5) Subject to the provisions of Sub-section (2-a) the decision on an appeal under this section shall be final and in deciding the appeal the appellate Court may modify or alter or reverse any decree or order of the Special Judge, if in the opinion of the appellate Court it be necessary to do so in the interest of justice and equity."

2. Learned counsel has urged that the application for apportionment should have been made before the learned Special Judge passed the decrees under Section 14, U. P. Encumbered Estates Act. Learned counsel had to admit that there is no section in the Encumbered Estates Act which requires in so many words that after decrees are passed under Section 14 of the Act, no application for apportionment shall be entertained. Reliance was placed at one stage on Section 20-A, Clause (ii), U. P. Encumbered Estates Act. A reference, however, to that clause makes it clear that it has no application whatsoever to an order under Section 9(5) of the Act.

Section 9(5), U. P. Encumbered Estates Act does not cast the duty of making the application for apportionment on the creditor. It lays down that "..... the Special Judge shall determine the amount of the joint debt which is due by the debtor or debtors who have applied and the amount due by those who have not applied ....."

It does not say who shall apply for an order under this section. In the ruling relied upon by the lower Courts, the decrees had already been passed under Section 14 of the Act and they had been sent to the Collector for liquidation of debts and thereafter the creditors applied for execution of the decrees and, against the order passed in the execution proceedings, an appeal was filed in this Court. In those proceedings, this Court had granted the landlord-applicant the right to apply for apportionment and, failing him gave the creditor a right to apply and observed that the Court had no doubt that the Special Judge will, on such application being received, determine the liability of the landlord-applicant and the other decree-holders.

There can be no doubt that no party having applied to the Special Judge for apportionment of the liability, the learned Judge had made a mistake in passing a decree for the whole amount against the estate of the landlord-applicant. The order passed by the lower Court that the decrees shall be apportioned is in the interest of justice and equity and it cannot, therefore, be paid that the order passed is erroneous and that we can entertain this appeal under Section 45(2-a), U. P. Encumbered Estates Act and set aside the order.

3. The appeal has no force and is dismissed with costs.