Mt. Naraini Devi vs Sudhist Narain Anand And Anr. on 8 September, 1952

Equivalent citations: AIR1953ALL71, AIR 1953 ALLAHABAD 71

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. One Pirthi Narain, who was the owner of the property now in question, created a charge in favour of his wife in a sum of Rs. 25 a month payable to her as maintenance. There-after he sold the property to one Parsidh Narain. After a partition in the family the property came to Sudhist Narain Anand and another. On 16th September 1936 Sudhist Narain Anand and another filed an application under Section 4, U. P. Encumbered Estates Act. On 27th September 1937, the landlord-applicants filed a written statement under Section 8 and notices under Section 11 were issued on 6th August 1938. On 9th November 1938, Srimati Naraini Devi, wife of Pirthi Singh, filed a claim-under Section 11, Encumbered Estates Act, and prayed that "it may specifically be provided in the decree of this Court after enquiry under Section 11, U. P. E. E. Act of 1934 that the property mentioned hereunder is subject to the charge of the maintenance money of Rs. 25 a month of your petitioner."

2. The learned Special Judge, II Grade, decided the application in favour of Brimati Naraini Devi.

3. On appeal the learned District Judge set aside the order and dismissed the application.

4. A second appeal against the decision of the District Judge was filed in this Court. The bench before which the appeal came up for decision has referred the question whether the application was maintainable under Section 11, U. P. Encumbered Estates Act, for decision by a larger bench.

5. In the referring order a reference was made to a decision of the Oudh Chief Court in Chandra Bhushan v. Mt. Putta Devi, A. I. R. 1942 oudh 352. The learned Judges were of opinion that the view taken in that case was that the liability for payment of future maintenance was a debt under Section 9, Encumbered Estates Act and they were inclined to differ from that view. We have care-fully read the judgment in the case mentioned above and though, at one or two places in the judgment, the learned Judges deciding that case have described the claim as for future maintenance and have held that it was provable under the Encumbered Estates Act, in the first paragraph of the judgment the

facts have been clearly stated and they show that the amount for the realisation of which the application for execution was filed was the arrears for which a decree was passed in the year 1936 and the future maintenance that had accrued duo after the date of the decree and before the application for execution was filed. It was not a case in which the learned Judges were called upon to decide the question whether a future liability, which may or may not come in existence, had to be claimed under Section 9, Encumbered Estates Act, and, if not claimed it would be deemed to be discharged under Section 13 of the Act. We do not think, therefore, that the view taken in Chandra Bhushan's case was really against the view that we are inclined to take.

6. The other case mentioned in the referring order is Mt. Khatoon Begam v. Saghir Husain Khan, 1945 ALL. L. J. 378 (F. b.). In that case the three learned Judges deciding the case took three different views. Allsop J. was of the opinion that the debts claimable under Section 9, Encumbered Estates Act, were debts for which not only the liability had been incurred but debts which had become payable on the date of the application under Section 4, Encumbered Estates Act. Mathur J. took the view that all liability -- whether in prae-senti or contingent liability which may come in existence in future--had to be proved under the Encumbered Estates Act at the risk of its getting discharged under Section 13, Encumbered Estates Act, if not so proved. The third view taken by Malik J. (as he then was) was that only those debts need be claimed under Section 9 the liability for which had been incurred before the date of the application under Section 4, Encumbered Estates Act,--though its actual payment may have been postponed and the amount could not be realised by suit on the date of the filing of the application. And in a case where the liability was a mere contingent liability, which may or may not arise, then such a claim could not be proved under Section 9, Encumbered states Act, for the simple reason that the ability had not arisen on the date when the application, under Section 4 had been filed by the landlord-applicant.

7. In the case before us the point is very simple. Smt. Naraini Devi could claim maintenance allowance at a rate of Rs. 25 a month during her lifetime and for each month the liability arose as she survived in that month. There is no provision in the Encumbered Estates Act for actuarial valuation of such a liability and for a decree to be passed on the basis thereof. The claim for future maintenance which had not accrued duo was, therefore, clearly not provable under Section 9, Encumbered Estates Act. It is not necessary for us to deal with this point at any length as we are in full agreement with the judgment of Malik J. in the Full Bench case of Mt. Khatoon Begum, 1945 ALL. L. J. 378.

8. When we come to Section 11, Encumbered Estates Act, we find that any person having any claim in the property is entitled to apply to the Special Judge, It must be admitted that Sm. Naraini Devi has a claim to the property as she holds a charge and is entitled to recover a sum of Rs. 25 a month so long as she is alive. Learned counsel appearing for the respondents has urged that an application under Section 11 can be filed only by, a per son who claims a proprietary interest in the pro perty. The words in the section, however, appear to us to be very wide and an application can be made by any person having any claim to the property. We cannot say that a person who has a claim to recover maintenance allowance from the property charged for such payment has no claim to such property.

9. Tho other objection is that the applicant can only object to the liability for attachment, sale or mortgage and in this case Sm. Naraini Devi is not objecting to tho liability for attachment, sale or mortgage of the property; all that she is claiming is that she has got certain rights which have to be safeguarded at the time of the sale. Under Section 8 of the Act, a landlord-applicant has to specify the nature and extent of his proprietary rights in land and any claimant under Section 10, Encumbered Estates Act, has also to clearly specify the nature and the extent of the landlord-applicant's proprietary rights in land and the nature and extent, if any, of the landlord's property other than proprietary rights in land. If the nature and extent of the landlords' proprietary interest had been correctly described then it should have been mentioned that the property was subject to a charge. And in that case no occasion for an objection under Section 11, Encumbered Estates Act, would have arisen. The nature and the extent of the landlord-applicants' proprietary rights not having been correctly specified it became necessary for Sm. Naraini Devi to file her objection under Section 11, Encumbered Estates Act.

10. We are of the opinion that the application was maintainable.