

Abdul Ghafoor And Ors. vs Abdus Salam And Ors. on 31 July, 1953

Equivalent citations: AIR1954ALL65, AIR 1954 ALLAHABAD 65

JUDGMENT

Malik, C.J.

1. Learned counsel had raised a short point and that is whether the plaintiffs who had. not filed an objection under Section 11, U. P. Encumbered Estates Act, could ignore the proceedings before the learned Special Judge and come to the civil court for a declaration that the property which had been included by the landlord in his written statement under Section 8 belonged to the plaintiffs. The learned single Judge before whom the case came up referred it to a larger Bench but in view of the Pull Bench decision in -- 'Krishnapal Singh v. Mst. Babban', AIR 1952 All 227 (A), the learned Judge changed the order and said that instead of a Full Bench the case may be listed before a Division Bench.

Today, however, the learned counsel has raised a slightly different point. He has urged that he had made a mistake in urging before the learned single Judge that the plaintiffs had filed no objection under Section 11 and he referred us to the replication filed by the plaintiffs to show that they had, as a matter of fact, filed an objection under Section 11. In paras. 19 and 20 of the replication, the plaintiffs pleaded that they were not parties to the Encumbered Estates Act proceedings and had no information or knowledge of these proceedings and said that "in order to avoid dispute, the plaintiffs have filed objections in encumbered suits under Section 11, But the plaintiffs absolutely deny this fact that due to encumbered suit the proceedings of this case could not be taken." The point urged is that the plaintiffs having filed an objection under Section 11 in the Encumbered Estates Act proceedings, they had no right to proceed with this suit. The suit from the paragraph in replication, appears to be an earlier instituted litigation and the objection under Section 11 seems to have been filed later. We have no information as to the stage at which the Encumbered Estates Act proceedings were nor do we know what happened to that objection if it was filed, that is, if it was ever admitted or registered. We cannot, therefore, allow the learned counsel to raise a new point. The case is fully covered by the decision of the Full Bench in Krishnapal Singh's case (A).

Learned counsel, however, has tried to distinguish that case on the ground that while in that case the plaintiff had no knowledge of the Encumbered Estates Act proceedings, in the case before us, the plaintiffs knew of the U. P. Encumbered Estates Act proceedings and they should have, therefore, filed objections under Section 11 before the Special Judge. We are not informed on what provision of law this argument is based. It may be that Section 11, Encumbered Estates Act, gives a third party, whose property has been included by the landlord in his written statement under Section 8 of the

Act a right to put in an objection that the property is not saleable in payment of the debt of the landlord applicant. If such an objection is filed and is decided, Section 11 itself provides that such a decision will be deemed to be a decision of a competent civil court. There is however, no section in the U. P. Encumbered Estates Act that if no objection is filed under Section 11, the right of any third party to the proceedings, to whom the property may rightfully belong, will automatically come to an end and he will have no right to come to a civil court of competent jurisdiction for the adjudication of those rights.

2. In the case of debts, the Legislature has provided in Section 13, U. P. Encumbered Estates Act, that if the creditors do not put forward their claims within a certain period, the claims would be deemed to be discharged for all purposes. If it was the intention of the Legislature that the same result should follow if the owner of a property which had been included in the list given by the landlord applicant had failed to file his objection under Section 11 and his right to the property should cease or his right to file a suit for a declaration of his title should be barred, then a section similar to Section 13 would have been enacted. We have no doubt that the contentions advanced by learned counsel have no force. The appeal, therefore, is dismissed but as the other side is not represented, we make no order as to costs.