Rajendra And Anr. vs Balmukand And Anr. on 14 August, 1953

Equivalent citations: AIR1954ALL63, AIR 1954 ALLAHABAD 63

JUDGMENT

Brij Mohan Lall, J.

1. This is a second appeal by the decree-holders. On the basis of a simple mortgage deed they obtained a decree for sale under Order 34, Rule 4, Civil P. C. on 24-8-1939 and a final decree under Order 34, Rule 5, Civil P. C. on 15-8-1942. They applied for execution of the final decree on 8-7-1944. On 27-8-1945 the judgment-debtors lodged a petition of objections and therein claimed that they were agriculturists within the meaning of the Agriculturists' Relief Act and the Debt Redemption Act. On the basis of that claim they prayed that the interest awarded in the decree might be reduced. The decree-holders denied the judgment-debtors' status as agriculturists.

2. At the time of hearing, the judgment-debtors gave up their claim as agriculturists under the Agriculturists' Relief Act, and the learned Munslf recorded a definite finding that they were not agriculturists within the meaning of the said Act. This finding has not been challenged at any stage of the litigation. The learned Munsif, however, held that "the judgment-debtor is an agriculturist so far as the Debt Redemption Act goes." It may be pointed out that the learned Munslf speaks of the judgment-debtor in singular number, but obviously he meant that both the judgment-debtors (who are brothers) were agriculturists. This finding was based on a certain khatauni in which the name of Balmukand (one of the judgment-debtors) was recorded in respect of plots Nos. 713 and 719. Treating the judgment-debtors as agriculturists, the learned Munsif amended the decree and reduced the amount of interest.

3. The decree-holders preferred an appeal which was heard by the learned District Judge of Agra. By the time the appeal came up for hearing the Commissioner of Agra Division had ordered the expunction of the entry on the basis of which the learned Munsif had treated Balmukand and his brother as agriculturists. The decree-holders sought the learned District Judge's permission to produce a copy of the Commissioner's judgment which had come into existence during the pendency of the appeal in the learned District Judge's Court. This prayer was refused and on the basis --of the materials already on the record the learned District Judge upheld the decision of the learned Munsif.

4. Against this decision this 'second appeal has been preferred, The appellants treat the decision of the Courts below as a decision of an objection under Section 47 and the appeal has been filed as an execution second appeal.

5. A preliminary objection has been taken by the learned counsel for the respondents to the effect that no appeal lay to the District Judge and that, in any case, none lies to this Court.

6. To meet this objection, the learned counsel for the appellants has adopted two different and independent lines of argument. It is contended that when a judgment-debtor puts forward a contention to the effect that, although the decree had been passed for a larger amount the amount actually payable under the decree is a smaller amount he really contends that a portion of the decree has been discharged. It is urged that a decision of the Court upholding this contention is, in substance, a decision to the effect that a portion of the decree has been discharged and therefore it is a decision under Section 47 which amounts to a decree as defined in Section 2(2), Civil P. C. The above argument was considered and upheld in two Pull Bench decisions reported in

-- 'Mt. Ketki Kunwar v. Ram Saroop', AIR 1942 Ail 390 (PB) (A) and -- 'Mohammad Abdul Razzak v. Mt. Parvati Devi', AIR 1942 All 394 (FB) (B). Both these were three-Judge decisions.

Later on, a somewhat similar question came up for decision by a Pull Bench of seven Judges in

-- 'Badri Prasad v. Shankar Lal', AIR 1950 All 713 (FB) (C). In that case the Court had rejected, and not allowed, the petition for amendment of a decree. The view taken by the majority in the Full Bench was that the decision of the Court refusing to amend the decree by reducing the interest did not amount to a discharge of the decree. In face of this decision, it is no longer open to contend that an order refusing to amend a decree amounts to a decision relating to a discharge of the decree. A necessary corollary of this decision is that even if the decision had been one amending a decree and reducing the interest, still there would have been no decision relating to the discharge of the decree. It cannot reasonably be maintained that if the Court accepts the judgment-debtors' contention it decides a question relating to the discharge of a decree and if it rejects it it makes no such decision. The nature of the question under consideration will not depend upon the decision made thereon. I am, therefore, of the opinion that the decision under appeal, although a decision allowing the objection, is not one relating to a discharge of the decree and as such, does not amount to a decree under Section 47 read with Section 2(2), Civil P. C. Therefore, no execution second appeal lies. The first line of argument put forward by the learned counsel for the appellants cannot, therefore, be accepted.

7. The second line of argument adopted by the learned counsel for the appellants is that by amending the decree the learned Munsif passed a new decree and that every decree passed by a Munsif is (subject to certain exceptions none of which applies to this case) open to appeal and second appeal under Sections 98 and 100, Civil P. C., respectively.

By virtue of Section 24, Debt Redemption Act, the provisions of the Code of Civil Procedure have been made applicable to the proceedings under the said Act "save in so far as they are inconsistent with the provisions of this Act." The learned counsel maintains that there is no inconsistency between the two and therefore an appeal lay to the learned District Judge and a second appeal lies to this Court as regular appeal and regular second appeal respectively. He concedes that if the appeal is treated as a regular second appeal, he will have to pay additional court-fee. He is prepared to pay

that.

8. In my opinion, the learned counsel stands on firmer ground in advancing this argument. The learned Munsif has undoubtedly passed a new decree, although, by fiction of law recognised by Sub-section (2) of Section 8, this decree shall be deemed to bear the date of the original decree. But there is no gainsaying the fact that this decree is not the same as the original decree. Jt is a new decree and, as such, it is appealable. In -- 'Man-mohan Lal v. Raj Kumar Lal', AIR 1946 All 89 (PB) (D) it was held that a decree passed in such circumstances was appealable under Section 96, C. P. C, and that the period of limitation would run from the date on which the amendment took place, notwithstanding the fact that notionally the amended decree would bear the date of the original decree.

The authority of this Full Bench has not been shaken by anything contained in the later Full Bench of seven. Judges. The question whether an appeal would lie under Section 96, C. P. C. did not arise in that case. But two of the learned Judges, Kidwai and Chandiramani JJ., observed by way of obiter dictum that, if the Court amends the decree and reduces the interest, an appeal would lie under Section 96, Civil P. C. In the circumstances, I treat this second appeal as a regular second appeal on the understanding that the appellants would pay the deficiency in court-fee. The preliminary objection is, therefore, overruled.

9. Coming to the merits, the first point that will arise for decision would be whether the judgment-debtors were agriculturists. I am told by the learned counsel that the Commissioner's decision, on the basis of which the decree-holders sought the setting aside of the learned Munsif's decision, is itself the subject-matter of an appeal before the Hon'ble Board of Revenue and that the appeal is still pending. At a certain stage I thought of postponing the decision of this appeal pending the disposal of the appeal by the Board of Revenue. But later on it transpired that it was not necessary to postpone the decision of this case because, even on the assumption that the judgment-debtors are agriculturists, this appeal is bound to succeed.

10. Assuming that the judgment-debtors are agriculturists, they had a right to apply under Section 8, Debt Redemption Act for amendment of a decree passed before the commencement of the said "Act. In respect of a suit pending at the commencement of the Act they had a right to ask for reduction of interest at the time of the passing of the decree in the said suit. If in a pending suit they failed to ask for reduction of interest at the time of the passing of the decree, they bad no further right to claim any reduction. Law confers no right on them to ask the Court to reduce the interest after a decree has been passed in a suit which was pending at the commencement of the Act.

11. The Act came into force on 1-1-1941. As already stated, the preliminary decree had been passed before that date, but the final decree had not been passed till then. A suit for sale on the basis of a mortgage is deemed to be a pending suit till the date of the passing of the final decree. This was held in -- 'Anmol Singh. v. Hari Shankar', AIR 1930 All 779 (E). This decision was approved of in the Full Bench case of -- 'Sat Prakash v. Banal Rai', AIR 1931 All 386 (FB) (F). It will, therefore, follow that the present suit was a pending suit on the date of the commencement of the Act. The judgment-debtors should have moved the Court for reduction of interest under Section 9 at the time

of the passing of the decree. If they failed to make that request to the Court at that time, they have no right to do so afterwards. Section 8 had no application to a case like the present. Their application for amendment should, therefore, be rejected on that very ground.

12. The learned counsel for the decree-holders offered to file a declaration under Section 4 in order to defeat the judgment-debtors' claim for reduction of interest. But this declaration cannot be filed because it is provided by Section 4(2) that a declaration can be filed in the case of a suit pending at the commencement of the Act till the disposal of the suit only and not afterwards.

13. As a result of the finding that the application for amendment presented after the decision of the suit was not maintainable, this appeal must succeed. The appeal is allowed. The appellants shall make good the deficiency in court-fee of both the Courts within two months from today. So long as the deficiency is not made good, they shall not be entitled to execute their decree. The deficiency shall be taxed in costs, if made good within two months, but not otherwise. The appellants shall get the costs of this appeal and of the lower appellate Court from the respondents only if they make good the deficiency within the aforesaid period, but not otherwise.