

## Jiwan Singh vs Subedar And Anr. on 11 August, 1950

**Equivalent citations: AIR1952ALL616**

### JUDGMENT

Agarwala, J.

1. This is a D.H.'s appeal arising out of an application for granting a self-liquidating mortgage under Section 17, U.P. Debt Redemption Act.

2. A preliminary decree for foreclosure was passed giving six months' time to pay up the decretal amount. The decretal amount not having been paid, an application was made by the D.H. on 24-10-1945, praying that a self-liquidating mortgage of certain zamindari property belonging to the J.D. [including property which was not mortgaged] be executed in favour of the D.H. The judgment-debtor contested this application and urged that a self-liquidating mortgage could be executed only so far as the mortgaged property was concerned. Both the Courts below accepted the judgment-debtor's contention and allowed the objection. The decree-holder has now come up in second appeal to this Court.

3. Section 16, U.P. Debt Redemption Act, provides for execution of decrees against agricultural land of an agriculturist. Where the land of an agriculturist is sought to be sold in execution of a decree the section provides for the transfer of such land to the decree-holder upon certain calculations of the value of the land. Then Section 17 provides that :

"(1) Notwithstanding anything contained in Section 16 or in any other law for the time being in force (a) the land of an agriculturist, the local rate payable by whom or recoverable from whom does not exceed rupees twenty, five per annum, shall not be sold or otherwise transferred in execution of a decree to which this Act applies, nor shall a final decree for foreclosure be passed in respect of such land."

4. It is admitted that the judgment-debtor is a person who does not pay more than rupees twenty-five per annum as local rate. Clause (b) of Sub-section (1) of Section 17 applies to agriculturists who pay local rate exceeding rupees twenty-five &, therefore, need not be quoted. Then there are three provisos. We are concerned only with the second proviso which runs as follows :

"Provided also that the Court may execute a decree to which this Act applies by granting to the D.H. a self-liquidating usufructuary mortgage, for a period of not more than twenty years, of such land as is protected from sale, transfer or foreclosure by the provisions of this section."

5. Thus although the land of an agriculturist who does not pay more than twenty-five rupees per annum, as local rate is protected from sale or foreclosure, such land can be given to the decree-holder under a self-liquidating usufructuary mortgage. It is clear that the land which can be given under a self-liquidating mortgage must be the land which could have been foreclosed & the foreclosure of which was prohibited under Clause (a). The land which could be foreclosed is the land which was mortgaged. Unmortgaged land could not, in any circumstance, be foreclosed. It is, therefore, clear that the D.H. is entitled to have a self-liquidating mortgage in respect of the mortgaged land only. The view taken by the Courts below is correct.

6. There is no force in this appeal and we dismiss it with costs.