

## **B. Govind Raj Sewak Singh And Anr. vs Bebhuti Narain Singh (Minor) on 28 March, 1950**

**Equivalent citations: AIR1950ALL487, AIR 1950 ALLAHABAD 487**

### **JUDGMENT**

Agarwala, J.

1. This is a judgment debtors' appeal arising out of execution proceedings.
2. The judgment-debtors are alleged to be agriculturists and their protected land could not be sold under the provisions of Section 17, U. P. Debt Redemption Act. Section 13 of the Act provides an exception in favour of a bank. Both the Courts below have held that the loan in this case was advanced by the Benaras State Bank and not by the plaintiff Maharaja Bebhuti Narain Singh, Maharaja of Banaras, personally. They have, therefore, dismissed the objections of the judgment-debtors to the execution of the decree by sale of the protected land.
3. The only point urged in this appeal is that the lower Court was wrong in holding that the present case fell within the purview of Section 13. The argument is that the plaintiff stated in the plaint that he was the owner of the Slate Bank and he sued in that capacity and that if that was so, then it could not be a bank because Under Section 2 (4) a bank must be a company.
4. I think this contention must be accepted. Section 2 (4) defines a bank as "a company which carries on the business of banking and was before the first day of June, 1940, registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in any of the colonies or dependencies thereof or in British India or in any Indian State or incorporated by an Act of Parliament or by Royal Charter or Letters Patent or by any Act of the Central Legislature." It is obvious that the bank must be a company, According to Section 2 (2), Companies Act, a company means a company formed and registered under that Act or an existing company. An 'existing company' is a company formed and registered under the previous Companies Act. Section 5, Companies Act, lays down how a company can be formed under that Act.

"Section 5--Any seven or more persons (or where the company to be formed will be a private company, any two or more persons) associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability,"
5. It is obvious that a single individual cannot form a company. In the case of a private company, there must be two or more persons. In the case of a public company, there must be seven or more

persons. As the Maharaja of Banaras is the sole proprietor of the bank, he cannot form a company and his bank cannot be said to be a bank within the meaning of Section 2 (4), Debt Redemption Act. If this was not a bank, Section 18 of the Act could not apply. The view taken by the Court below was erroneous and must be set aside.

6. I, therefore, allow this appeal, set aside the orders of the Courts below and remand the case to the first Court for deciding the other points arising on the objections of the judgment-debtors.

7. The judgment-debtors are entitled to their costs in the lower appellate Court and in this Court. Costs of the first Court will abide the result.