

Ram Naresh Rai And Ors. vs Phanindra Behari Rai And Ors. on 22 November, 1950

Equivalent citations: AIR1952ALL612, AIR 1952 ALLAHABAD 612

JUDGMENT

Wali Ullah, J.

1. This is an appeal by the D.Hs. arising out of execution proceedings. A preliminary decree for sale on the basis of two mortgage deeds was passed on 28-5-1945. Later a final decree for sale was passed on 9-3-1946. The J.Ds. were six in number including a father & his five sons. It was found by the Court which passed the decree that a partition had been effected between the father & the sons by means of an award which had been made a rule of the Court, prior to the suit on the basis of the mortgages.

2. Then the D.Hs. applied for execution of the final decree for sale. The property sought to be sold was zamindari property. The civil Court transferred the execution of the decree to the Collector. It is not clear whether this transfer was made by reason of the provisions of Section 63, Civil P.C., or by reason of the rules framed by the Provincial Govt. under Sections 16 & 17, U. P. Debt Redemption Act. Before the Collector, or rather the Sales Officer, three of the six J. Ds. made an application, claiming the benefit of Section 17, U. P. Debt Redemption Act, 1940. This application was not disposed of on its merits, but was forwarded to the civil Court which had passed the decree for disposal. Thereupon the learned Civil Judge went into the merits of the application & decided that the local rate paid by each one of the six J. Ds. was less than Rs. 25 per annum. He accordingly held that the entire property liable to sale under the decree was protected under Section 17 (a), Debt Redemption Act. Thereafter he directed his "finding" as well as the papers to be sent back to the Sales Officer.

3. Against the order passed by the learned Civil Judge, the D. Hs. have now come up in appeal to this Court. Before going into the merits of the appeal, learned counsel for the appellants has raised the contention that the learned Civil Judge acted contrary to law in entertaining the application & deciding the question of the protection of land under the provisions of Section 17, Debt Redemption Act. This is the main question which has been argued before us. The argument of the learned counsel for the appellants is that the question of the protection of land from sale under the provisions of Sections 16 & 17 of the Act is a question which has to be decided by the Collector & not by the civil Court which may have passed the decree. In support of his contention learned counsel has relied upon Rules 3 & 4, U. P. Debt Redemption Rules, 1941, framed by the Provincial Govt. under Section 26, U. P. Debt Redemption Act. Rule 3 runs thus :

"The execution of all decrees to which the Act applies in which a civil Court has ordered any land situated in the United Provinces or any interest in such land, to be sold or otherwise transferred, shall be transferred to the Collector".

Rule 4 reads thus :

(1) "On receipt of a decree for execution under Rule 3, the Collector shall, having regard to the provisions of Clause (e) of Section 3, & the first proviso of Sub-section (1) of Section 17 of the Act, proceed to determine the local rate payable by, or recoverable from the J.D., or each of the J.Ds. where there are more than one.

(2) Where the local rate determined under Sub-rule (1) in regard to any J.D. does not exceed Rs. 25, the whole of his land shall be determined as protected land.

(3) Where the local rate so determined in regard to any J.D. does not exceed Rs. 25, the Collector shall, with due regard to the wishes of the J.D., proceed to determine what portion of the land shall be protected land.

(4) The collector shall also see that the area of land determined under Sub-rule (3) as far as possible compact, & is situated in a village in or near which the J.D. resides."

4. Reference has been made to certain decisions of this Ct. as well as of the Board of Revenue. The first case is Har Prasad v. Budh Singh, (1949) A.L.J. 222, decided by a learned single Judge of this Ct., Seth J. In this case, the decree for sale was passed by the Civil Ct. It was transferred to the Collector for execution. The J.D. objected to the sale of the land by claiming protection under Section 17 (1) (a), Debt Redemption Act. This objection was dismissed by the Sales Officer & the order of the Sales Officer was confirmed in appeal by the Collector. Thereafter the J.D. appears to have filed the same objections in the civil Court which had passed the decree. While proceedings were still pending in the civil Court, the matter came up in an appeal to this Court.

It was held :

"The civil Court has no jurisdiction to determine an objection claiming the benefit of Section 17 (1) (a), Debt Redemption Act. By virtue of Rule 4, Debt Redemption Rules the jurisdiction vests solely in the Collector & the Civil Court has no jurisdiction in such matters."

5. Next, reference may be made to the case of Aziz Mirza v. Mt. Tayyaba Begam, EX. s.A. No. 2201 of 1944, decided by a Bench of two learned Judges of this Court, on 2-5-1949. In this case, two questions arose for decision by the Bench : (1) whether the rules framed by the Provincial Govt. in particular Rules 3 & 4, U. P. Debt Redemption Rules, 1941, were ultra vires the powers of the Provincial Govt. & (2) whether, by reason of the rules, the Collector was vested with powers of a "Court executing the decree" exercisable under Sub-sections (2) to (5) of Section 16, Debt Redemption Act. The learned Judges held (1) that the rules in question were perfectly valid

inasmuch as the Provincial Govt. by reason of Section 70(1)(b), Civil P.C., read with Sections 24 & 26, U.P. Debt Redemption Act, had full powers to confer on the Collector the powers of a Ct. executing a decree and secondly that, under the rules, the power had been conferred upon the Collector to execute the decree in accordance with the provisions of Sections 16 & 17, Debt Redemption Act. In effect, the Bench held that the civil Court had no jurisdiction to decide the claim of a J.D. for the benefit of Sections 15 & 16, Debt Redemption Act.

6. The view taken in the above mentioned cases was followed by another D.B. of this Ct., in the case of Bijai Pal Singh v. Tej Singh, EX. f.A. No. 354 of 1948 connected with Ex. F.A. No. 359 of 1918, decided on 12-9-1949, of which one of us was a member.

7. Again, the same view of the law was taken in the case of Jai Narain v. Vidya Ram, Ex. f.a. No. 54 of 1947, decided by another Division Bench of this Ct. on 24-8-1950.

8. Lastly, I may refer to the case of Jitendra Bahadur Singh v. Ballabh Das, A. I. R. (37) 1950 ALL 94, where it was held :

"Under Rules 3 & 4 of the rules framed by the Provincial Govt. it is clear that the determination of the question whether any land sought to be sold in execution of a decree is protected land & should not be sold under Section 17 of the Act is left to the Collector. It is his province & not that of the civil Court to decide the questions arising in this connection." (Italics are mine).

9. In view of the rulings referred to above, it must be held that the civil Court has no jurisdiction to deal with the question of the protection of land from sale, in execution of a civil Court decree when the power respecting the same has been conferred upon the Collector by rules framed by the Provincial Govt. under Section 26, Debt Redemption Act. I am reinforced in this view by the fact that the civil Court has no jurisdiction in any way to control the proceedings in execution before the Collector, so far as the matters directly covered either by Schedule 3 of the Code or the rules framed by Govt. under Section 70 of the Code are concerned. It may be that in certain matters arising in execution, which are not specifically covered either by the provisions of Schedule 3 or by the rules framed under Section 70 of the Code, the civil Court may continue to have jurisdiction.

10. On this question, the Board of Revenue in the case of Mt. Thakurdei v. Bhadeshwar Nath, 1945 R.D. 449, expressed its view thus :

"In a case of execution of a civil Court decree in accordance with the provisions of Sections 16 & 17, U.P. Debt Redemption Act, the rulings of the H.C. relating to the execution of such decrees will be followed by the Board & must be followed by the subordinate revenue Court."

11. Again, in Mt. Ram Piary v. Ram Bachan Ahir, 1950 R.D. 10, the Board of Revenue, following an earlier decision of the Board, in the case of Jaikaran Lal v. Bhuneshwar Dube, 1944 R.D. 366, held that in a case of sale it is for the Collector to decide whether the property is protected or not. This is

clearly in conformity with the rulings of this Court as discussed above.

12. For the reasons given above, it seems to me that the order under appeal was clearly one passed without jurisdiction. The learned Civil Judge should have returned the application to the Sales Officer, or the Collector, & not decided it on the merits.

13. I would accordingly allow the appeal, set aside the decree passed by the Court below & direct it to return the application filed by the J. D's. to the Collector for disposal on its merits.

14. Agarwala J.--I agree and have nothing to add.

By the Court

15. We allow the appeal, set aside the decree passed by the Court below & direct it to return the application filed by the J.Ds. to the Collector for disposal of its merits.