

Baldiwakar Misir And Anr. vs Mahatma Singh And Ors. on 30 January, 1953

Equivalent citations: AIR1953ALL480, AIR 1953 ALLAHABAD 480

JUDGMENT

Agarwala, J.

1. This is a judgment-debtors appeal arising out of an objection to the execution of a decree. The facts of the case may briefly be stated as follows: Mahatam Singh, Daleep Singh and Rajdeo Singh, respondents, sold their proprietary interest in village Bhilevana to one Mangla Prasad Misir, brother of the appellants, Baldiwakar Misir and Balmukund Misir, for Rs. 1,500/- leaving a sum of Rs. 1295/- with the vendee for payment to one Bharat Singh in liquidation of a debt due from the vendors. Mangla Prasad. Misir vendee did not pay the amount left with him under the sale deed with the result that the respondents vendors sued Mangla Prasad for recovery of Rs. 1752/12/-, the unpaid sale consideration with interest. A decree was passed in this suit in favour of the respondents for Rs. 1606/- with costs and future interest. This was on 11-12-1935. Then the respondents-decree-holders applied under the Encumbered Estates Act and disclosed this decree as one of the items of property belonging to them. In due course the debts against the respondents were investigated and simple money decrees were passed against them and were sent to the Collector. The Collector liquidated all the debts due from the respondents without touching the decree which they had obtained against Mangla Prasad vendee. The award under the Encumbered Estates Act proceedings was made on 10-4-45, on which date the entire Encumbered Estates Act proceedings came to an end. During all this period from 1935 to 1945 the respondents did not take any steps to execute their decree against Mangla Prasad, probably under the impression that since they had shown this decree as one of the items of property belonging to them in the Encumbered Estates Act proceeding they had no power to execute it.

2. Then on 2-4-1948, they applied for execution of the decree against Baldiwakar Misir and Balmukund Misir appellants brothers of Mangla Prasad Misir who appears to have died in the meanwhile leaving the appellants as his legal representatives. To this execution application the appellants filed objections under Section 47, Civil P. C. on two grounds, first, that Section 24, Encumbered Estates Act barred the execution of the decree, and second, that the decree-holders, having been discharged from the judgment of the decretal amount on the basis of which the decree was passed, had no right to realise the amount. The execution Court held that the second point had no force, but that the decree was barred under Section 24, Encumbered Estates Act, It held that the decree was still under attachment and it was only the Collector who could exclude it. In the result it allowed the objection of the appellants. The decree-holders-respondents appealed to the lower appellate Court. The learned Civil Judge held that Section 24, Encumbered Estates Act was no bar to the execution of the decree, because there was nothing in Section 24, Encumbered Estates Act which

prevented the respondents from executing their decree. He further held that the execution of the decree was not barred by limitation as the application for execution had been made within three years of the date of the award made in the Encumbered Estates Act proceedings. In the result the appeal was allowed and the execution was ordered to proceed. Against this decree the judgment-debtors have come up in appeal to this Court.

3. There seems to be a misapprehension about the correct legal position in the case. There is nothing in the Encumbered Estates Act which prevents a landlord applicant from executing a decree in his own favour against a judgment-debtor. Under Section 7, Encumbered Estates Act all decrees or execution proceedings in respect of a 'debt due from the landlord' are stayed. There is no stay of a decree or proceedings relating to decrees 'in favour of the landlord applicant'. The prohibition against the landlord applicant himself relates to the exercise by him of the power of transferring his property. Clauses (2) and (3) of Section 7 refer to the disability of the landlord applicant. He cannot make any exchange or gift of, or sell, mortgage or lease any of his property. This provision does not debar the landlord applicant from 'executing' his own decree. There is no other provision which prevents him from executing his decree. Section 24 which has been referred to in this connection merely prescribes the procedure which shall be followed by the Collector in liquidating the debts due from the landlord applicant. It is provided that the Collector shall first realise the value of such of the debtor's property other than proprietary rights in land as shall have been reported by the Special Judge under the provisions of Sub-section (2) of Section 19 to be liable to attachment or sale. The Collector could have sold the decree in favour of the landlord applicant under Section 24, but this power of the Collector does not imply that the decree could not be executed by the landlord applicant. It does not further imply, that the decree is under attachment. No disability has been cast upon the landlord applicant for executing a decree in his favour. It may be that the landlord applicant after realising the decretal amount has to deposit it in Court for the benefit of the creditors and the Collector may have the right, to dispose of the proceeds of the decree. Nor has Section 44, Encumbered Estates Act anything to do with the matter. It merely lays down that when the debts due from the landlord applicant are liquidated the disabilities from which the landlord suffered would cease. The decree was executable from the very beginning, and the application for execution having been made more than three years after the passing of the decree, was barred by limitation.

4. In the result the appeal is allowed the order of the Court below is set aside and that of the Munsif restored. The execution application is dismissed. In the circumstances of the case, however, we order that costs of all the proceedings of all the Courts shall be borne by the parties.