

## **Sanwal Das And Ors. vs Dargah Sayed Shah Bazid Handi Mauquf And ... on 1 August, 1952**

**Equivalent citations: AIR1953ALL61, AIR 1953 ALLAHABAD 61**

### **JUDGMENT**

Bind Basni Prasad, J.

1. Today in the course of arguments learned counsel for the appellants made the following statement :

"The land on which stands the three storied house No. 596/1 to 3 with two shops bounded as below :

East--Shop No. 590/10 etc., West--Land of the Dargah, North--House No. 595, South-- Drummond Road, which property is described as item No. 9 in the written statement filed on behalf of the Dargah in Case No. 784 of 1936 before the Special Judge, 1st Grade, Agra, belongs to the Dargah, the landlord-applicant and the rights of creditors 1 to 8 in respect of that land are that of licensees and they are holding the land as licensees having built on it as licensees."

Learned counsel for the respondent made the following statement:

"In view of the fact that no lease was executed by the owner in favour of Sukhdeo, I concede that the position of Sukhdeo and his legal representatives, which expression includes creditors Nos. 1 to 8 (appellants in the appeal) is that of a licensee and not a lessee. This statement of mine refers to the land detailed by the learned counsel for the appellants in his statement. The respondents do not dispute the ownership of the appellants in respect of the building standing upon the aforesaid land."

2. In view of these statements the appeal is allowed in part. The appellants are declared to be the licensees of the land upon which the disputed building is situated, and the owners of that building. The order of the lower Court declaring Dargah Syed Shah Bazid Handi Mauquf as the owner of that land is upheld. Parties will bear their costs throughout.

Cross-objection in First Appeal No. 438 of 1941

3. Creditors NOS. 1 to 8 preferred this appeal against the judgment dated 25-8-1941, passed by the learned Special Judge, 1st Grade, Agra. Upon this the landlord-applicant which is a Dargah filed a cross-objection on 7-4-1942. Sri Kirty who is representing one of the creditors, viz. Creditor No. 9,

Bohrey Earn Gopal, raises a preliminary objection to the maintainability of the cross-objection. His contention is that there is no provision in chap. VI, U. P. Encumbered Estates Act about a cross-objection. Section 45 of that Act deals with appeals and Section 46 with revisions. Section 47 provides :

"Except as provided in Sections 45 and 46, no proceedings of the Collector or Special Judge under this Act shall be questioned in any Court."

The argument is that orders passed in proceedings under the Encumbered Estates Act can be questioned only by appeals or revisions and not by cross-objections.

4. Learned counsel for the appellants invites our attention to Rule 6 of the Rules made under the U. P. Encumbered Estates Act, 1934, which provides :

"Proceedings under this Act shall be governed by the provisions of the Code of Civil Procedure of 1908, for the time being in force, so far as they are applicable and not inconsistent with the provisions of the Act and of these Rules."

The contention is that as the whole of the Code of Civil Procedure has been applied to the proceedings under the Encumbered Estates Act the provisions of Order 41, Rule 22, Civil P. C., which provides for cross-objections also become applicable.

5. The Code of Civil Procedure has not been applied in its entirety to the proceedings under the Encumbered Estates Act. They apply only "so far as they are applicable and not inconsistent with the provisions of the Act and of the Rules." The question is whether the filing of a cross-objection is inconsistent with the Act. Section 47 of the Act is very emphatic. It says that no proceedings of the Special Judge shall be questioned in any Court except in the manner provided by Sections 45 and 46.

If the intention had been that the order of the Special Judge could be questioned also by means of a cross-objection there would have been a provision to that effect. We are of opinion that inasmuch as the filing of a cross-objection is inconsistent with the provisions of Section 47 of the Act, Order 41, Rule 22 is not applicable to the proceedings under the Encumbered Estates Act.

6. Sri Misri Lal Chaturvedi, learned counsel for the appellants (respondents ?) has argued also that in essence there is no difference between an appeal and a cross-objection because the object of both is the same and the word "appeal" occurring in Section 45 must be interpreted as including a cross-objection. We do not agree with this. There is a great difference between an appeal and a cross-objection. A right of appeal is a substantive right, whereas a right of filing a cross-objection is a right which accrues only when the adversary files an appeal.

Moreover, Sub-section (1) of Section 45 provides that the period of limitation for appeals shall be 90 days. If the word "appeals" occurring there be interpreted as including cross-objections then it would mean that there is an independent right to file a cross-objection and the period of limitation

for the same is 90 days. That would be meaningless and would run counter to the provisions of Order 41, Rule 22. We hold that the word "appeals" occurring in Section 45 does not include the word "cross-objection."

7. Learned counsel for the appellants (respondents?) has also argued that if the cross-objection is not maintainable it may be treated as a revision under Section 46. That section provides :

"Any Court empowered under Section 45 to hear an appeal under this Act may of its own motion, or on the application of any person concerned, call for the record of proceedings in any case under this Act pending in a Court from which appeals lie to such Court and after giving due notice to the parties concerned pass such order thereon consistent with the provisions herein contained as it thinks fit, and such order shall be final."

The case from which this appeal arises has been decided by the learned Special Judge. It is not pending. It is true that the proceedings under the Encumbered Estates Act are still pending before the lower Court, but the particular dispute between the parties to this appeal has been disposed of and that particular case is no longer pending there. We doubt whether we can exercise the powers under Section 46 in a case like this. Moreover, the learned Special Judge has based his decision in regard to ownership of the shop in dispute on a judgment of this Court and we see no good reason to exercise our discretion under Section 46 to convert this appeal into a revision.

8. The preliminary objection prevails. The cross-objection is dismissed. The parties will bear their costs.

9. The record of the case shall be sent down to the lower Court at a very early date.