

Abdul Saeed Khan And Anr. vs Mohmood Ali And Anr. on 24 March, 1950

Equivalent citations: AIR1950ALL467, AIR 1950 ALLAHABAD 467

Author: Ghulam Hasan

Bench: Ghulam Hasan

JUDGMENT

Ghulam Hasan, J.

1. This appeal has been referred to a Full Bench by an order of two learned Judges of this Court dated 29th March 1949 in view of the importance of the question arising upon the true interpretation of Sections 4, 8 and 9, U. P. Debt Redemption Act.

2. A short pedigree which will serve to elucidate the facts is given below :

B A N D E H A S A N M A R R I E D T O B A T U L A N
-----|-----| Sarfarazan
Imtiazan | | _____| _____| | | |
Wilayatullah Shafiullah Nauaher Ali Maqsud Ali Yusuf Ali (defendant 4) (defendant
3) (deceased) (plaintiff 2) (deceased) | Mahmud Ali (plaintiff 1)

3. On 19th June 1886, Bande Hasan mortgaged with possession 30 Bighaa and 14 Biswas of Qasba Muhamdi, district Kheri, to Abdul Majid, now represented by his son Abdul Saeed Khan, defendant 1 for Rs. 600 at 12 per cent. per annum. He also executed a deed of further charge for Rs. 406 at the same rate of interest on 13th August 1890, and his widow Batulan executed another deed of further charge for Rs. 163/5/- on 6th May 1891. Shafiullah and Wilayatullah, who had succeeded to the half share of their mother, sold that share on 8th November 1935, to Mahmud Ali. Mahmud Ali also acquired by sale one-fourth of the half share inherited by Maqsud Ali with the result that three-fourth share of the entire property came into the possession of Mahmud Ali and the remaining one-fourth remained with Maqsud Ali, Although Abdul Majid was the ostensible mortgagee, it is not disputed that his brother Abdul Wahid owned the mortgagee rights with him. Abdul Wahid made a waqf of his mortgagee share constituting his wife Fakhr Jahan Begam as mutawalli. In 1936 Mahmud Ali and Maqsud Ali sued for an account of the money under Section 33, U. P. Agriculturists' Relief Act, against Abdus Saeed Khan and Fakhr Jahan Begam. Shafiullah and Wilayatullah, who were impleaded originally as parties to the suit were discharged. On 23rd December 1940, the Court found that RS. 500 were due to Abdus Saeed Khan and Rs. 628/2/9 to Fakhr Jahan Begam from the plaintiffs. Accordingly the Court declared these amounts as being still

payable by the plaintiffs to the defendants under Sub-section (2) of Section 33, The U. P. Debt Redemption Act came into force on 1st January 1941 (see Section 1). Mahmud Ali and Maqsd Ali thereafter applied under Sections 8 and 9 of the said Act for reduction of interest and for the amendment of the decree. On 26th July 1912, Abdus Saeed Khan and Fakhr Jahan Begam filed a declaration under Section 4 of the Act stating that the application under Section 8 was not maintainable as the decree was not executable. This declaration was rejected by the learned Munsif who also held that as the defendants had been overpaid, nothing was due to them from the plaintiffs. No other point was pressed before that Court. The lower appellate Court upheld the decision.

4. When the second appeal came up before a learned single Judge of this Court, he referred it to a Division Bench and that Bench has referred the appeal for decision by a Full Bench. In the referring order two questions were stated as arising for decision. The first question was whether a declaration under Section 4, U. P. Debt Redemption Act can be made in proceedings under Section 33, U. P. Agriculturists' Relief Act before any application has been made under that section by the creditor or a decree has been passed in his favour. The other question was whether the definition of "loan" given in Section 2 (9), U. P. Debt Redemption Act, covers the case of a mortgage repayable out of the property which has devolved upon several persons when a part only of the mortgaged property has been transferred and there is no agreement in the deed of conveyance, by which the transferee undertakes to pay off the entire mortgage money. On the latter question, there is a conflict of opinion between a Full Bench of the Allahabad High Court in *Saran Singh v. Miththan Lal*, A. I. R. (33) 1946 ALL. 174: (226 I. C. 185) and a Division Bench of the late Chief Court of Avadh in *Minhin Lal v. Chittar*, 1947 O. W. N. 576: (A.I.R. (36) 1949 Oudh 53).

4a. As the appeal itself has been referred to the Full Bench for decision, we have heard arguments upon the first question and not on the second, for, in our opinion, the appeal can be disposed of on the first question.

5. The crucial point which falls for determination depends upon the true interpretation of Section 8, U. P. Debt Redemption Act. The relevant portion of the section may be quoted as below:

"8. (1) Notwithstanding the provisions of any decree or of any law for the time being in force, an agriculturist or a workman liable to pay the amount under a decree to which this Act applies passed before the commencement of this Act, may apply to the civil Court which passed the decree or to which the execution of the decree has been transferred, for the amendment of the decree by reduction according to the provisions of this Act of the amount due under it, and on receipt of such application the Court shall, after notice to the opposite party, calculate the amount due from the applicant in accordance with the provisions of Sections 9 and 10 and shall amend the decree accordingly :

Provided that if the decree was passed by a Court outside the United Provinces it shall not be executed against the land or agricultural produce or person of the judgment-debtor, unless the decree-holder agrees to an amendment of the decree in

accordance with the provisions of this Act....."

The words which require to be construed are those underlined above, (here italicised) viz., whether the declaration passed by the Court in the suit under Section 33, U. P. Agriculturists' Relief Act, declaring the amounts due from the plaintiffs to the defendants brings the plaintiffs within the ambit of these words. It cannot be doubted that before the agriculturist is entitled to avail himself of the provisions of Section 8, he must show that he is liable to pay the amount due under a decree to which this Act applies passed before the commencement of this Act. Section 2 (6) defines "decree to which this Act applies" as a decree passed either before or after the commencement of this Act in a suit to which this Act applies. Sub-section (17) of Section 2 defines "suit to which this Act applies" as "any suit or proceeding relating to a loan" It may be conceded that the suit under Section 33, U. P. Agriculturists' Relief Act, was a suit relating to a loan and that the decree was passed in such a suit before the commencement of the Act, although the decree was declaratory in character. This is, however, not sufficient to bring the case within the purview of Section 8. That section does not merely refer to the liability of the agriculturist which is determined by the declaration under Section 33, but requires as a condition precedent to its application an important qualification that the liability of the amount must be due under a decree. The subsequent reference in the section to the civil Court which passed the decree or to which the execution of the decree has been transferred and the further reference in the proviso prohibiting execution of the decree passed by a Court outside the United Provinces against the land of the judgment-debtor, leave no room for doubt that a declaratory decree passed under Section 33, U. P. Agriculturists' Relief Act, such as the one we have before us, was not contemplated under Section 8. This conclusion is further fortified by the provisions of Section 33. Sub-section (1) of Section 33 entitles an agriculturist to sue for an account of the money due from him. The Court under Sub-section (2) after taking the necessary account declares the amount which is still payable by him to his creditor. Up to the stage of declaration, no question arises as to the payment of the amount due under any decree until the creditor makes an application to the Court to pass a decree in his favour if the money is payable to him. The present is not the case where the creditor asked for any decree nor was any such decree passed in the case. A plain and reasonable construction of Section 33, Agriculturists' Relief Act and Section 8, Debt Redemption Act read together will show that Section 8 was intended to apply only to cases where a decree had been passed in favour of the creditor against the agriculturist debtor and not to a case where a mere declaration had been made by the Court determining the liability of the debtor to the creditor. Any other view would not only be contrary to the plain meaning of the words used in Section 8 but would render the words "due under a decree", in that section wholly redundant. The language of Section 4 lends additional support to the view above expressed in that that section clearly says that the declaration by the creditor which will render the provisions of the Debt Redemption Act inapplicable must be to the effect that if a decree is passed in his favour either for the whole or part of the claim such decree shall not be executed against the land, agricultural produce or person of the agriculturist. The dominant intention of the legislature in enacting Section 8 was to confer a right upon the agriculturist debtor to approach the Court for reduction of interest where a decree had been passed against him, which decree rendered him or his property liable to be proceeded against. A decree declaratory in nature such as is contemplated under Section 33, although it determined the liability of the agriculturist for the time being, did not expose him to any risks, but the moment the creditor asked the Court to pass a decree in his favour, it was obvious that

such a decree would be liable to be executed in which case the right would accrue to the agriculturist for the benefits of Section 8 being extended to him. It is not contended, and cannot be contended, that a purely declaratory decree fixing the liability of the debtor can be executed. The contention put forward on behalf of the creditors while emphasising the fact that the declaratory decree makes the debtor liable to pay ignores the important words in Section 8 "due under a decree." It is not possible to derive any assistance from the meaning of the word "liability" in Aiyar's Law Lexicon of British India, p. 728 and Stroud's Judicial Dictionary, p. 434, relied upon for the debtors in construing the language of Section 8. Liability can undoubtedly be construed to cover all possible cases but it can have no bearing upon the interpretation of words used in Section 8. Nor is it possible to interpret these words with reference to the construction placed upon the word "liability" in English Statutes. The cases in Attorney-General v. G.S. & W. Rly. Co, of Ireland, 1925 A. C. 754 : (94 L. J. K. B. 772) and Saunders v. Newbold, (1905) 1 Ch. 260 : (74 L. J. Ch. 120) have no bearing. The decision in Mahmud Hasan Khan v. Narain, A. I. R. (36) 1949 ALL. 210 : (1948 O. W. N. 412 F. B.) affords no assistance to the case of the debtors. In that case the agriculturist judgment-debtor had applied under Sections 8 and 9, Debt Redemption Act after he had transferred the entire mortgaged property to a third person long after the final decree for sale had been passed against him. The decree-holder opposed the application contending that having transferred the entire mortgaged property, he was no longer liable to pay the amount due under the decree within the meaning of Section 8. The Full Bench repelled this contention, holding that the expression is wide enough to include the person immediately liable to pay and also the person ultimately liable to pay. Under the terms of the sale deed, it was the duty of the judgment-debtor to discharge the previous encumbrances but in the sale deed he had concealed this fact as well as the decree passed on foot of a mortgage against him. The Full Bench held that although the liability devolved upon the vendee, yet the ultimate liability of the agriculturist was not wiped out. They consequently extended the benefit of Section 8 to him. There was no question about the application of the provisions of Section 8 to a declaratory decree passed under Section 33. I am, therefore, of opinion that Section 8, Debt Redemption Act, is inapplicable to the case. This conclusion does not involve any undue hardship to the debtors, for it is now open to them to take advantage of the benefits of the amendment introduced by Section 27 (2) (a), U. P. Debt Redemption Act in Sub-section (2) of Section 33, U. P. Agriculturists' Relief Act.

6. As a result of the foregoing discussion, it follows that this appeal must be allowed. Accordingly I allow the appeal, set aside the decree of the lower appellate Court and dismiss the application of the debtors with costs throughout.

Chandivamani, J.

7. I concur.

Misra, J.

8. I agree with my learned brother Ghulam Hasan J. The language of Section 8, D. P. Debt Redemption Act is clear and unambiguous. An agriculturist or a workman invoking the aid of the section can obtain relief only if he is 'liable to pay the amount due under a decree.' Where the decree

sought to be amended does not place on the debtor a liability to pay, there can be no amendment under the section. The decree passed in the present case was merely declaratory. It contained no order to the effect that Mahmood Ali and Maqsood Ali must pay a sum of Rs. 1128-2-9 to the appellants. An accounting under Section 33, Agriculturists' Relief Act only puts on record the result of the calculations at the reduced rate of interest. The creditors did not take advantage of the second part of Section 33 (2). I am clear that where a decree merely determines the amount of indebtedness and does not make the amount payable in the sense of creating thereby a liability or legal obligation on the debtor and a corresponding right in the creditor to recover the sum declared there is no scope for the application of Section 8, U. P. Debt Redemption Act, the provisions whereof can be brought into play only where a legally enforceable liability of the nature afore-said is created by the decree. Where such a case occurs, Sub-section (3) of Section 4 of the Act gives to the decree-holder a reciprocal right to escape the amendment of the decree by giving a declaration to the effect that execution will not be taken out against the land, agricultural produce or person of the agriculturist. The word 're-coverable' in Sub-section (3) of Section 4 and the expression 'liable to pay' in Section 8 are referable to the same quality of the decree, the judgment-debtor that is to say, being liable to pay under the decree what the decree-holder is entitled to recover.

9. In the view which I take of the nature and the scope of Section 8, U. P. Debt Redemption Act, it is unnecessary to proceed to determine whether or not the advance to which the decree related was a loan within the meaning of Section 2 (9) of the Act.

Brij Mohan Lal, J.

10. I have read the judgment of my learned brother Ghulam Hasan J. The two points that originally arose for decision are mentioned in the said judgment. A third point, which was allied to the first one, also arose and was argued before the Full Bench. It was as follows:

"Whether an application for amendment of a decree under Section 8, U. P. Debt Redemption Act (XIII [13] of 1910) can be maintained by a debtor who has obtained a declaratory decree under Section 33, U. P. Agriculturists' Relief Act (XXVII of 1934)."

11. A suit under Section 33, Agriculturists' Relief Act, is instituted by a debtor. It need not necessarily be a suit in respect of a "loan." As the section itself indicates, the suit may be in respect of an amount due on account of price of goods. In such a suit the plaintiff (debtor) asks for an account from the creditor and seeks a declaration about the amount payable by him. The Court declares the amount which would be payable by the plaintiff if he were to settle the account just then. The decree is a declaratory one. This is the first stage under Section 33. At this stage, the creditor cannot demand from the debtor the amount which has been found payable to him. The amount, under the terms of the agreement between the parties, may not fall due for years to come.

12. The second stage is reached when the creditor seeks a decree for the recovery of the amount. He has to pay court-fees and then the Court has to see whether "the money is payable." If under the terms of the agreement the claim is premature, the Court will refuse to pass a decree in favour of the decree-holder. Similarly, it shall refuse to pass a decree if it finds that the claim has become time

barred. But if there is no such valid objection, the Court shall pass a decree for the amount due to the creditor. It is then that the amount becomes "due under the decree."

13. To maintain an application under Section 8, U. P. Debt Redemption Act, the applicant must prove, inter alia, that there is an amount "due under a decree." The "amount due under a decree" means the amount for the recovery of which the decree may be executed. It will, therefore, follow that so long as the creditor does not secure a decree under Sub-section (2) of Section 33, Agriculturists' Relief Act, and so long as the decree obtained by the debtor remains a declaratory decree under Section 33, no application can be maintained for amendment of that decree under Section 8, U. P. Debt Redemption Act.

14. Therefore, in agreement with my learned brother Ghulam Hasan J., I am of the opinion that the appeal be allowed and the debtor's application for amendment of the decree presented under Section 8, U. P. Debt Redemption Act, be dismissed with costs throughout.

Harish Chandra, J.

15. The decree that has been obtained by the plaintiffs-respondents in this case is one under Section 33, U. P. Agriculturists' Relief Act. It merely declares the amount which is still payable by them to the appellants. Section 8, U. P. Debt Redemption Act, is very clear and applies to agriculturists of workmen liable to pay the amount under a decree to which that Act applies passed before the commencement of that Act. No doubt, the word 'liable' is capable of various interpretations according to the context, but in the context in which the word has been used in Section 8, U. P. Debt Redemption Act, it seems clearly to indicate that the liability must be to pay a certain sum of money under a decree. I have read the judgment of my brother Ghulam Hasan and agree that this appeal should be allowed and that the respondents' application under Section 8 and 9, U.P. Debt Redemption Act for the amendment of the decree should be dismissed with costs throughout.

16. We allow the appeal, set aside the decree of the lower appellate Court and dismiss the debtors' application for amendment of the decree presented under Section 8, U. P. Debt Redemption Act with costs throughout.