

MISCELLANEOUS CIVIL

Before Mr. Justice Niamat-ullah and Mr. Justice Allsop

IN THE MATTER OF JODHA SINGH AND OTHERS*

1937
August, 16

U. P. Encumbered Estates Act (Local Act XXV of 1934), sections 4, 6—Application accepted by Collector and forwarded to Special Judge—Question before Special Judge that the application was not “duly made” as the applicant was not entitled to apply—Question not raised before Collector—Powers of Special Judge—Jurisdiction.

Where the Collector entertains an application under section 4 of the U. P. Encumbered Estates Act and accepts it, it is not open to the Special Judge, to whom it is forwarded by the Collector under section 6, to refuse to proceed with it on the ground that the applicant was not entitled to apply under section 4 or that the Collector should not have treated the application as one “duly made”. When the application has been forwarded by the Collector to the Special Judge under section 6 a definite stage of the proceedings terminates, and thereafter the Special Judge has no option but to follow the procedure laid down by the sections which follow section 6. There is no provision in the Act which empowers the Special Judge to send back the application to the Collector for the decision of a question which should have been raised before the Collector originally but was not so raised and was subsequently raised before the Special Judge. Nor is it open to the Special Judge to question the jurisdiction of the Collector to entertain an application under section 4. The jurisdictions of the two authorities are clearly demarcated by the Act.

The parties were not represented.

NIAMAT-ULLAH and ALLSOP, JJ.:—This is a reference under order XLVI, rule 1 of the Civil Procedure Code made by the learned Special Judge exercising jurisdiction under the U. P. Encumbered Estates Act. It appears that a certain person, claiming to be a landlord within the meaning of section 4 of the Encumbered Estates Act, made an application to the Collector for action being taken under that section. The Collector entertained the application and, after the usual preliminary notices, “accepted” it and forwarded the

*Miscellaneous Case No. 774 of 1936.

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same to the Special Judge. An objection was taken before the Special Judge by one of the creditors that the application to the Collector had not been "duly made". The ground on which this objection was based was that the applicant was not a recorded co-sharer and, therefore, not a "landlord", as contemplated by section 4 of the Act. It was argued, on behalf of the applicant, that the Special Judge must proceed to dispose of the application in the manner laid down by the Act and that an objection of the kind made before him should have been made before and decided by the Collector. The Special Judge entertained some doubt on the question thus raised before him and made the reference which is before us.

We express no opinion on the question as to whether only a recorded co-sharer can apply under section 4 of the Encumbered Estates Act. We are, however, of opinion that, if the Collector entertains the application and accepts it, it is not open to the Special Judge, to whom it is forwarded under section 6, to refuse to proceed with it on the ground that the applicant was not entitled to apply under section 4 or that the Collector should not have treated the application as one "duly made". It seems to us clear that with the "acceptance" of the application by the Collector under section 6 and his forwarding the same to the Special Judge a definite stage of the proceedings terminates. Thereafter the Special Judge must observe the procedure laid down by the sections which follow. Section 8 makes it incumbent upon the Special Judge to call upon the applicant to submit, within a period to be fixed by him in this behalf, a written statement giving certain particulars. He is enjoined to issue certain notices to others concerned and to receive written statements to be filed by them. He is bound to examine such claims as may be put forward under the Act. The subsequent stages of the proceedings before him make it necessary for the Special Judge to exercise

powers which he cannot disclaim. There is no provision in the Act which empowers a Special Judge to send back the application to the Collector for the decision of a question which should have been raised before the Collector originally but was not so raised and was subsequently raised before the Special Judge. Nor is it open to the Special Judge to question the jurisdiction of the Collector to entertain an application under section 4. The jurisdictions of the two authorities are clearly demarcated by the Act. It is the Collector who is entitled to "accept" applications under section 4 and make reference to the Special Judge. Once the application is received by the Special Judge, he has no option but to follow the procedure laid down by the Act. This is our answer to the reference.

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 SINGH

REVISIONAL CIVIL

*Before Sir Shah Muhammad Sulaiman, Chief Justice,
 and Mr. Justice Harries*

ANIS BEGAM AND ANOTHER (PLAINTIFFS) *v.* SHYAM SUNDAR
 LAL (DEFENDANT)*

1937
 August, 17

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 33—Suit by debtor for account—Not a suit for declaration—Valuation for jurisdiction—Suits Valuation Act (VII of 1887), section 9—General Rules (Civil), 1936, by High Court for subordinate courts, chapter XX, rule 28(3).

A suit under section 33 of the U. P. Agriculturists' Relief Act is a suit for account purely, in which the plaintiff does not seek to recover any amount as a result of taking the accounts; no declaration is asked for in such a suit and it is not a suit for a declaration, although under sub-section (2) of the section the court after taking the accounts "declares" the amount still due by the plaintiff to the defendant. The valuation of such a suit for purposes of jurisdiction is governed by the rules framed by the High Court under section 9 of the Suits Valuation Act and contained in chapter XX, rule 28(3), of the amended General Rules (Civil), 1936; according to that rule

*Civil Revision No. 364 of 1936.