

It is well established law that the execution court has no power to amend a decree. The duty of the execution court is to carry out the decree as it has been passed by the court from which the decree has been transferred for execution. If the intention of the legislature had been to give power to the execution court to amend the decree so as to give the judgment-debtor benefits of the provisions of the Agriculturists' Relief Act, such provision, so inconsistent with accepted principle and present procedure, would have been embodied in clear and unambiguous terms.

No doubt the inability of the executing court to give effect to section 5 of the U. P. Agriculturists' Relief Act may lead to much inconvenience, and in certain instances, as in the present, it appears that the main intention of the Act may be defeated. Our duty, however, is to give effect to the clear provisions of the Act as they stand. It will be a matter for the Government to consider whether section 5 of the Act should not be amended so as to give execution courts the necessary jurisdiction to amend decrees under the provisions of the Act.

In the result we answer the question referred by the learned Additional Civil Judge of Ballia in the negative.

MISCELLANEOUS CIVIL

Before Mr. Justice Thom and Mr. Justice Rachhpal Singh

INAM-ULLAH (DECREE-HOLDER) *v.* BABU RAM AND OTHERS
(JUDGMENT-DEBTORS)*

1937
January, 15

U. P. Encumbered Estates Act (Local Act XXV of 1934), sections 7, 9—Stay of proceedings—Proceedings in execution against a surety—Application by some judgment-debtors under section 4 of the Act—Whether the execution against the surety must be stayed.

1937
LAKHI
NARAIN
RAM
v.
ADJAI
COAL
COMPANY

1937

INAM-
ULLAH
v.
BABU RAM

In execution of a money decree, which had been converted into an instalment decree under the U. P. Agriculturists' Relief Act, two of the judgment-debtors were arrested, but were released on a certain person standing surety for the payment of the instalment within one month. The payment was not made and the decree-holder put the decree in execution against the surety, by virtue of section 145 of the Civil Procedure Code. Then some of the judgment-debtors applied to the Collector under section 4 of the U. P. Encumbered Estates Act, and the question thereupon arose whether the execution proceedings pending against the surety must be stayed, under section 7 of the Act:

Held, that having regard to the very wide provisions of section 7, the proceedings pending against the surety were covered by those provisions and must therefore be stayed. A consideration of the provisions and scope of section 9 also led to the same conclusion. Although only two out of several judgment-debtors had applied under section 4, that would make no difference, inasmuch as the whole matter of the amount recoverable by the decree-holder and the amount of liability of each of the judgment-debtors would have to be adjudicated upon by the Special Judge.

Mr. *A. H. Khan*, for the applicant.

Mr. *Panna Lal*, for the opposite party.

THOM and RACHHPAL SINGH, JJ.:—The question on which the opinion of this Court is invited by the learned Judge of the court below is as follows: "Should the execution proceedings taken by the decree-holder against the surety, Kanhai Lal, be stayed because two of the principal judgment-debtors have applied under section 4 of the Encumbered Estates Act of 1934?"

The brief history of the litigation between the parties is this. Sheikh Inam-ullah decree-holder obtained a decree under the provisions of rule 6, order XXXIV of the Code of Civil Procedure against Babu Ram, Makhan Lal and Raghunath Das and against the assets of Mul Chand in the hands of Mst. Hira Kuar, on the 8th of November, 1930, for a sum of Rs.5,410-8-0 together with

future interest at Rs.6 per cent. There was an appeal against that decree, but it was dismissed by this Court on the 19th of December, 1934.

The judgment-debtors made an application for the amendment of the decree under the provisions of the U. P. Agriculturists' Relief Act of 1934, and the amendment prayed for was allowed. One of the terms under the amended decree was that the judgment-debtors would pay a sum of Rs.1,000 yearly to the decree-holder. This was not done and therefore the decree-holder made an application for execution of his decree and got Babu Ram and Makhan Lal arrested. The judgment-debtors prayed for one month's time within which to pay a sum of Rs.1,000 to the decree-holder. The latter would not agree unless some security was given and thereupon two persons Kanhai Lal and Ghasi Ram executed a security bond under which they made themselves liable for the payment of a sum of Rs.1,006 if the judgment-debtors did not pay the sum. The amount was not paid to the decree-holder and thereupon he made an application for execution of his decree against one of the sureties Kanhai Lal. This he did under the provisions of section 145 of the Code of Civil Procedure.

Babu Ram one of the judgment-debtors and Mst. Hira Kuar made an application under the provisions of section 4 of the Encumbered Estates Act to the Collector. Kanhai Lal, against whom the decree-holder had applied for execution, prayed that the proceedings in execution should be stayed against him as an application had been made by some of the judgment-debtors under section 4 of the Encumbered Estates Act. The decree-holder opposed this application for postponement of the proceedings in execution against Kanhai Lal surety. The learned Judge of the court below found some difficulty in deciding this point and has therefore referred the question mentioned previously in this judgment to this Court for decision.

1937

INAM-
ULLAH
v.

BABU RAM

1937

INAM-
ULLAH
v.
BABU RAM

Section 7 of the Encumbered Estates Act, as amended by Act IV of 1935, among other things enacts as follows:

"(1) When the Collector has passed an order under section 6 the following consequences shall ensue: (a) all proceedings pending at the date of the said order in any civil or revenue court in the United Provinces in respect of any public or private debt to which the landlord is subject, or with which his immovable property is encumbered, except an appeal or revision against a decree or order, shall be stayed, all attachments and other execution processes issued by any such court and then in force in respect of any such debt shall become null and void, and no fresh process in execution shall, except as hereinafter provided, be issued;"

We are clearly of opinion that having regard to the provisions of section 7 referred to above, the proceedings against the surety should be stayed. The provisions of section 7 are very wide, and it enjoins that all proceedings pending at the date of the said order in respect of any public or private debt to which the landlord is subject shall be stayed. There can be no doubt whatsoever that the proceedings against the surety are covered by the provisions of this section. These proceedings are proceedings in execution pending at the date of the order of the Collector in respect of which a debt is due by a landlord. We have to take note of the provisions of section 9 of the Encumbered Estates Act in dealing with this question. That section enacts the procedure to be followed by the Special Judge when dealing with the applications made under the provisions of this Act. In the present case there are several judgment-debtors. It is true that only two of them have applied under section 4 of the Act, but it shall be the duty of the Judge to make the other judgment-debtors parties to the suit and finally he would decide the question as to how much in all is due to the decree-holder before us and other decree-holders and what is the amount for which the various judgment-debtors are liable to their creditors. It is conceivable that after this inquiry has been made

it may be found that nothing is due to the decree-holder from the judgment-debtors. It is, however, for the purpose of this case not at all necessary to go into this question. The decree-holder is not without his remedy. If his application for execution against the surety is stayed under section 7 of the Encumbered Estates Act, it will be still open to him to institute a suit for the recovery of the amount for which the sureties made themselves liable. It is unfortunate that the security bond, which the two sureties executed in favour of the decree-holder, is not before us, and we are not, therefore, in a position to make a definite pronouncement on this question. In view of all that has been said above we hold that the proceedings which are pending in the court below for execution of decree against the sureties should be stayed till the matter has been decided by the court which will hear the application of the judgment-debtors under the Encumbered Estates Act.

Our answer to the reference is, therefore, in the affirmative.

1937

INAM-
ULLAH
v.
BABU RAM