

also refer to the provisions in section 11 of the Court Fees Act which deals, among other matters, with the payment of court fee in a case like the present which is a suit for an account. That section provides: "The decree shall not be executed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits or the amount so decreed shall have been paid to the proper officer." This shows that until the payment is made there is no decree capable of execution. In our view until there is a decree capable of execution it cannot be said that limitation has begun to run under article 182 of the Limitation Act.

For these reasons we allow this Letters Patent appeal with costs throughout and we restore the order of the execution court of first instance.

REVISIONAL CIVIL

Before Mr. Justice Mulla

BRIJ BEHARI LAL (DEFENDANT) *v.* UDAI NATH SHAH
(PLAINTIFF)*

1938
August, 2

U. P. Encumbered Estates Act (Local Act XXV of 1934), sections 1(2) and 7(b)—Excluded areas—"United Provinces"—Applicability of section 7 to the excluded areas—Interpretation of statutes—Conflict between sections.

The provisions of section 7 of the U. P. Encumbered Estates Act are applicable to suits or proceedings in any civil or revenue court in the United Provinces, including any such court in the areas excluded by section 1(2) of the Act.

There is an apparent conflict between the provisions of section 7 of the Act, the operation of which is expressed to be throughout the "United Provinces", and the provisions of section 1(2) of the Act which excludes certain areas from the operation of the Act. Having regard to the scheme and purpose of the Act and all the relevant provisions, this conflict

1938

can be reconciled by interpreting section 1(2) in the following way:

BRIJ
BEHARI
LAL
v.
UDAI
NATH
SHAH

The correct interpretation of the exception laid down in section 1(2) of the U. P. Encumbered Estates Act is that encumbered estates which are situated within the excluded areas cannot derive any benefit from the Act, but that other provisions of the Act which either confer some benefit upon the landlord or impose some disability upon the creditor can operate everywhere in the United Provinces including the excluded areas.

Mr. G. S. Pathak, for the applicant.

The opposite parties were not represented.

MULLA, J.:—This is an application in revision under section 115 of the Civil Procedure Code, against an order passed by the learned Civil Judge of Naini Tal refusing to dismiss a suit pending in his court as against the applicant. The applicant here is one of three defendants in the suit pending in the court of the learned Civil Judge at Naini Tal. It appears that he has made an application under section 4 of the Encumbered Estates Act and the Collector has issued an order under section 6 of the Act. The Collector's order is dated the 29th of October, 1936, while the suit pending in the lower court, which is sought to be dismissed as against the applicant, was instituted in June, 1937. In these circumstances the applicant moved the lower court under section 7 of the Encumbered Estates Act to dismiss the suit as against him. His prayer has been rejected and he has come up in revision from that order.

In rejecting the applicant's prayer for the dismissal of the suit as against him, the learned Civil Judge has relied upon section 1, sub-section (2) of the Encumbered Estates Act, which lays down that the Act "extends to the whole of the United Provinces of Agra and Oudh, except the districts of Garhwal and Almora, the Naini Tal tahsil of the Naini Tal district and the tract of Jaunsar Bawar of the Dehra Dun district." The learned Civil Judge has taken this sub-section to mean

that the operation of the Encumbered Estates Act does not extend to the excluded areas, and hence section 7 of the Act cannot apply to those areas. It was argued on behalf of the applicant that section 7 of the Act refers generally to the United Provinces without mentioning any excluded area, and hence its operation must be deemed to extend to the whole of the United Provinces including the areas excluded by sub-section (2) of section 1 of the Act. Now the relevant provision of section 7 runs as follows:—"No fresh suit or other proceedings other than an appeal or revision against a decree or order, or a process for ejectment for arrears of rent shall, except as hereinafter provided, be instituted in any civil or revenue court in the United Provinces in respect of any debts incurred before the passing of the said order." It is upon this provision of section 7 that the applicant relies in this case, and his contention is that the words "any civil or revenue court in the United Provinces" are general and they must be deemed to include any civil or revenue court even in the areas excluded by sub-section (2) of section 1 of the Act. The learned Civil Judge attached considerable weight to this argument, but he could not reconcile this general provision with sub-section (2) of section 1 of the Act and he consequently rejected the applicant's prayer for the dismissal of the suit as against him. The simple question, therefore, is whether it is possible, having regard to the scheme and purpose of the Act, to reconcile the apparent conflict between the general provisions contained in section 7 and the exception made in sub-section (2) of section 1 of the Act. Having fully considered the scheme and purpose of the Act and all the relevant provisions, I have arrived at the conclusion that the contention made on behalf of the applicant is sound and ought to prevail. The meaning of the exception laid down in sub-section (2) of section 1 of the Act to my mind, is only this, that encumbered estates which are situated within the excluded areas cannot derive any benefit from the provisions of the Act. It is to be

1938

 BBIJ
 BEHARI
 LAL
 v.
 UDAI
 NATH
 SHAH

1938

BRJ
BEHARI
LAL
v.
UDAI
NATH
SHAH

noted that the Act is intended to provide for the relief of encumbered estates in the United Provinces. The operation of the Act extends to all encumbered estates in the United Provinces, excepting those that are situated in the areas excluded by sub-section (2) of section 1. This does not, however, mean that the benefits which have been conferred by the Act upon the landlord and the disabilities which it has imposed generally upon the creditor do not take effect within the areas excluded by sub-section (2) of section 1. "United Provinces" has nowhere been defined in the Act, and it must, therefore, be interpreted in its ordinary sense wherever it is used in the Act. Standing by itself "United Provinces" must necessarily include the particular areas which have been excluded by sub-section (2) of section 1 of the Act. If the legislature intended "United Provinces" to be interpreted as "United Provinces minus the areas excluded under sub-section (2) of section 1", it could have plainly indicated its intention to that effect. That it has not chosen to do so clearly shows that it wanted "United Provinces" to be interpreted in its ordinary sense. This conclusion is fortified by reference to certain provisions of the Act, for example, sections 14, 24 and 48. Section 14, sub-section (7) provides that no decree against the landlord shall be executable within the United Provinces, except under the provisions of this Act. If "United Provinces" in this section is given a limited sense, it would follow that any decree against the landlord may be executed within the areas excluded by sub-section (2) of section 1. This is, to my mind, clearly inconsistent with the scheme and purpose of the Act. Again, section 24, sub-section (3) lays down that for the purpose of execution against property outside the United Provinces, the decrees passed by the Special Judge shall be deemed to be decrees in favour of the Collector. I think there can be little doubt that "United Provinces" in this section includes the excepted areas referred to in sub-section

tion (2) of section 1. Now it is obvious that if "United Provinces" as used in sections 14 and 24 of the Act includes the areas excluded by sub-section (2) of section 1, the same sense must be given to that expression as used in section 7 of the Act. Lastly, I find that section 48 of the Act lays down the general proposition that no creditor shall be entitled to present an insolvency petition against the landlord. Now if the operation of the Act does not extend to the areas excluded by sub-section (2) of section 1, it would follow that section 48 also has no application to those areas and a creditor residing in those areas shall be entitled to present an insolvency petition against the landlord. No such conflict and anomaly can possibly arise if the exception contained in sub-section (2) of section 1 is interpreted in the limited sense referred to above, namely that the encumbered estates situated in the excluded areas cannot get any relief under the Act, though other provisions of the Act which either confer some benefit upon the landlord or impose some disability upon the creditor can operate everywhere in the United Provinces including the excluded areas. The result, therefore, is that I allow this application, and setting aside the order passed by the learned Civil Judge, direct that the suit shall stand dismissed as against the applicant, but it may be continued against the other two defendants. The application has not been opposed in this Court and I shall, therefore, make no order as to costs of this Court. The applicant shall, however, get his costs in the lower court.

1938

BRIG
BEHARI
LAL
v.
UDAI
NATH
SHAH