

MISCELLANEOUS CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge
and Mr. Justice H. G. Smith

SITLA BAKHSH SINGH (DEBTOR-APPELLANT) *v.* BALCHAND
AND ANOTHER (CREDITORS-RESPONDENTS)*

1936
September 9

United Provinces Encumbered Estates Act (XXV of 1934), section 7(1)(a)—Debtor executing sale-deed of his entire property—Proceedings for compulsory registration of sale-deed—Transferor applying under Encumbered Estates Act—Stay of proceedings for compulsory registration—Section 7(1)(a), whether applies to proceedings for compulsory registration.

Held, that proceedings for the compulsory registration of a sale-deed of his entire property, executed by a debtor, pending before the District Registrar cannot be regarded as proceedings in respect of any public or private debt to which the transferor is subject, or with which his immovable property is encumbered, even though the sale-deed may purport to have been executed for the payment of certain debts and if the transferor, after the execution of the sale-deed, institutes proceedings under the U. P. Encumbered Estates Act, he is not entitled to obtain an order under section 7(1)(a) of that Act for stay of proceedings for compulsory registration of the sale-deed.

Mr. *Nasir Ullah Beg*, for the appellant.

Mr. *Ali Zaheer*, for the respondents.

SRIVASTAVA, C.J. and SMITH, J.:—This is an application under section 7 of the U. P. Encumbered Estates Act, 1934.

The facts of the case are that the applicant is alleged to have executed a sale-deed of his entire property in favour of the respondents-opposite parties. As he refused to get the sale-deed registered, proceedings are pending in the court of the District Registrar for the compulsory registration of the said deed. Soon after the alleged execution of the sale-deed, the applicant instituted proceedings under the U. P. Encumbered Estates Act, which are now pending before the Special

*Civil Miscellaneous Application No. 518 of 1936, in Miscellaneous Appeal No. 48 of 1936, against the order of Saiyid Qadir Hasan, Special Judge, First Class, Sitapur, dated the 27th of May, 1936.

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Judge of Sitapur. The applicant moved the Special Judge to stay the proceedings for compulsory registration, and obtained an *ex parte* order which was subsequently discharged by the Special Judge. He has filed an appeal against the last mentioned order of the Special Judge, and pending the said appeal has applied for stay of the proceedings before the District Registrar. The application purports to have been made under section 7(1)(a) of the U. P. Encumbered Estates Act.

Clause (1)(a) of section 7 provides that when the Collector has passed an order under section 6, 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. We are of opinion that the proceedings for the compulsory registration of the sale-deed pending before the District Registrar cannot be regarded as a proceeding in respect of any public or private debt to which the applicant is subject, or with which his immovable property is encumbered. It has been argued that the sale-deed in question purports to have been executed for the payment of certain debts. Even so, we do not think that the proceedings for the registration of the sale-deed can be regarded as a proceeding in respect of a debt such as is contemplated by section 7. Of course, the creditors of the applicant can have the sale-deed annulled if the conditions laid down in section 12 of the Act are satisfied. But this is not the question before us, and even the provisions of section 12 relate to annulment only at the instance of the creditor, and not at the instance of the transferor. In the circumstances we are of opinion that section 7, clause (1)(a), which has been relied upon in support of the application, cannot help the applicant.

We accordingly discharge the order for temporary injunction which was passed *ex parte*, and reject the application. No order as to costs.

Application rejected.

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APPELLATE CIVIL

*Before Mr. Justice E. M. Nanavutty and Mr. Justice
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KANHAIYA LAL (PLAINTIFF-APPELLANT) *v.* THE SECRETARY
OF STATE FOR INDIA IN COUNCIL THROUGH AGENT,
E. I. RAILWAY (DEFENDANT-RESPONDENT)*

1936
September 30

Government of India Act of 1919, sections 96B, 32(2) and 131—Civil Service Rules—Government servants—Dismissal of Civil servant—Suit for damages for wrongful dismissal, maintainability of—Interpretation of Statute—Specific remedy prescribed—Other remedy, if can be taken.

In the Government of India Act of 1919 there is a clear and express statutory provision in section 96B to the effect that every person in the Civil Service of the Crown in India holds office during his Majesty's pleasure. That statutory prerogative of the Crown cannot be taken away by any rules made under section 96B by the Secretary of State for India. The remedy for any breach of these rules lies in an appeal by the aggrieved public servant to the immediate official superior of the officer who has passed the alleged illegal order of dismissal or removal, but it can furnish no cause of action against His Majesty the King-Emperor, or the Secretary of State for India in Council who represents him. A public servant cannot, therefore, in any circumstance bring a civil suit against the Secretary of State for India in Council for wrongful dismissal from service. *Case law discussed.*

It is well-settled that if a statute prescribes a specific remedy, then the general rule is that no remedy can be taken but the particular remedy prescribed by the Statute.

Messrs. *Radha Krishna Srivastava, Harish Chandra and M. P. Nigam*, for the appellant.

The Government Advocate (Mr. *H. S. Gupta*) and Mr. *R. K. Bose*, for the respondent.

*First Civil Appeal No. 20 of 1934, against the decree of Pandit Brij Kishen Topa, Civil Judge of Malihabad at Lucknow, dated the 31st of October, 1933.