

REVISIONAL CIVIL

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

LALA BENI MADHO AND ANOTHER (APPLICANTS) *v.* MUSAM-
MAT KANIZ ZOHRA BEGAM (OPPOSITE-PARTY)*

1937
March, 12

United Provinces Encumbered Estates Act (XXV of 1934), sections 14(7), 18 and 35—Civil Procedure Code (Act V of 1908), section 151 and order XLI, rule 5—Appeal against decree of Special Judge under section 14(7), pending—Chief Court's power to stay proceedings under sections 18 and 35 before Collector—Application under sections 18 and 35, if an application for execution—Order XLI, rule 5, Civil Procedure Code, if applicable to application under sections 18 and 35.

The jurisdiction exercised by the courts of the Collector or of the Sub-Divisional Officer under sections 18 and 35 of the Encumbered Estates Act is quite independent of the civil courts and these courts are not subordinate to the Chief Court. Where, therefore, an appeal is pending against a decree of the Special Judge passed under section 14(7) of the Encumbered Estates Act, there can be no question of the exercise of any inherent powers of the Chief Court under section 151 of the Code of Civil Procedure in staying proceedings contemplated by sections 18 and 35 of the Encumbered Estates Act. An application under sections 18 and 35 cannot also be regarded as an application for execution of the decree of the Special Judge, and order XLI, rule 5 of the Code of Civil Procedure can therefore have no application. It is no doubt true that the provisions of section 18 relating to the extinguishment of the previous rights are subject to the result of any appeal or revision, but that cannot give the Chief Court a right to interfere with delivery of possession, which has to be made by the Collector under section 35 of the Encumbered Estates Act. The proper remedy of the applicants is to move the Collector to stay proceedings for delivery of possession until the decision of the appeal filed in the Chief Court.

Mr. *P. D. Rastogi*, for the applicants.

Mr. *Habib Ali Khan*, for the opposite-party.

SRIVASTAVA, C. J. and SMITH, J.—The admitted facts of the case are that the opposite-party made an

*Civil Miscellaneous Application No. 47 of 1937, filed in First Civil Appeal No. 129 of 1936, against the decree of P. Kaul, Esq., Special Judge of 1st class of Bara Banki, dated the 3rd of September, 1936.

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application under section 4 of the United Provinces Encumbered Estates Act which was sent by the Collector to the Special Judge for disposal. The applicants were in possession of certain property of the opposite-party under a usufructuary mortgage. The Special Judge, after making the necessary inquiry into the various claims, passed a money decree in favour of the applicants under section 14, clause (7) of the Encumbered Estates Act, and sent the decree to the Collector under section 19 of that Act. The opposite-party made an application to the Collector under sections 18 and 35 alleging that the effect of the decree of the Special Judge was to extinguish the mortgage, and claiming to be put in possession of the mortgaged property. In the meantime the applicants have filed an appeal to this Court against the decree of the special Judge, and the appeal is pending in this Court. The applicants objected against delivery of possession being made pending the decision of the appeal, but the Sub-Divisional Officer, who is dealing with the matter on behalf of the Collector, ordered that unless a stay order is made by this Court possession will be delivered to the opposite-party. Thereupon the applicants made the present application to this Court praying for stay of the delivery of possession till the decision of the appeal pending in this Court. This application purports to have been made under section 151 of the Code of Civil Procedure. We are of opinion that section 151 has no application to the facts of the case. The court of the Collector or of the Sub-Divisional Officer is not subordinate to this Court, and the jurisdiction exercised by the court under sections 18 and 35 of the Encumbered Estates Act is quite independent of the civil courts. In the circumstances it appears to us that there can be no question of the exercise of any inherent powers of this Court in staying proceedings contemplated by sections

18 and 35 of the Encumbered Estates Act. It is equally obvious that the application under sections 18 and 35 cannot be regarded as an application for execution of the decree of the Special Judge, and order XLI, rule 5 of the Code of Civil Procedure also can therefore have no application.

It has been argued that the opening words of section 18 are "subject to the right of appeal or revision conferred in Chapter VI", and that this Court as a Court of Appeal can therefore control the action of the Collector in pursuance of the provisions of section 18. We regret we cannot accede to this argument. It is no doubt true that the provisions of this section relating to the extinguishment of the previous rights are subject to the result of any appeal or revision, but that cannot give this Court a right to interfere with delivery of possession, which has to be made by the Collector under section 35 of the Encumbered Estates Act. We are therefore of opinion that the present application made to this Court is misconceived. The proper remedy of the applicants is to move the Collector to stay proceedings for delivery of possession until the decision of the appeal filed in this Court. It will, of course, be open to the applicants to urge in support of such an application that the provisions of the section being subject to the result of the appeal filed in this Court, the Collector might properly in the exercise of his discretion await the result of the appeal before disturbing the *status quo* as it existed at the time when the decree was passed by the Special Judge, and put the applicants to such terms as he might think proper for safeguarding the interests of the opposite-party. But in any case we are clearly of opinion that this Court has no power, either under section 151 or under order XLI, rule 5 to stay the proceedings pending before the Collector. We accordingly reject this application. We make no order as to costs.

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Application rejected.