
 APPELLATE CIVIL

Before Mr. Justice Ziaul Hasan and Mr. Justice R. L. Yorke

1938
October, 17

RAI SAHIB PANDIT JAI NARAIN MISRA (PLAINTIFF-APPELLANT) v. SHIAM LAL AND ANOTHER (DEFENDANTS-RESPONDENTS)*

U. P. Encumbered Estates Act (XXV of 1934), section 7(1)(b)—Expression "In respect of any debts" in section 7(1)(b), meaning of—Suit for perpetual injunction by mortgagee against lessees whether barred by section 7(1)(b).

The expression "in respect of any debts" in section 7(1)(b) of the U. P. Encumbered Estates Act cannot be interpreted as meaning "having connexion with any debt" and therefore a suit for perpetual injunction by a mortgagee against the subsequent lessees of the mortgaged property is not barred by that section. *Nisar Khan v. Abdul Hameed Khan* (1) referred to.

Messrs. *Niamat Ullah and Kashi Prasad Srivastava*, for appellant.

Mr. *G. D. Khare*, for respondents.

ZIAUL HASAN and YORKE, JJ.:—These are three connected second appeals against appellate orders of the learned Civil Judge of Mohanlalganj in three suits brought by the plaintiff appellant in the following circumstances.

Mohal Ali Mehdi of village Kharka comprising a five annas ten pies share was owned by two brothers, Abul Hasan and Ali Mehdi in the proportion of two annas nine pies and three annas one pie respectively. Abul Hasan died leaving several children and two of his sons, namely, Ali Naqi and Mohammad Askari made a usufructuary mortgage of a ten pies three krants share in favour of the plaintiff appellant on the 1st January, 1932. The term of this mortgage was ten years. On the 23rd July, 1932, the plaintiff appellant took a simple mortgage of the three annas one pie share from Ali Mehdi and a decree on foot of this mortgage has already

*Second Civil Appeals Nos. 446-448, of 1937, against the order of P. Kaul, Esq., Civil Judge, Mohanlalganj, of Lucknow, dated the 22nd November, 1937.

(1) (1959) I.L.R., 14 Luck., 130.

been passed in favour of the appellant on the basis of a compromise. Ali Mehdi is also dead and has left two sons and a daughter. On the 29th October, 1936, the sons and daughter of Ali Mehdi put in an application under section 4 of the Encumbered Estates Act and the Collector passed an order under section 6 of the Act on the same date. Subsequently one of the sons of Ali Mehdi named Mohammad Ali, who had been appointed lambardar of the mohal, gave four leases to various persons, the defendants in the present three suits, on behalf of himself and his brother and sister in respect of certain specified plots of land. The lease in favour of Shiam Lal and Ram Lal, respondents to appeal no 446 of 1937, was executed on the 2nd November, 1936. That in favour of Babu Kedar Nath, defendant respondent in appeal no. 447, was executed on the 25th January, 1937, and that in favour of Sardar Sahib Sardar Singar Singh, respondent in appeal no. 448, was executed on the 4th November, 1936. It will thus be seen that all the three leases were executed subsequently to the application under section 4 of the Encumbered Estates Act. All the leases were for twelve years and were given for the purpose of enabling the lessees to dig earth from the leased plots to the depth of twelve feet for the purpose of making bricks. The suits which have given rise to these appeals were brought by the plaintiff appellant for a perpetual injunction restraining the defendants from digging earth from the plots in suit on the allegation that the leases given by Mohammad Ali to the different defendants infringed his rights and were void.

The trial court, the learned Munsif of Haveli, Lucknow, decreed the suits except in respect of plots nos. 37, 41/1 and 50 in suit no. 91. The reason for dismissal of the suit in respect of these plots was that they were found to have been leased out prior to the mortgage in favour of the plaintiff appellant. The

1938

RAI
SAHIB
PANDIT
JAI NARAIN
MISRA
v.
SHIAM
LAL

Ziaul Hasan
and
Yorke, JJ.

1938

RAI
SAHIB
PANDIT
JAI
NARAIN
MISRA
v.
SHIAM
LAL

Z'aul Hasan
and
Yorke, JJ.

learned Munsif also dismissed the claim for damages. The defendants to the three suits filed appeals against the trial court's decrees and the plaintiff filed a cross-objection in respect of the plots about which his suit had been dismissed. The learned Civil Judge who heard the appeals came to the conclusion that the suits were barred by the provisions of section 7 of the Encumbered Estates Act and accordingly decreed the defendants' appeals and dismissed the plaintiffs suits and cross-objections. The plaintiff has therefore brought these appeals against the order of the learned Civil Judge.

The question in all the three cases is whether or not the suits were barred by section 7(1)(b) of the United Provinces Encumbered Estates Act. That section runs as follows:

"No fresh suit or other proceedings other than an appeal or revision against a decree or order, or a process for ejection 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,"

and the order referred to is the order under section 6 passed by the Collector. The question turns on the interpretation to be put on the expression "in respect of any debts" and after giving careful consideration to the points raised by the learned counsel for the parties in their arguments, we have come to the conclusion that the present suits cannot be said to be in respect of any debts. The learned counsel for the respondents wants us to interpret this expression as meaning "having any connexion with any debts"; but we cannot accept this interpretation which appears to us to be too wide. The expression "having connexion with any debt" will embrace a number of suits of various descriptions and would either leave many wrongs without a remedy or would confer on the Special

Judge, appointed under the Act, jurisdiction which it was not intended by the Act to confer on him. Section 3 of the Act lays down that the Special Judge appointed by the local Government shall, subject to the orders of Government as regards the area and extent of his jurisdiction, exercise the powers conferred, and perform the duties imposed, on him by the Act; but the Act nowhere gives the Special Judge jurisdiction to pass a decree for a perpetual injunction under section 54 of the Specific Relief Act. If the plaintiff appellant be entitled to a perpetual injunction the interpretation of section 7(1)(b) of the Encumbered Estates Act contended for by the respondents would deprive him of that right. No doubt the plaintiff's right to the injunction sought for by him arises on account of the fact that he holds mortgages of the land in his favour but the suits brought by him cannot in our opinion be said to be in respect of his debt. A representative suit under section 53 of the Transfer of Property Act also arises on account of a debt but in the case of *Nisar Khan v. Abdul Hameed Khan* (1) a Bench of this Court held that such a suit is not a suit in respect of any public or private debt and cannot be stayed under section 7 of the Encumbered Estates Act. Exception was taken to this decision by the learned counsel for the respondents on various grounds but after considering the points urged by him, we are of opinion that the point was rightly decided in the case referred to.

It was argued that every matter which the Special Judge is called upon to decide must be deemed to be in respect of a debt and that as the Special Judge in the present case will have to decide whether or not the plots of land which are subject to the leases in question will be liable to be attached and sold for recovery of debts due from the applicants under section 4, the substance of the plaintiff's suit will be decided by the Special Judge and therefore no other court has jurisdiction

1938

 RAI
 SAHIB
 PANDIT
 JAI
 NARAIN
 MISRA
 v.
 SHIAM
 LAL

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 and
 Yorke, JJ.*

(1) (1939) I.L.R., 14 Luck., 150.

1938

RAT
SAHIB
PANDIT
JAI
NARAIN
MISRA
v.
SHIAM
LAL

to decide it; but in the first place, as we have said above, the Special Judge has no jurisdiction to give a decree for a perpetual injunction sought by the plaintiff in these suits, and, in the second, we do not think that the jurisdiction of the Special Judge to decide the validity or otherwise of a transfer bars the jurisdiction of the ordinary civil courts to entertain other suits relating to that transfer.

*Ziaul Hasan
and
Yorko, JJ.*

Reliance was placed on sub-section (4) to section 11 which reads—

“ Any order passed by the Special Judge under this section shall be deemed to be a decree of civil court of competent jurisdiction,”

and it was argued that the lessees in the present case will have to put forward their claims before the Special Judge under sub-section (2) of section 11; but, in the first place, we do not think that sub-section (2) contemplates any claim derived from the applicant under section 4 subsequent to his making his application, the reason being that all such transfers are void under section 7(3) of the Act which provides that after the passing of the order under section 6, the landlord shall not be competent without the sanction of the Collector to make any exchange or gift of, or to sell, mortgage or lease proprietary rights, or any portion of them; and in the second place, the order referred to in sub-section (4) of section 11 obviously means the Special Judge's decision on any claim to the property mentioned in the notice under section 11 brought before him. If no such claim is actually brought, there is nothing for the Special Judge to determine. As in the present case the respondents lessees have not put forward any claim before the Special Judge (nor could they bring such a claim as said above) no order has been or could be passed by the Special Judge to constitute a decree of civil court and to bar the jurisdiction of the ordinary civil court.

It was also argued that no injunction as prayed for by the plaintiff-appellant should be granted to him as his rights under the mortgages in his favour can be extinguished under section 18 of the Act which provides:

“Subject to the right of appeal or revision conferred in Chapter VI, the effect of a decree of the Special Judge under sub-section (7) of section 14 shall be to extinguish the previously existing rights, if any, of the claimant, together with all rights, if any, of mortgage or lien by which the same are secured and, where any decree is given by the Special Judge to substitute for those rights a right to recover the amount of the decree in the manner and to the extent hereinafter prescribed.”

But this is an argument on the merits of the case and has no connexion with the question whether the present suits are barred under section 7 of the Encumbered Estates Act.

We are definitely of opinion that the learned Judge of the lower appellate court was wrong in thinking that the present suits were barred under section 7. We therefore allow these appeals with costs and send back the appeals to the lower appellate court for decision on the merits. The cross-objection of the plaintiff will also be reheard.

Appeals allowed

1938

RAI
SABIB
PANDIT
JAI
NARAI
MISHRA
v.
SHIAM
LAL

Zinnul Hasan
and
Yorke, J.