

MISCELLANEOUS CIVIL

Before Mr. Justice R. L. Yorke

1938
August, 8

LALA GOVIND PRASAD AND OTHERS (CREDITORS-APPLICANTS) v. Mst. MUSTAFA BEGUM AND OTHERS
(OPPOSITE-PARTY)*

Civil Procedure Code (Act V of 1908), section 24—Encumbered Estates Act (25 of 1934), section 14—Two proceedings under Encumbered Estates Act pending in two different courts involving claims under the same mortgage—Transfer and re-transfer of proceedings from one court to another, whether permissible.

Where proceedings under the U. P. Encumbered Estates Act are pending in two different courts and both involve the decision of a claim arising from one and the same mortgage, it is permissible under section 24, of the Code of Civil Procedure, to transfer the disposal of one claim from the court of one Special Judge to another and then to re-transfer the decided case to the file of the former Special Judge after its decision by the latter.

Mr. M. Wasim, for the applicants.

Mr. Habib Ali Khan, for the opposite-party No. 1.

YORKE, J.:—This is an application for transfer under section 24 of the Code of Civil Procedure of suit No. 28 of 1936, from the court of the Special Judge first class, Lucknow, to the court of the Special Judge first class, Sitapur. I note that the application is described at the beginning as an application for transfer of a claim under the Encumbered Estates Act, whereas in the last paragraph but one the prayer is for the transfer of suit No. 28 of 1936, which is apparently the number of the case as a whole.

The applicant Govind Prasad is a mortgagee of Mst. Mustafa Begam and Mst. Gauhar Jafian Begam. Mst. Mustafa Begam has filed an application under the Encumbered Estates Act in Lucknow and has mentioned in her list of debts the applicant's debt under certain mortgage deeds in which she is the owner of the equity

*Civil Miscellaneous Application No. 57 of 1938, for transfer of a case pending in the court of the Special Judge, of first class, Lucknow.

of redemption to the extent of a 1/7 share. Similarly Mst. Gauhar Jahan Begam has filed an application under the Encumbered Estate Act in the Sitapur district and has mentioned in the list of debts the same mortgage deeds in which she also is interested as a mortgagor to the extent of a 1/7th share. We are not concerned with the other 5/7th. The case of Mst. Mustafa Begam under the Act in Lucknow has progressed much farther than the case of Gauhar Jahan Begam in Sitapur, in which it is stated that the 24th February, 1938, was fixed for the settlement of issues. It is to be remembered that each of these claims under the Encumbered Estates Act becomes for practical purposes a separate suit in which ultimately the Special Judge concerned will, under sub-clause 7 of section 14, pass a simple money decree for such amount as he finds due to the claimant. We have therefore clearly established in the present case and doubtless this must be the case in numerous such proceedings all over the country, that whereas a redemption suit or a suit on foot of a mortgage could have been filed in one and only one place, two suits to decide the amount due to the creditor claimant under one and the same mortgage or mortgages are to be decided in different districts. Theoretically it will be necessary to produce the same evidence twice over, although it is suggested that by making Mst. Gauhar Jahan Begam a party to the proceeding in Lucknow, the decision of the Special Judge of Lucknow will effectively decide the claim in regard to the other mortgagor in Sitapur. Even this is a point on which it would be unsafe to dogmatize at the present moment because the Special Judge has in each case under section 14(2) of the Act to determine the amount, if any, due from the landlord to the claimant on the date of the application under section 4 which *prima facie* the Special Judge of Lucknow might not have jurisdiction to do.

On the other hand the results of transferring a suit under this Act from one Special Judge to another are

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also not free from doubt. The Special Judge to whom the transfer is sought to be made will have no power to do anything in the matter after he has come to a decision and passed a simple money decree provided for by section 7, and if this proceeding were to stay on the file of that Special Judge, it would not be possible for the Special Judge of Lucknow to comply with the provisions of section 16 of the Act, with regard to the ranking of the debts and section 19 of the Act and with regard to the sending of the decrees granted under sub-section (7) of section 14 to the Collector for execution. It is possible that there may be other complications which have not been foreseen in the arguing of this application. It seems to me, however, that this particular difficulty can be met by a further direction in the order of transfer that when the court to which the proceeding is transferred passes a decree, it shall send the record of that particular proceeding back to the Special Judge of Lucknow to be dealt with according to the spirit, if not according to the strict letter of the Act.

Learned counsel for the applicant lays great stress on the difficulties which will befall his client if the case arising out of the claim of the applicant against Mst. Mustafa Begam pending in Lucknow is not transferred to Sitapur. First he will have to file both in Lucknow and Sitapur the originals of his accounts covering a period from 1903 to 1938, of which it is clearly impossible to file certified copies, secondly he will have to produce the same set of witnesses twice over in Lucknow and Sitapur, and thirdly there will be a completely unnecessary duplication of proceedings entirely contrary to the spirit of the law, which on principle is opposed to multiplicity of suits arising out of the same matter. On this score it is clear that the applicant has a very strong case.

On behalf of the opposite-party it is contended that the provisions of section 24, C. P. C., are not wide enough to cover the present application. That section

lays down that "on the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage :

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same, or

(b) (i) withdraw any suit, appeal or other proceeding pending in any court subordinate to it, and

(ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the court from which it was withdrawn."

Learned counsel contends that this transfer, if made, will not amount to the transfer of any suit or proceeding but will amount to a dissection of a suit. It might equally be said that the Encumbered Estates Act itself has in cases of this kind resulted in the dissection of a mortgage suit. It appears to me that the phrase "other proceeding" contained in section 24 is sufficiently general to cover the case of the transfer of the disposal of one claim from the court of one Special Judge to another. It further appears to me that the provision relating to the retransfer contained in sub-clause (iii) of the section is sufficient to cover the retransfer of the decided case to the file of the Special Judge, Lucknow, after its decision at Sitapur.

Learned counsel for the opposite-party further contends that this application for transfer is really being made on the ground of the convenience of the applicant and nothing more. I am not satisfied on that point, and it seems to me that even if that is a major point in the case of the applicant, it is not one which can be neglected in the present case. The opposite-party will be put to little inconvenience comparatively speaking while the

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result of the transfer will be that the claim against the two encumbered estates applicants under one and the same set of mortgages will be decided in a single court before which the whole of the evidence both documentary and oral can be produced with comparatively little difficulty. It may be that there may be a few months further delay in the final disposal of Mst. Mustafa Begam's application at Lucknow, but I am not disposed to think that that is really a very serious consideration.

Taking all that has been put before me into consideration, I am satisfied that in the interest of justice and the proper disposal of questions arising with reference to the claims of the applicant under these particular mortgages, it is necessary to grant the prayer of the applicant.

I accordingly order under section 24, of the Code of Civil Procedure that the applicant's claim against Mst. Mustafa Begam under the mortgages mentioned in list A of this application be transferred to the court of the Special Judge, First Class, of Sitapur, for disposal under section 14, of the Encumbered Estates Act, and that after decision of the said claim, the case be retransferred to the court of the Special Judge, First Class, Lucknow, for further disposal under the Act. No order as to costs of this application.

Application allowed