

THE  
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MISCELLANEOUS CIVIL

Before Mr. Justice Ziaul Hasan and Mr. Justice  
A. H. deB. Hamilton

LALMOHAN AND OTHERS (APPLICANTS) v. RAM CHANDAR  
AND ANOTHER (OPPOSITE PARTY)\*

1938

January, 10

*United Provinces Encumbered Estates Act (XXV of 1934), sections 6 and 7—Civil Procedure Code (Act V of 1908), order XXXIX, rule 7—Encumbered Estates Act applies only to United Provinces—Execution of decree in other provinces, if can be stayed under section 7—Court, if has jurisdiction to stay proceedings in another province or issue injunction against a person residing beyond its jurisdiction—Order staying sale of property in execution of decree, whether “an order for preservation of property”—Order XXXIX, rule 7, Civil Procedure Code, if applies to proceedings under the Encumbered Estates Act.*

Section 6 of the United Provinces Encumbered Estates Act provides for stay of proceedings in Civil and Revenue courts in the United Provinces only on an order made by the Collector under section 6 and the preamble of the Act also shows that the Act was passed to provide for the relief of encumbered estates in the United Provinces. A court is, therefore, not justified in staying proceedings in a court not situated in this province or to issue an injunction against a party residing outside the jurisdiction of that court not to execute his decree in a court in another province.

An order staying sale of property in execution of a decree is an order for “preservation” of that property. Under order XXXIX, rule 7(a), the property sought to be preserved must be the subject-matter of a suit but a suit under the Encumbered

\*Civil Miscellaneous Application No. 808 of 1937, filed in Miscellaneous Appeal No. 79 of 1937, against the decree of Babu Bhagvat Prasad, Special Judge of 1st Grade, Unao, dated the 3rd of September, 1937.

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Estates Act does not relate to any property but to a debt owing by the applicants to the opposite-party and so order XXXIX, rule 7 of the Code of Civil Procedure has no application.

Mr. *L. S. Misra*, for the applicant.

Mr. *Radha Krishna*, for the opposite party.

ZIAUL HASAN AND HAMILTON, JJ.—This is an application asking this Court to stay proceedings in execution case no. 319 of 1937 pending in the Court of the Munsif, Purelia, district Manbhum, Bihar.

The facts are that the applicants applied to the Collector under section 4 of the United Provinces Encumbered Estates Act and the application was in due course forwarded to the Special Judge for disposal. One of the creditors of the applicant named in his application was the Chota Nagpur Banking Association, Purelia, Bihar, which held some decrees against the applicants. As the said Banking Association (henceforward to be called the opposite-party), was proceeding in execution against some property of the applicants situated in the province of Bihar, the applicants applied to the Special Judge, Unao, for the issue of an injunction prohibiting the opposite-party from executing its decree in the Court of the Munsif of Purelia. The Special Judge passed an interim order of stay but on objections raised by the opposite-party he withdrew that order. The applicants have filed an appeal against this order of the Special Judge in this Court and by the present application they pray that proceedings in the Purelia court be stayed pending decision of their appeal by this Court.

We have heard the learned counsel for the applicants at length but are not prepared to grant the prayer contained in this application or to issue an injunction, as orally requested by the learned counsel, against the opposite-party, prohibiting him from executing his decree in the Purelia court.

It was conceded by the learned counsel that so far as the provisions of the United Provinces Encumbered Estates Act go they do not help him. In fact section 6 of the Act provides for stay of proceedings in civil and revenue courts in the United Provinces only on an order made by the Collector under section 6 and the preamble of the Act also shows that the Act was passed to provide for the relief of encumbered estates *in the United Provinces*. The learned counsel however placed reliance on order XXXIX, rule 7 of the Code of Civil Procedure and argued that as the provisions of the Code of Civil Procedure have, by rules framed under the United Provinces Encumbered Estates Act, been made applicable to proceedings under the Act, an order may be passed under rule 7(a) for "preservation" of the applicants' property. We do not think that an order staying sale of property in execution of a decree is an order for "preservation" of that property. Moreover, under order XXXIX, rule 7(a), the property sought to be preserved must be the subject-matter of a suit but the suit between the applicant and the opposite-party in the Court of the Special Judge does not relate to any property but to a debt owing by the applicants to the opposite-party. Order XXXIX, rule 7 of the Code of Civil Procedure has therefore no application to the facts of the present case. Apart from the law invoked on behalf of the applicants, we do not think we will be justified in staying proceedings in a court not situated in this province or to issue an injunction against a party residing outside the jurisdiction of this Court not to execute his decree in a court in Bihar.

The application is therefore dismissed with costs.

*Application dismissed.*

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Hamilton,  
J.J.*