

appellants. There is nothing improbable in the suggestion made by the appellants that the first information report made by Nagai was made at the instance of this Aulad Ali. The statement of Nagai in the first information report implicating the appellants as the persons who assaulted him is open to great suspicion.

In my opinion the guilt of the appellants is not established by evidence, which can be said to be free from all reasonable doubt. After hearing the learned counsel for the appellants and the Assistant Government Advocate I hold that the case is not free from suspicion. I give the appellants the benefit of doubt and acquit them of the offence of which they have been convicted.

I, therefore, set aside the conviction and sentence passed upon the appellants, acquit them of the offence charged and direct that they be released at once.

All the three appeals are allowed.

*Appeals allowed.*

### APPELLATE CIVIL

*Before Mr. Justice G. H. Thomas, Chief Judge and Mr. Justice Radha Krishna Srivastava*

RAJA SHATRANJE JI (CLAIMANT-APPELLANT) *v.* DEPUTY COMMISSIONER, KHERI, MANAGER, COURT OF WARDS, MAHEWA ESTATE (APPLICANT-RESPONDENT)\*

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*January, 16*

*United Provinces Encumbered Estates Act (XXV of 1934), sections 4, 14 and 49—Application under section 4—Landlord in application under section 4 cannot omit property inherited from another and the debt due from that property—Decree to be passed by Special Judge—Power of special Judge to put conditions in the decree as to how and from what property money is to be realised.*

When an application is made under section 4 of the Encumbered Estates Act by a landlord then a claim for all debts due

\*First Civil Appeal No. 43 of 1937, against the order of Mr. Mahabir Prasad Verma, Special Judge, First Grade, Kheri, dated the 22nd January, 1937.

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from him or his immovable property must be put forward and adjudicated upon. It is not open to a landlord to omit from his application the property which he had inherited from another person and also the debt due from that property. Where an application is made under section 4 as distinct from section 49 of the Act, which is confined to the liquidation of inherited debts only, the Special Judge is bound to take into consideration all debts due from the applicant or from the immovable properties owned by him.

Under section 14 in the matter of determining the amount due the Special Judge is vested with the same powers and has to follow the same principles which an ordinary court has when a suit would have been maintained but for the provisions of the United Provinces Encumbered Estates Act, and further the only jurisdiction of the Special Judges to pass a simple money decree for the amount determined by him. He has, while passing a decree under section 14, no jurisdiction to put any conditions or limitations upon how or from which property that money is to be realised. He cannot, therefore, put a condition that the actual liability of the landlord will be limited to the extent of the transfer value of the mortgaged property which might be fixed by the Collector.

Messrs. *M. Wasim* and *Ali Hasan*, for the Appellant.

Mr. *H. S. Gupta, Rai Bahadur*, for the Respondent.

THOMAS, C.J. and RADHA KRISHNA, J.:—This is a creditor's appeal against a decree passed by the Special Judge, First Grade, District Kheri, under section 14 of the United Provinces Encumbered Estates Act. The decree for the amount claimed by the appellant was passed in the following terms:

"I decree the claim for Rs.2,09,087 with future and *pendenti lite* interest at Rs.3-12 per cent. per annum till payment. The actual liability of the landlord will, however, be limited to the extent of the transfer value of the mortgaged property which might be fixed by the Collector. The claimant will get costs from the applicant on contested scale on Rs.25,000. The applicant will bear his own costs."

The appellant's contention is that in passing a decree under section 14 of the United Provinces Encumbered Estates Act it was not open to the learned Special Judge

to put down a limitation to the effect that the actual liability of the landlord will be limited to the extent of the transfer value of the mortgaged property.

The facts giving rise to this appeal are that on the 11th October, 1927, one Sitla Bakhsh and his son Thakur Bankata Singh, minor under the guardianship of his mother Thakurain Champa Kuar, executed a possessory mortgage-deed for a sum of Rs.1,10,000, in favour of Maharaj Kunwar Sardar Singh. The mortgage was for ten years. It was stipulated that if the mortgagors failed to redeem after the period fixed then the mortgagee was competent to have the mortgaged *haqiqat* foreclosed in lieu of his entire demand. The details of consideration are given in the deed as well as in the judgment of the lower court.

The property covered by the deed was 17 biswas and  $7\frac{1}{2}$  biswansis of village Mathnan, comprising the entire mahal of Uma Shankar Singh.

On the 23rd December, 1927, the mortgagors transferred the equity of redemption in favour of Rani Bhuvaneshwari Devi, the second wife of Thakur Jai Indra Bahadur Singh. the taluqdar of the Mahewa estate, which is under the superintendence of the Court of Wards. In June, 1933, the said Rani died and Thakur Jai Indra Bahadur Singh succeeded to her properties.

On the 30th September, 1935, the Deputy Commissioner as Manager of the Court of Wards, Mahewa estate, applied under section 4 of the United Provinces Encumbered Estates Act praying for the benefit of the provisions of that Act. The Court of Wards omitted to mention the mortgage debt mentioned above and the property mortgaged thereunder in its application under section 4 of the Act. On the 4th March, 1936, the appellant as the transferee from the mortgagee put in a claim under section 10 of the Act giving the particulars of the mortgage debt due to him and the property

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mortgaged thereunder. A decree for a total amount of Rs.2,09,087 was claimed. The Court of Wards on the 17th November, 1936, filed a reply to the claim of the appellant. The particular plea with which we are concerned in this appeal was that Rani Bhuvaneshwari Devi's liability was confined to the value of the mortgaged property and that the said value came to Rs.24,164-12-3 at a fair market rate. It was further stated that the petitioner had no objection to village Mathnan being treated as the property of Thakur Jai Indra Bahadur Singh subject to the condition that neither Thakur Jai Indra Bahadur Singh personally, nor any of his property was liable for the debt. The learned counsel for the Court of Wards made an oral statement also practically to the same effect.

The trial court passed a decree in terms which have been set forth above and this is an appeal against that decree.

The United Provinces Encumbered Estates Act was passed to provide for a relief of the encumbered estates in the United Provinces. The word "debt" is defined in section 2(a) as including any pecuniary liability excepting a liability for unliquidated damages. The debt may be a private debt or a public debt, which are again defined in clauses (b) and (c). Under section 4 of the Act an application can be made by any landlord who is personally subject to or whose immovable property or any part thereof is encumbered with private debts. On the death of Rani Bhuvaneshwari Devi the immovable property covered by the mortgage and belonging to her came to be owned by Thakur Jai Indra Bahadur Singh. In the application the Court of Wards had to state the amount of all private debts as also public debts, whether decreed or undecreed and whether due from the ward personally or from the immovable property owned by him.

Under section 8 the Special Judge is authorised to call upon the applicant to submit to him within a

period to be fixed by him a written statement containing so far as may be practicable—

(a) full particulars respecting the public and private debts to which the landlord is subject or with which his immovable property or any part thereof is encumbered;

(b) the nature and extent of the landlord's proprietary rights in land;

(c) the nature and extent of the landlord's property which is liable to attachment and sale under section 60 of the Code of Civil Procedure (Act V of 1908), exclusive of his proprietary rights in land, and

(d) the names and addresses of his creditors, so far as they are known to, or can be ascertained by, the applicant.

Under section 9 the Special Judge is bound to publish a notice in English in the Gazette calling upon all *persons having claims* in respect of private debts both decreed and undecreed against the person or the property of the landlord by or on whose behalf the application has been made under section 4 to present to the Special Judge, within three months from the date of the publication of the notice, a written statement of their claims.

Section 10 provides for the particulars which a claimant referred to in section 8 is required to set forth in his written statement and section 11(2) lays down that any person having any claim to the property mentioned in the notice published in accordance with clause (1) of section 11 may make an application to the Special Judge stating his claim and the Special Judge shall determine whether the property as specified in the claim, or any part thereof, is liable to attachment, sale or mortgage in satisfaction of the debts of the applicant, and clause (4) lays down that the order passed by the Special Judge under this section shall be deemed to

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be a decree of a Civil Court of competent jurisdiction.

Section 13 lays down the penalty against a creditor claimant who fails to make his claim in the manner required by the Act.

Thus it is clear that when an application is made under section 4 by a landlord then a claim for all debts due from him or his immovable property must be put forward and adjudicated upon.

The learned Government Advocate, who appeared for the respondents, argued that it was open to a landlord to omit from his application the property which he had inherited from another person and also the debt due from that property. In our opinion it is not open to a landlord to escape from the effect of the laws of inheritance in view of the provisions of the Act which we have set forth above. We are of opinion that where an application is made under section 4 as distinct from section 49 of the Act, which is confined to the liquidation of inherited debts only, the Special Judge is bound to take into consideration all debts due from the applicant or from the immovable properties owned by him.

After an application to obtain the benefit of the United Provinces Encumbered Estates Act has been made, the procedure for the disposal of that application is divided into two distinct and separate parts. Chapter IV lays down the manner of proof of debts and the procedure of Special Judge. Chapter V lays down the procedure of execution of decrees and liquidation of debts. The ascertainment and determination of debts due from the landlord is thus reserved for the Special Judge and the Collector has been given exclusive jurisdiction as to the liquidation of debts found due by the Special Judge. By section 14, with which we are concerned in this appeal, the Special Judge is directed by an order in writing to fix a date for enquiring into the claims made in pursuance of the notice published in accordance with section 9. By clause (2) of that section the Special Judge is directed to determine the

amount, if any, due from the landlord to the claimant on the date of the application under section 4, and by clause (4) of that section in examining each claim the Special Judge has and exercises all the powers of the court in which a suit for the recovery of the money due would lie and has to decide the question in issue on the same principles as those on which such court would decide them, subject to certain provisions relating to the amount of interest to be allowed. As soon as the amount due for principal and interest has been determined the Special Judge, under clause (7) of section 14 is directed to pass a simple money decree for such amount together with costs which he may allow in respect of proceedings in his court or of proceedings in any Civil Court stayed under the provisions of the Act together with *pendente lite* and future interest at a rate not greater than the rate specified in section 27. It may be noticed here that under section 14 in the matter of determining the amount due the Special Judge is vested with the same powers and has to follow the same principles which an ordinary court has when a suit would have been maintained but for the provisions of the United Provinces Encumbered Estates Act, and further the only jurisdiction of the Special Judge is to pass a simple money decree for the amount determined by him. He has, while passing a decree under section 14, no jurisdiction to put any conditions or limitations upon how or from which property that money is to be realised. Our view is strengthened by the language of section 18 which lays down that the effect of a decree by a Special Judge under 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.

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In the present case the learned Special Judge has in passing a decree for the amount due to the appellant put a condition that the actual liability of the landlord will be limited to the extent of the transfer value of the mortgaged property which might be fixed by the Collector. In our opinion in doing so the learned Special Judge has exceeded the jurisdiction vested in him by law.

Our attention was drawn to section 16 of the United Provinces Encumbered Estates Act which directs the Special Judge to rank all debts for priority. It is argued that under clause (4) of that section in mentioning "Other secured debts" the Special Judge is authorized to mention the debt due to the appellant as also the fact that it shall be realised only from the mortgaged property and no other. Our attention is also drawn to the proviso to section 49 as added by the United Provinces Encumbered Estates (Amendment) Act, 1939. The learned Counsel for the appellant urges that it is not open to the Special Judge to incorporate in the ranking order under section 16 any such condition as is contended for by the learned Government Advocate. He further contends that the proviso to section 49 is limited in its application to cases where an application was originally made under section 49 and has no application to a case where an application was initially made under section 4 of the Act.

We refrain from expressing any opinion on these two contentions raised by the learned Government Advocate, *firstly* because in our opinion the stage for passing a ranking order under section 16 has not yet arisen and *secondly* because we think that the proviso at the end of section 49 is applicable to the stage of liquidation which is reserved by Chapter V for the Collector and with which the Special Judge has nothing to do.

Lastly, the appellant's learned counsel challenged the order of costs passed by the lower court and further

claimed future interest at a higher rate than allowed by the lower court. Under section 14(7) the question of costs is entirely within the discretion of the Special Judge. The only amount in dispute was Rs.25,000 between the parties and on this amount costs were allowed to the appellant on contested scale. We find no reason to interfere with the order of the lower court in respect of costs.

As regards interest it is admitted that  $4\frac{1}{4}$  per cent. is the maximum rate that can be allowed by the Special Judge on the amount determined as due to the claimant. Under clause (7) of section 14 the Special Judge has discretion to allow future interest at a rate not greater than that rate. The learned Special Judge allowed  $3\frac{1}{4}$  per cent. in the exercise of his discretion and we see no reason in the present case to interfere with it. The contentions of the appellant in respect of costs and future interest are disallowed.

In the result we allow the appeal and order that the words, "The actual liability of the landlord will, however, be limited to the extent of the transfer value of the mortgaged property which might be fixed by the Collector," will be deleted from the decree. The rest of the decree will stand.

As regards costs of this Court, we order that the appellant will get costs on Rs.24,164-12-3, which according to the respondents, is the market value of the property to which the claim of the appellant should have been confined; and the respondents will get costs on Rs.2,570 which was the valuation of the relief covered by grounds Nos. 4 and 5 disallowed by this Court. The order of the lower court as regards costs of that court will stand.

*Appeal partly allowed.*

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