

## APPELLATE CIVIL

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

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November,  
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HAR GOVIND PRASAD (CLAIMANT-APPELLANT) *v.* Mst. MAHRAJ KUAR AND OTHERS (CREDITORS-RESPONDENTS)\*

*U. P. Regulation of Sales Act (XXVI of 1934), section 5—Oudh Laws Act (XVIII of 1876), section 20—Civil Procedure Code (Act V of 1908), section 68—Execution of decree transferred to Collector under section 68, Civil Procedure Code—Ancestral land—Transfer of property by Collector under Regulation of Sales Act—Section 20, Oudh Laws Act, whether applicable to such transfer.*

Section 20 of the Oudh Laws Act is applicable to sales or transfers of land effected under the provisions of section 5 of the Regulation of Sales Act. There is no repugnancy between the provisions requiring permission of the Local Government to a sale of ancestral property and the provisions whereby the Deputy Commissioner executes a decree under the U. P. Regulation of Sales Act. It is true that it does not appear at what stage the permission of the Local Government is to be obtained, but it would seem to be obvious that permission must be taken after the valuation has been carried out. *Rajdei, Mst. and another v. Chhama Nath (1)*, and *Raghuraj Singh v. Sheo Shankar Lal and others (2)*, referred to.

Where, therefore, the Deputy Commissioner in execution of a decree sent to him under section 68, Civil Procedure Code, transferred certain property to a person under the provisions of section 5 read with sections 3 and 4 of the U. P. Regulation of Sales Act, but the sanction of the Local Government for the sale had not been obtained as required by section 20 of the Oudh Laws Act, the transfer is without effect and confers no title on the transferee.

Messrs. *M. Wasim, Durga Dayal and Ali Hasan*, for the appellants.

Messrs. *Haider Husain and Moazzam Ali*, for the respondents.

\*First Civil Appeal no. 8 of 1938, against the order of M. Yaqub Ali Rizvi, Esq., Additional Special Judge of 1st Grade, Bara Banki, dated the 15th December, 1937.

(1) (1937) R.D., 269.

(2) (1937) O.W.N., 1167.

ZIAUL HASAN and YORKE, JJ.:—This is a first civil appeal from the decree of the Additional Special Judge, First Grade, Bara Banki, dismissing the claim of the claimant appellant under the provisions of section 11 of the Encumbered Estates Act. This is a claim with reference to a 16 annas zamindari share of mahal Gur Bakhsh Singh, village Baddupur, pargana Fatehpur, district Bara Banki. This property was mortgaged in favour of one Jagannath on the 10th February, 1919. On the 1st May, 1921, it was again mortgaged to Hargobind Prasad the present claimant. It appears that both Hargobind Prasad and Jagannath filed suits on foot of their mortgages, the latter making Hargobind Prasad a party to his suit. Hargobind Prasad got a preliminary decree on the 19th July, 1929, and a final decree for Rs.31,125 on the 25th October, 1930. Jagannath got a decree on the 27th August, 1932. The final decree of Hargobind Prasad was transferred to the Deputy Commissioner under the provisions of section 68 of the Code of Civil Procedure on the 17th November, 1933. Proceedings were still pending in the Deputy Commissioner's court when Mst. Mahraj Kuar as owner of the property filed an application under section 4 of the Encumbered Estates Act. In due course Hargobind Prasad in whose favour the Deputy Commissioner had made an order of transfer of this very property on the 22nd August, 1935, under the provisions of section 5 read with sections 3 and 4 of the U. P. Regulation of Sales Act (Act XXVI of 1934), filed a petition under section 11 of the Encumbered Estates Act, because Mst. Mahraj Kuar had in her written statement under section 8(1)(b) of the latter Act, included this property in the statement of the nature and extent of her proprietary rights in land. This transfer to Hargobind Prasad had been made at the figure of Rs.40,093-2-11. Under section 3 of the Regulation of Sales Act an appeal is provided to the Board of Revenue from the decision of the Collector

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fixing the net profits or the multiple of such net profits under sub-section (2). Mst. Mahraj Kuar filed a review application which was dismissed on the 24th October, 1935. She either subsequently or contemporaneously filed an appeal which was dismissed by the Board of Revenue on the 24th August, 1936. Meanwhile on the 2nd November, 1935, Hargobind Prasad got a sale certificate, and on the 28th February, 1936, he got this sale certificate registered. The procedure in regard to these matters has since been altered and a regular sale-deed is now executed by the Collector or Deputy Commissioner when an order of transfer is made under section 5 of the Regulation of Sales Act. That procedure, however, was not in force at this time.

Mst. Mahraj Kuar had also on the 3rd September, 1935, applied for amendment of the final decree for sale in favour of Hargobind Prasad under the provisions of the U. P. Agriculturists' Relief Act, but that application was dismissed by the Subordinate Judge on the 18th November, 1935, and an appeal from this order was dismissed by the District Judge on the 26th September, 1936. The Subordinate Judge held that the sale was complete with the passing of the order of transfer under section 5 of the Regulation of Sales Act, and that in consequence the decree had been satisfied and could not be amended. The District Judge did not agree with the Subordinate Judge being of opinion that the transfer order of the 22nd August, 1935, did not effect a transfer of the property which was only effected by the issue of the sale certificate on the 2nd November, 1935, but he was of opinion that the decree could not be amended unless and until the transfer made on the 2nd November, 1935, was set aside. As the civil court had no jurisdiction to interfere and set aside the sale made by the Collector, he was of opinion that even if he set aside the order of the Subordinate Judge, it would not help the appellant unless and until the sale was set aside.

The contention of the claimant Hargobind Prasad under section 11 of the Encumbered Estates Act was that by virtue of the transfer of the 22nd August, 1935, he had become sole proprietor of the property in question, that Mst. Mahraj Kuar applicant under the Encumbered Estates Act had no title to the property, and was therefore not entitled to show it as her property in the statement filed under section 8. He further contended that Mst. Mahraj Kuar was estopped from denying his title in view of the decisions of the revenue courts and that she could not in the Special Judge's court challenge the transfer made by the Deputy Commissioner. The defence put forward was that the title of the claimant objector had never been perfected, that before he obtained his sale certificate the application under the Encumbered Estates Act had been made, and therefore the proceedings of the revenue court came within the mischief of section 7 of the Encumbered Estates Act, and were *ultra vires*. It was also contended that the transfer under section 4 of the Regulation of Sales Act conferred no title on Hargobind Prasad because the provisions of section 20 of the Oudh Laws Act had not been complied with. That section provides as follows:

"So much of section 60 of the Code of Civil Procedure, 1908, as renders land liable to sale in execution of a decree shall be subject to the following restrictions:

"No ancestral land shall be sold in satisfaction of a decree without the permission of the Lieutenant-Governor". For Lieutenant-Governor we may now read the Local Government.

A number of issues were framed. On issue 4(a) "Was the permission of the Local Government necessary to complete the transfer under the Regulation of Sales Act", the learned Additional Special Judge held that the permission of the Local Government was necessary to complete the sale or transfer in favour of the decree-holder Hargobind Prasad as required by section 20 of the Oudh Laws Act. On issue 4(b), "if so, can the transfer be questioned by the applicant-debtor in

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this Court," he held that the applicant-debtor could question and challenge the sale or transfer, and he held that the order of the 22nd August, 1935, was *ultra vires* and a mere nullity. On issue 3 he held that the principle of *res judicata* did not apply so as to bar the applicant-debtor from denying Hargobind Prasad's title. On issue 2 he held that the order of the 22nd August, 1935, being *ultra vires*, the transfer thereby and the subsequent grant of the sale certificate on the 2nd November, 1935, did not confer any title on Hargobind Prasad. He accordingly held on issue 1 that the property in question was liable to attachment, mortgage, or sale in satisfaction of the debts of Mst. Mahraj Kuar applicant under the Encumbered Estates Act.

A number of points have been raised in the grounds of appeal, but only two questions have been argued before us. It is contended in the first place that section 20 of the Oudh Laws Act cannot be held to be applicable to sales or transfers of land effected under the provisions of section 5 of the Regulation of Sales Act. The second point is in answer to a contention put forward on behalf of the respondent that there was in any case no effective sale resulting from the order of the Deputy Commissioner of the 22nd August, 1935, and that the transfer having really been effected only by the issue of sale certificate on the 2nd November, 1935, was null and void, as falling within the mischief of section 7 of the Encumbered Estates Act, because that sale or transfer was effected subsequent to the application under the Act.

The gist of the contention of learned counsel in regard to section 20 of the Oudh Laws Act is that the procedure prescribed in sections 3, 4 and 5 of the U. P. Regulation of Sales Act leaves no scope whatsoever for the permission of the Local Government, and it must therefore be held that this Act by implication repeals section 20 of the Oudh Laws Act. He observes that the object of section 20 was to protect

owners of ancestral land from sales of their property by public auction for grossly inadequate prices, and that the Regulation of Sales Act has the same object in view, but substitutes a new procedure. He further observes that the provisions of this Act are clearly mandatory and must be presumed to be all embracing. Learned counsel has referred us to Halsbury's Laws of England, Second Edition, Vol. 31, paragraph 684 at page 524 and paragraph 759 at page 561. Stated shortly he contends that the provisions of the U. P. Regulation of Sales Act are so inconsistent with the provisions of section 20 of the Oudh Laws Act that they must be regarded as by implication repealing that section. For this proposition he has to contend that the provisions of the Oudh Laws Act are plainly repugnant to those of the U. P. Regulation of Sales Act. It will be useful to quote some passage from Halsbury's Laws of England. In paragraph 684, page 524, we find it stated :

"The common law gives place to statute law, and an older statute to one more recent, where the language and the objects of the latter are inconsistent with those of the former. Even though the words of a later statute taken strictly and grammatically repeal a former statute, they ought not to be so construed where it is clear that the intention of Parliament is that they should not be so construed; and no statute operates to repeal or modify the existing law, whether common or statutory, or to take away rights which existed before the statute was passed, especially if it involves a drastic departure from the principles of law existing when it was passed, unless the intention is clearly expressed or necessarily implied. *Prima facie* a later statute, which is supplementary to and intended to be read with an earlier statute dealing with the same matter, is not of wider application than the earlier statute."

Paragraph 685 runs as follows :

"Affirmative statutes do not repeal precedent affirmative statutes unless they are contrary or repugnant to them; for without negative or repealing words, expressed or implied, the intention of Parliament to alter what already existed is not apparent, and it is always to be presumed that there was no such intention."

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In paragraph 759 at page 561 in the Chapter dealing with "Repeals" it is stated:

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"A statute is repealed by implication in the following cases, namely:

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(1) If its provisions are plainly repugnant to those of a subsequent statute;

(2) If the two standing together would lead to wholly absurd consequences;

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(3) If the entire subject-matter of the first is taken away by the second.

Repeal by implication, which, whenever it occurs, is the consequence of inconsistent legislation, is never to be favoured, and should not be imputed to Parliament. It is not to be implied from a mere recital, or schedule, or from non-user, and the mere omission in a later statute of an exception in an earlier one cannot by itself have the result of a substantive affirmation. It is necessary to see how the law would have stood without the original exception and the terms in which the repealed sections are re-enacted."

Applying the principles set forth in these paragraphs we find ourselves unable to hold that there is any repugnancy between the provision requiring permission of the Local Government to a sale of ancestral property and the provisions whereby the Deputy Commissioner executes a decree under the U. P. Regulation of Sales Act. It is true that it does not appear at what stage the permission of the Local Government is to be obtained, but it would seem to be obvious that permission must be taken after the valuation has been carried out. That is the view which has been taken by the learned members of the Board of Revenue of this Province, in *Rajdei, Mst. and another v. Chhama Nath* (1), and again in *Raghuraj Singh v. Sheo Shankar Lal and others* (2). Learned counsel urges that the view of the learned members of the Board of Revenue, which is of course not binding on this Court, is also unsound, but we are not prepared to accept that view. It was contended in the second of these two cases that

(1) (1937) R.D., 269.

(2) (1937) O.W.N., 1167.

section 20 of the Oudh Laws Act was passed in order to prevent properties from being sold in the public auction at an absurdly low price, and this consideration could not apply to the transfer of the land at an inflated rate fixed by the Government, but, as the learned Junior Member remarked, "Government are entitled to be assured that the valuation has been properly carried out and their sanction has to be applied for before the land can be sold." We could not hold that his view is unsound unless we were first prepared to hold that the provisions of the Regulation of Sales Act are repugnant to those of the Oudh Laws Act. The provisions of the earlier Act are capable of being combined with the provisions of the latter Act, and the mere fact that the provisions of section 5 of the Regulation of Sales Act have a mandatory tone does not seem to us to exclude the application of section 20 of the Oudh Laws Act. We are clearly of opinion that the permission of the Local Government was necessary to complete the sale or transfer in favour of Hargobind Prasad, and it was rightly held by the learned Additional Special Judge that as that permission had not been obtained, the transfer of the 22nd August, 1935, was without effect and did not confer a title on Hargobind Prasad claimant objector.

As regards the second point raised on behalf of the respondent, namely that the transfer was only effected by the issue of sale certificate on the 2nd November, 1935, and that that transfer was subsequent to the application under the Encumbered Estates Act made on the 12th October, 1935, and the order under section 6 of that Act was passed on the same day, and was therefore to be treated as null and void, learned Counsel has referred us to a case reported in *Sheo Baran Singh v. Ranbir Prasad* (1), in which it was held that the order of transfer preceding the application under the Encumbered Estates Act did not constitute a transfer, and a sale deed and *dakhl* which took place after the

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application under the Encumbered Estates Act were to be set aside in view of the provisions of section 7 of the Encumbered Estates Act, and therefore the decree and the debt which were intended to be satisfied by that transfer continued to subsist. In that particular case the order of transfer was differently worded from the present case and something might have been founded on that fact. We are however of opinion that this is a point which does not arise for decision in the present case in view of our finding on the first point argued before us, and we therefore make no pronouncement upon it.

In view of our finding on the first point argued we hold that the claim of Hargobind Prasad under section 11 of the Encumbered Estates Act was rightly dismissed. There is no force in the present appeal which accordingly fails and is dismissed with costs.

*Appeal dismissed.*

## REVISIONAL CIVIL

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

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LYALLPUR BANK, LIMITED (IN LIQUIDATION) THROUGH ITS OFFICIAL LIQUIDATORS (APPLICANT) v. RAM JI DAS, DECEASED, THROUGH HIS SONS KARAM CHAND AND OTHERS (OPPOSITE-PARTY)\*

*Civil Procedure Code (Act V of 1908), sections 73 and 115—Companies Act (XIX of 1930), section 186—Rateable distribution—Order under section 186, Indian Companies Act, whether decree—Person holding order under section 186, whether entitled to rateable distribution—Revision whether lies when other remedy open to party—Order under section 73, C.P.C. whether judicial order—Revision against order under section 73, whether lies.*

An order under section 186 of the Indian Companies Act cannot be regarded as a decree within the meaning of section 73,

\*Section 115 Application no. 153 of 1936, for revision of the order of Raghubar Dayal, Esq., I.C.S., District Judge of Unao, dated the 6th August, 1936.