

## MISCELLANEOUS CIVIL

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

AHMAD HUSAIN RIZVI (APPELLANT) v. ATHAR ALI,  
CHAUDHRI, AND OTHERS (RESPONDENTS)\*

1939  
September,  
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*United Provinces Encumbered Estates Act (XXV of 1934), section 4—Application under section 4 forwarded by Collector to Special Judge—Question of validity of application under section 4, whether can be entertained by Special Judge.*

The question whether an application under section 4 is a valid application or not is a question within the exclusive jurisdiction of the Collector and the Special Judge, to whom the application is forwarded by him, has no power to sit in judgment upon the order of the Collector forwarding the application. The jurisdiction of the Special Judge under the Encumbered Estates Act is limited to matters provided for by sections 8 to 20 of the Encumbered Estates Act. The question whether an application has been duly made according to the provisions of section 4 is a matter which cannot be entertained by the Special Judge. *Ganga Bakhsh Singh v. Pohooop Kuer* (1), *Jodha Singh In Re*: (2), and *Brahma Nand, In the matter of* (3), relied on.

Messrs. *Shah Mohammad Husain Usmani* and *Nazir Uddin*, for the appellant.

Mr. *Akhlaque Husain*, for the respondents.

THOMAS, C.J., and RADHA KRISHNA, J.:—This is a creditor's appeal arising out of an Encumbered Estates Act case.

The facts leading up to this appeal are these.

On the 24th February, 1930, Chaudhri Asghar Ali, Chaudhri Athar Ali and Chaudhri Azhar Ali executed a mortgage in respect of certain zamindari properties in favour of Rai Bahadur Dr. Sheo Nandan Tewari, who on the 29th September, 1934, on its basis obtained a preliminary decree for sale against Athar Ali, Azhar Ali and three other persons, who were the heirs and

\*Civil Miscellaneous Appeal No. 8 of 1937, against the order, dated the 16th October, 1936, of Pandit Pradyumna Krishna Kaul, Special Judge, 1st grade, Bara Banki.

(1) (1939) O.W.N., 106.

(2) (1937) A.L.J., 867.

(3) (1937) A.L.J., 1207.

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legal representatives of Chaudhri Asghar Ali, who had died in the meantime. This decree was made final by a compromise between the parties on the 4th May, 1936. All the five judgment-debtors applied under section 4 of the United Provinces Encumbered Estates Act on the 7th May, 1936, and their application was forwarded to the Special Judge under section 6 by the Collector.

On the 12th October, 1936, the applicants made an application expressing doubt as to the legality of a joint application under section 4 by all the judgment-debtors, upon which the learned Special Judge passed the order which is under appeal.

The learned Special Judge seems to have been of opinion that under the scheme of the Encumbered Estates Act a joint application by several landlords in the circumstances like those before him was not maintainable. He thereupon ordered that the applicants should elect as to which of them should continue the application. The counsel for the applicants stated that applicants nos. 1 and 2 would continue the application and that the remaining applicants shall make separate applications before the Collector under section 4 of the Encumbered Estates Act. The learned Civil Judge then ordered the names of the applicants nos. 3 to 5 to be transferred from the array of the applicants to that of the opposite-party.

The learned counsel for the appellant contends that the order passed by the Special Judge was without jurisdiction and that he was bound to proceed with the application in the form in which it had been sent to him by the Collector. In our opinion the contention of the appellant must prevail. We have read the relevant sections of the Encumbered Estates Act carefully. Our opinion is that the question whether an application under section 4 is a valid application or not is a question within the exclusive jurisdiction of the Collector and that the Special Judge, to whom the applica-

tion under section 4 is forwarded by him has no power to sit in judgment upon the order of the Collector forwarding the application. The jurisdiction of the Special Judge under the Encumbered Estates Act is limited to matters provided for by sections 8 to 20 of the Encumbered Estates Act. The question whether an application has been duly made according to the provisions of section 4 is a matter which cannot be entertained by the Special Judge. The order passed by the court below has the effect of questioning the decision of the Collector that the application had been duly made according to the provisions of section 4 of the Encumbered Estates Act which order is implied necessarily in his order dated the 30th October, 1936, transmitting the application to the Special Judge for disposal.

The view that we have taken above is supported by a decision of this Court as well as those of the Allahabad High Court among which may be cited: *Ganga Bakhsh Singh v. Pohoop Kuer* (1), *Jodha Singh In re* (2) and *Brahma Nand, In the matter of* (3).

The result is that we allow the appeal with costs, set aside the order, dated the 13th October, 1936, passed by the learned Special Judge and direct him to proceed with the application under section 4 in the form in which it was forwarded to him by the Collector under section 6 of the United Provinces Encumbered Estates Act.

*Appeal allowed.*

(1) (1939) O.W.N., 106.

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