
AIR 1938 All 8

Allahabad High Court

Case No: None

Mt. Champa Devi

APPELLANT

Vs

Mt. Asa Devi

RESPONDENT

Date of Decision: Sept. 10, 1937

Acts Referred:

Encumbered Estates Act, 1934 " Section 4#Uttar Pradesh Encumbered Estates Act, 1934
" Section 7(1)(b)

Citation: AIR 1938 All 8

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. The question of law that arises for consideration in the present application in revision is whether a suit filed by Mt. Asa Devi, plaintiff opposite

party, in the circumstances to be presently stated, offends against the provisions of Section 7(1)(b), U.P. Encumbered Estates Act (Act No. 25. of

1934). The Act was passed with the professed object of making provision ""for the relief of encumbered estates in the United Provinces"" and the

machinery provided for by the Act for the purpose is set in motion by an application to the Collector in accordance with Section 4 of the Act. It is

enacted by that section that any land, lord who is subject to or whose Immovable property or any part thereof is encumbered with private debts,

may make an application in writing to the Collector of the district in which his land or any portion of his land is situated stating the amount of such

private debts and also of his public debts both decreed and un-decreed and requesting the Collector to apply the provisions of the Act to him. On

the receipt of such an application, the Collector is by virtue of Section 6 of the Act bound to forward the application to a special Judge appointed

by the Local Government and invested with the jurisdiction to exercise the powers conferred and to perform the duties imposed on him by the Act.

Section 7(1)(b) of the Act lays down that:

When the Collector has passed an order u/s 6.... No fresh suit or other proceedings shall, except as hereinafter provided, be instituted in any Civil

or Revenue Court in the United Provinces in respect of any debts incurred before the passing of the said order....

2. The facts that led to the institution of the suit mentioned above are as follows : Asa Devi plaintiff is the widow of the brother of the father of one

Shambhu Nath. The plaintiff's husband died in the year 1905 and then disputes arose between the plaintiff and Shambhu Nath about the

possession of the properties belonging to the family. The family was possessed of Immovable properties of considerable value and was also in

possession as usufructuary mortgagee of shares in two villages named Islamnagar and Muzaffarpur under two deeds of usufructuary mortgage that

were executed in consideration of a sum of about Rs. 42,000. The dispute between Shambhu Nath and the plaintiff was amicably settled by means

of a deed of family arrangement dated 17th August 1908. The arrangement arrived at was that Shambhu Nath was to get all the Immovable

properties belonging to the family including the properties held by the family under the usufructuary mortgage deeds and was to pay forthwith in a

lump sum Rs. 16,000 to Asa Devi plaintiff. Further, Shambhu Nath was made liable to pay to Asa Devi a sum of Rs. 1,300 per year on account of

her maintenance. This amount of Rs. 1,300 was payable annually in two equal instalments. It was provided in the deed of family settlement that, in

the event of the default of payment of three consecutive instalments, Asa Devi would be entitled to put an end to the family arrangement and take

possession of the properties specified in the deed and to realize the instalments due with interest. The properties of which Asa Devi was entitled to

take possession on the happening of the contingency referred to above, included half of the properties subject to the two usufructuary mortgages,

and the deed provided that if those mortgages are redeemed by their respective mortgagors, and Asa Devi is consequently unable to get

possession over those properties, she would be entitled to recover from Shambhu Nath a sum of Rs. 5,000 with interest at 8 annas per cent, per

mensem.

3. It is common ground that portions of the shares mortgaged in the two villages were redeemed by the mortgagors or some of the mortgagors and

that Shambhu Nath sub-mortgaged the remaining mortgaged shares that were in his possession to defendants 2, 3 and 4. Thus no portion of the

mortgaged shares in the two villages remained in possession of Shambhu Nath.

Shambhu Nath died some time ago and Mt. Champa Devi

defendant, applicant in the present case is his widow and legal representative. It appears that the maintenance allowance fixed by the deed of

family settlement was regularly paid to Asa Devi till 15th August 1933, but there, after there was default in the due payment of three consecutive

instalments. Asa Devi accordingly brought the suit mentioned above in which she claimed the following three reliefs : (1) Possession of the

Immovable properties including half of the mortgaged shares in the two villages. (2) In the event of her claim for possession of half of the

mortgaged shares not being decreed, she prayed in the alternative for a decree for a sum of Rs. 5,000 principal and Rs. 375 interest. (3) A decree

for a sum of Rs. 2,144 on account of the arrears of instalments and further a decree for Rs. 3,000 on account of past mesne profits.

4. There were in all 51 defendants in the suit. The defendants other than Champa Devi were subsequent transferees of the properties the

possession of which was claimed by Mt. Asa Devi. The suit was filed by Asa Devi on 11th November 1935, but prior to that date Champa Devi

had filed an application u/s 4, Encumbered Estates Act, and the Collector had, u/s 6 of the Act, forwarded her application to the Special Judge on

26th September 1935. It appears that the fact that the Collector had forwarded Champa Devi's application under the Encumbered Estates Act to

the Special Judge before the institution of the suit by Mt. Champa Devi, was brought to the notice of the trial Court and that Court passed an order

staying the suit. Thereafter Champa Devi filed an application pointing out that the plaintiff's claim was barred by Section 7(1)(b) of the Act and

was fit to be dismissed. It was therefore stated in the application that the Court, instead of having passed an order staying the suit, should have

dismissed the same. Asa Devi, plaintiff, then filed an application on 27th January 1936, in which she stated that the only relief claimed by her which

fell within the purview of Section 7(1)(b) of the Act was the relief for the recovery of Rs. 2,144, the arrears of the maintenance allowance, and that

the section had no application to the other reliefs prayed for by her. She accordingly prayed that she be allowed to withdraw the claim for the

recovery of Rs. 2,141 so that the same may, in due course, be adjudicated upon by the Special Judge.

5. On a consideration of the respective applications filed by Asa Devi and Champa Devi, the trial Court on 1st February 1936 passed an order

rejecting the claim for Rs. 2,144 and directed the rest of the suit to proceed and the present application in revision is directed against this order.

The contention advanced on behalf of Champa Devi, applicant, is that Section 7, Encumbered Estates Act was applicable to the entire suit and

accordingly the suit should have been dismissed. It is further contended that in any case the order staying the suit should not have been recalled by

the trial Court and that the Court should not have ordered the suit to proceed as regards the reliefs other than the relief for the recovery of Rs.

2,144.

6. It is manifest that Section 7(1)(b), Encumbered Estates Act, is confined in its operation to suits ""in respect of any debts incurred before the

passing of the order by the Collector u/s 6 of the Act", and has no application to suits for possession of immovable property. It follows that relief

(1) noted above claimed by Asa Devi that related to possession of immovable properties did not fall within the purview of Section 7 and the claim

for that relief was maintainable. Relief (2), mentioned above viz. the claim for recovery of Rs. 5,375, was however a claim in respect of a "debt" as

defined in the Act. It is provided by Section 2 (a) of the Act that "debt" includes "any pecuniary liability except a liability for unliquidated damages".

It has already been stated that it was provided in the deed of settlement that, in the event of Asa Devi not being able to get possession of half of the

mortgaged shares in the two villages, she would be entitled to get a fixed sum of Rs. 5,000 with interest from Shambu Nath, the predecessor-in-

interest of Champa Devi. By relief (2) Asa Devi claimed to enforce the pecuniary liability imposed on Shambhu Nath by the deed of settlement and

therefore the suit was in respect of a debt as defined by the Act. The Court below had therefore no jurisdiction to proceed with the trial of the

claim embodied in relief (2) and the same ought to have been dismissed in view of the provisions of Section 7(1)(b) of the Act.

7. There were two prayers contained in relief (3) claimed by Asa Devi. Firstly she claimed a decree for a sum of Rs. 2,144 on account of the

arrears of instalments, and secondly she claimed a decree for Rs. 3,000 on account of past mesne profits. It has already been stated that the Court

below has rejected the claim for Rs. 2,144 on the ground that it fell within the purview of Section 7(1)(b) and this order of the Court below has not

been assailed before us. The question however remains whether the claim for the recovery of mesne profits was a claim in respect of a debt within

the meaning of Section 7(1)(b) of the Act, It is argued on behalf of Champa Devi that as the amount of mesne profits was ascertainable and could

be fixed after proper inquiry, it could not be characterized as "unliquidated damages", and therefore amounted to a debt within the meaning of the

Act as it constituted a pecuniary liability on the defendant. In our judgment this argument is untenable. ""Mesne profits"" is defined by Section 2(12),

Civil P.C., as meaning

those profits which the person in wrongful possession...actually received or might with ordinary diligence have received therefrom....

8. In other words, the amount which is payable by a person in wrongful possession of a particular property on account of mesne profits to the

rightful owner is the amount that the person in wrongful possession did receive or might have received from the property provided he exercised

ordinary diligence. The amount of ""mesne profits"" is therefore not a fixed and ascertained amount and cannot be styled as liquidated damages.

Liquidated damages"" means damages assessed beforehand by the parties to an agreement or fixed by some statute. It is obvious that the amount

of mesne profits to which the rightful owner of the property is entitled is not fixed either by an agreement or by some statute and depends on the

result of the inquiry conducted by the Court with a view to ascertain the amount which the rightful owner of the property is entitled to get from the

person in wrongful possession. ""Mesne profits"" is therefore unliquidated damages. In this connexion we may quote a passage from the decision of

their Lordships of the Privy Council in *Grish Chunder Lahiri v. Soshi Shikhareswar Roy* (1900) 27 Cal 951 at page 967. Their Lordships are

reported to have observed that:

Their Lordships agree, because mesne profits are in the nature of damages which the Court may mould according to the justice of the case.

9. This observation of their Lordships does unmistakably show that mesne profits at best amount to unliquidated damages. The, claim for mesne

profits therefore is not a claim in respect of a debt within the Weaning of the Encumbered Estates Act. Accordingly the claim of Asa Devi for the

recovery of Rs. 3,000 on account of mesne profits was maintainable.

10. The result is that relief (2) for the recovery of Rs. 5,375 and the relief for the recovery of the arrears of the instalments fell within the purview of

Section 7(1)(b) of the Act, and the claim as regards those reliefs could not be tried by the Court below. The rest of the claim of Asa Devi was

maintainable. The question then arises whether the Court below had jurisdiction to recall its order staying the entire suit. In our judgment it had. The

order staying the entire suit was wrong in law and was certainly unjust as there was no bar to the granting of the relief for possession of immovable

properties claimed by Asa Devi and for a decree for the mesne profits being passed in her favour, provided she was found entitled to those reliefs.

A Court has inherent jurisdiction to recall and cancel its invalid orders and this is what the Court below did in the present case.

11. For the reasons given above, we allow this application to this extent that we direct the Court below to reject relief (2) prayed for in the plaint

and to proceed with the trial of the suit so far as the claim for possession of immovable properties and for mesne profits is concerned. It would be

open to Asa Devi to prosecute her claim for the arrears of instalments as well as for the recovery of Rs. 5,375 before the Special Judge. It is

however clear that she would be entitled to get Rs. 5,375 only in the event of her being unable to get a decree for possession of half of the

mortgaged shares in the two villages. As the victory has been divided in this Court, we direct the parties to bear their own costs of this application.