B. Shaila Pati Bhattacharji Vs Sahu Mahadeo Prasad and Others

Court: Allahabad High Court

Date of Decision: Feb. 8, 1945

Citation: AIR 1945 All 215 : (1945) 15 AWR 92

Final Decision: Dismissed

Judgement

1. These are two connected appeals by two sets of decree-holders, who had obtained a compromise decree on the basis of a mortgage on 15th

November 1932. It appears that under this compromise decree, Shaila Pati, appellant, got a half interest in the decree and Sheo Shankar and Ram

Shankar got the other half interest in the decree. On 12th March 1941, an application for execution of the decree with respect to the entire

decretal amount was filed by Sheo Shankar and Ram Shankar on their own behalf as well as on behalf of Shaila Pati. Later on 28th March 1941

another application for execution was made by Shaila Pati alone for execution of the decree in respect of half of the decretal amount. It appears

from the application, dated 12th March 1941 that the decree-holders sought execution against the entire mortgaged property consisting of landed

property as well as house property, whereas in the application, dated 28th March 1941 on behalf of Shaila Pati, the prayer was that execution

might take place first against the house property and then against the landed property. On 18th August 1941, objections were filed on behalf of the

judgment-debtors to the effect that the decree was time-barred and hence execution could not proceed; it was also contended that if all the

payments made till then by the judgment-debtors be taken into account and if they be given the benefit of the Debt Redemption Act, the entire

decretal amount would be found to be satisfied. Thereafter various applications were made on behalf of the decree-holders contesting the claims of

the judgment-debtors. On 25th October 1941 an application was made on behalf of the decree-holders giving a declaration as contemplated by

Section 4, Debt Redemption Act. During the course of the hearing of these objections it was stated on behalf of the decree-holders that they were

prepared to concede that the judgment-debtors were agriculturists. It was however contended on behalf of the decree-holders that it was open to

them to proceed against the house property by reason of the declaration given by them u/s 4. The judgment-debtors however contended that the

declaration was not a valid and effective declaration, inasmuch as it was made after the decree-holders had already applied for execution against

the land of the judgment-debtors. It was however agreed by the parties that if the declaration made on behalf of the decree-holders be found to be

defective, the total amount recoverable under the decree would be deemed to have been paid up because of the payments mentioned in the

account filed by the judgment-debtors. The learned Civil Judge in the course of his judgment found that the declaration made on behalf of the

decree-holders on 25th October 1941 was not and could not be considered to be a valid declaration. He held, in effect, that the applications for

execution made in the first instance in March 1941, did not contain an undertaking by the decree-holders that the ""decree shall not be executed

against the land, agricultural produce or person of such agriculturist."" He further held that the subsequent application, dated 25th October 1941 by

means of which the decree-holders sought to give a declaration within the meaning of Section 4 of the Act could not be effective, inasmuch as

proviso 3 to Sub-section (3) of Section 4 stood in the way of the decree-holders. This proviso makes it clear that no such declaration shall be

made under Sub-section (3) where the decree-holder has already applied for execution against the land,! agricultural produce or person of such

agriculturist. As regards the question of the decretal amount the learned Judge held that, in view of the admissions made by the parties, the decree

was fully satisfied.

2. Mr. Banerji for the appellants contends that, inasmuch as there was no written application made by the judgment-debtors claiming the benefits

of the Act, they were not entitled to them. Section 8 merely says that""...an agriculturist...may apply...."" It does not rule out of consideration an oral

prayer and for aught we know there might have been an understanding between the parties before the learned Civil Judge that no written

application was necessary. It is significant that the judgment of the learned Civil Judge, which is a full judgment, makes no reference to this

grievance of the decree-holders.

3. The next point is whether the declaration of 25th October 1941 was a good and effective declaration. There can be no doubt that on the plain

reading of Section 4 it was not a good declaration. According to Section 4, Clause (2) in the case of a suit pending at the commencement of this

Act, the declaration may be made at any time before the decision of the suit and in the case of a suit instituted after the commencement of this Act

the declaration must be made in the plaint itself. The present is a case where the suit terminated before the Debt Redemption Act came into force.

It is therefore proviso 3 to Sub-section (3) which falls to be considered: Where the creditor has already applied for execution against the land or

the agriculturist, it is not open to him to make any declaration, and thus shut out the benefits of the Act from the judgment-debtors. Mr. Banerji

however contends that the declaration made by him must be deemed to have reference to the applications for execution made by the decree-

holders on 12th March 1941 and 28th March 1941. We cannot agree with him in this contention. It was held by the Full Bench in Mohd. Abdul

Razzaq v. Mt. Parvati Devi (''42) AIR 1942 All. 394 that even in the case of a decree which was passed before the U.P. Debt Redemption Act

came into force, the decree-holder cannot make a declaration as contemplated by Sub-section (8) of Section 4, after he has once applied for

execution against the land, agricultural produce or person of the agriculturist judgment-debtor. We, therefore, think that the view taken by the

Court below that the declaration in question was not an effective declaration is correct. It has also been feebly contended that it was not possible

for the decree-holders to know if the judgment-debtors in this case were agriculturists, and it was therefore impossible for decree-holders to have

made any declaration. The character of an agriculturist is implicit in him and does not depend upon its recognition as such by a Court of law. If the

judgment-debtors were agriculturists, they were entitled to the benefits of this Act because its provisions are peremptory and must be enforced

even in the teeth of the provisions of a decree or any other provision of law for the time being in force. That benefit can be denied to them only if a

certain condition is fulfilled by the creditor. That condition is a valid declaration under Seciton 4. There is no doubt that the judgment-debtors in this

case are agriculturists. There is no doubt therefore that they are entitled to the benefits of this Act, once it is established that the declaration was not

a good declaration. We, therefore, think that the view taken by the Court below is correct. We accordingly dismiss both the appeals, but under the

circumstances of the ease, we make no order as to costs.