

Bimlananda Tarketirtha Vs Surya Narain Singh and Others

Court: Patna High Court

Date of Decision: May 17, 1968

Acts Referred: Civil Procedure Code, 1908 (CPC) " Order 21 Rule 22
Encumbered Estates Act, 1934 " Section 2, 2B

Citation: (1969) 17 BLJR 792

Hon'ble Judges: K.B.N. Singh, J; Anwar Ahmad, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

K.B.N. Singh, J.

These two appeals, filed by the decree-holder against the judgment-debtor-respondents, arise out of a common order

dated the 14th April, 1964, passed by the learned Subordinate Judge in two execution cases. Miscellaneous appeal No. 217 of 1964 arises out of

Execution Case No. 490 of 1934, while Miscellaneous Appeal No. 218 of 1964 arises out of Execution Case No. 105 of 1937, As common

questions of fact and law arise in these two appeals, both have been heard together with consent of the parties and are being disposed of by a

common judgment,

2. The appellant-decree-holder obtained money decree against Raja Shyam Sunder Singh, proprietor of the Pandra ""Estate, from the original side

of the Calcutta High Court and the decrees were transferred for execution to the court of the Subordinate Judge at Dhanbad. From the order of

the executing court it appears that the Commissioner of Chotanagpur Division acting under the provisions of the Chotanagpur Encumbered Estates

Act. 1876 (Act VI of , 1876), hereinafter referred to as the Encumbered Act, passed prohibitory orders dated 7th September, 1940, prohibiting

sale of the property of the judgment-debtor. Later, the orders were withdrawn and re-imposed in 1944 and again withdrawn in 1945, Thereafter

also several prohibitory and recall orders were passed by the Commissioner, referred to in the order of the executing court. These orders

presumably seem to have been passed u/s 2-B of the Encumbered Act, while the question of application of Section 2 of the Act and vesting the

management of the properties of the judgment-debtor was pending before the Commissioner. We are not concerned with the aforesaid orders, as

the relevant order with which we are concerned is one communicated in the letter dated the 16th April, 1955, from the General Manager of the

Encumbered Estates, Purulia, that the Government had taken the management of Tauzi No. 21 and vesting order was passed as mentioned in the

order of the court below, and which fact has not been disputed by learned Counsel for the parties before us, Tauzi No. 21 was sought to be

proceeded with the two execution cases. This order was passed before the estate of the judgment-debtor vested in January, 1956, in the State of

Bihar under the provisions of the Bihar Land Reforms Act, 1950. The learned Subordinate Judge, in view of the prohibitory order communicated

by letter No. 5082-89 dated the 16th April, 1955, stayed the execution proceedings, so that the same may be conveniently revived after the

release of the estate. Thereafter, on the 18th January, 1960, after the vesting, in Execution Case No. 105 of 1937, the decree holder filed an

application for amendment of the execution petition by adding compensation, final or interim, payable to the judgment-debtor under the Bihar Land

Reforms Act and other properties, movables and immovables, of the judgment-debtor, against which the execution case should proceed. Similar

petitions were also filed by other decree-holders in Execution Cases Nos. 236 of 1937 and No. 65 of 1939, which were also pending against the

judgment-debtor. These amendments were allowed by the court by an order dated the 9th November, 1960. It may be pointed out that no such

petition was filed in the other execution case No. 490 of 1934. In this execution case the executing court, suo motu, noted in the order-sheet that

as the properties of the judgment-debtor had vested in the State of Bihar, the decree-holder might proceed against the State or the judgment-

debtor, as the case may be. The stay order passed earlier was also vacated and on failure of the decree-holder to take steps, the execution case

was dismissed. The execution case, however, was restored and notices under Order XXI, Rule 22, of the CPC was yet to be served. Thereafter,

there were correspondences between the executing court and the Land Reforms Deputy Collector with regard to the compensation payable to the

judgment-debtor, which was sought to be. proceeded against in execution case No. 105 of 1937, and it was pointed out that no cash amount was

available and compensation was payable in bonds drawn in the name of the judgment-debtor. Thereafter, on the 20th February, 1964, the decree-

holder filed a petition for attachment of the compensation bonds issued to the judgment-debtor under the Bihar Land Reforms Act, whose numbers

were noted in the petition. After that matter was heard, the court, while, looking into the records for passing orders, discovered that the estate of

the judgment-debtor was taken over under the Encumbered Act, with the result that all proceedings and suits become barred and no movables

could also be attached. It also observed that if any suit or proceeding be there, the Manager of the estate has to be substituted in place of the land-

holder whose estate is taken over and asked the decree-holder to show cause by the 25th March, 1964, as to why the execution case should not

be dismissed and the petition for attachment of the compensation bonds should not be rejected. Subsequently, on the 14th April, 1964, after

hearing the decree-holder, the court passed the impugned orders, holding that the proceedings in the execution cases had become null and void on

account of the vesting of the properties in the Manager in 1955 under the Encumbered Act and the execution cases were to be taken not to be

pending at all. Consequently, the court below also held that the petitions for amendment or attachment of the bonds could not be maintained and

that the aforesaid two execution cases, as well as Execution Cases No. 236 of 1937 and No. 65 of 1939 (which were all heard together) became

null and void and dismissed them. Being aggrieved by the said order, the decree-holder-appellant has preferred the present appeals.

3. Mr. L. K. Choudhury, appearing for the appellant, has urged that after the vesting of the estate under the Bihar Land Reforms, Act, by virtue of

Section 42 of the said Act, the provisions of the Encumbered Act ceased to be operative and the estate of the judgment-debtors would pass on to

the State of Bihar under the provisions of the Land Reforms Act. Therefore, learned Counsel submitted that, as vesting of the estate under the

Land Reforms Act was on the 1st January, 1956 the vesting orders passed u/s 2 of the Encumbered Act ceased to be operative. As a matter of

fact, according to the learned Counsel, the Encumbered Act itself became inoperative and no order for revival was necessary to be passed u/s 12

of the Encumbered Act, as held by the court below.

4. To appreciate the submissions of the learned Counsel it will be relevant to consider the scheme of the Encumbered Act. This Act has been

enacted ""to provide for the relief of holders of land in Chotanagpur who may be in debt and whose immovable property may be subject to

mortgages, charges and liens"". Section 2 provides that if any holder of immovable property applies to the Commissioner, stating that the holder of

the said property is subject to, or that his said property is charged with, debts or liabilities other than debts due or ""liabilities incurred to the

Government and prays for the application of the provisions of this Act to give him relief, the Commissioner may, with the previous consent of the

State Government, by an order published in the official gazette appoint an officer, called the Manager, and vest in him the management of the

whole or any portion of the immovable property of or to which the said holder is then possessed or entitled in his own right, or which he is entitled

to redeem or which may be acquired or devolve on him during continuance of the arrangements. Section 2-B authorises the Commissioner to pass

orders prohibiting the sale of the immovable property of such holder or any portion thereof in execution of any decree or order until the passing of

final orders on such application u/s 2, either rejecting or vesting the property in a Manager. Section 3 provides the consequences that will ensue on

the publication of the vesting order u/s 2. In the first instance, it provides that all proceedings, which may be pending in any Civil Court in any part

A State or part C Stale, or in any Revenue Court in Bihar or in West Bengal or that part of Orissa which in the year 1909 was included in the

Presidency of Bengal in respect of such debts or liabilities, shall be barred, and all processes, executions and attachments for or in respect of such

debts and liabilities shall become null and void. Secondly, it provides that so long as the management continues, the holder of the said property and

his heirs shall not be liable to arrest for or in respect of the debts and liabilities nor shall his movable properties be liable to attachment or sale.

Thirdly, it also provides that so long as such management continues, the holder shall not be competent to mortgage, charge, lease or alienate his

immovable property, and that his property shall be exempt from attachment or sale, and the holder shall also have no power to enter into any

contract. It may be stated that this position would continue so long as the management continues and an order u/s 12 of the Act restoring the

property to the owner is not passed. Section 4 confers on the Manager extensive power of management and settlement of debts. Section 5

provides that after the , publication of the order vesting the management in the Manager, he shall publish a notice, calling upon all persons having

claims against the holder of the said property to notify the same in writing to such Manager within three months from the date of the publication.

Section 6 requires all the claimants to file a claim giving full particulars. Section 7 provides that the debts or liabilities not notified shall be barred.

Section 8 authorises the Manager to determine the debts or liabilities justly due to several creditors of the holder of the property. Section 9 gives

him power to enquire into the adequacy of the consideration for any grant or lease executed by the holder of the property within three years before

the publication of the order u/s 2. It also gives him power to demand further consideration or to cancel the lease or grant. Section 10 provides for

appeal and Section 10-A gives the Commissioner power to suo motu review any order or proceeding. After the Manager has prepared the

scheme for settlement of such debts and liabilities and submitted for orders of the Commissioner, u/s 11-A. the Commissioner has powers either to

send the scheme back to the Manager for revision, or approve the same or revise the scheme. Section 11-B provides that even after the scheme

has been approved, the Commissioner may direct to relinquish the management of the estate in the event of new circumstances coming to light,

which may render the scheme unworkable. Section 12 provides for the restoration of possession of the property or remaining portion thereof on

the happening of either of the following three contingencies:

(i) When all debts and liabilities", referred to in Section 11, and those effected under Clause (c) of Section 18, have been paid and discharged;

(ii) If the Commissioner, at any time before the Scheme is approved by him, thinks that the provisions should not apply or even after the Scheme is

approved issues instructions for the relinquishment of the management;

(iii) If at any time arrangement is made for satisfaction of the debts and liabilities, which is accepted by the creditor and approved by the

Commissioner.

The restoration under this section is required to be notified in the official gazette and this section further provides that ""where the holder of the

property or his heir is so restored under the circumstances mentioned in the second clause of this section, such restoration shall be notified in the

official gazette; and thereupon the proceedings, processes, executions and attachments mentioned in Section 3 (so far as they relate to debts and

liabilities which the Manager has not paid off or compromised) and the debts and liabilities barred by Section 7, shall be revived...."" It also

provides for the exclusion of the period between the publication of order u/s 2 and restoration of the property in calculating the period of limitation.

- It will be also relevant to refer to Section .12-A of the Act which provides that when the property is restored under the first and third clauses of

Section 12, the holder of the property shall not create any charge without the previous sanction of the Commissioner and that if any attempt is

made, under Sub-section (5) of this section, the Commissioner may re-appoint a Manager vesting in him the management of the property. Sections

13 to 18 deal with the powers of the Manager, Section 17 gives him powers to grant lease and Section 18 gives him power to sell, mortgage and

raise loans etc.

5. From a reference to the aforesaid provisions it is apparent that after a notification u/s 2 of the Encumbered Act is issued vesting the management

of the immovable properties of the encumbered proprietor, as he is commonly called, the properties remain so vested in the Manager unless orders

u/s 12 is passed restoring back the properties to such encumbered proprietor. In Execution Case No. 105 of 1937, by order No. 362 dated the

20th February, 1964, the executing court asked the decree-holder to explain as to how the compensation bonds handed over to the Manager of

the Encumbered Estate could be attached and proceeded with. By order No. 364 dated the 16th March, 1964, the executing court also asked the

decree-holder to show cause as to why execution cases be not dismissed as the estate of Shyam Sunder Singh was taken under the management

under the Encumbered Act, with the result that all proceedings had become null and void. It further observed that if any suit or proceedings be

pending the Manager of the Encumbered Estate has to be substituted in place of the land holder whose estate has been taken under management.

Thereafter, the decree-holder was heard and the impugned order was passed. It will be important to note that no order of release or restoration of

the immovable properties u/s 12 of the Encumbered Act was produced before the executing court. The argument proceeded before the executing

court on the same lines as before us that as a result of vesting of the estate of Shyam. Sunder Singh under the Bihar Land Reforms Act, no order

u/s 12 of the Encumbered Act was necessary, as by virtue of Section 42 of the Land reforms Act, the management passed from the Manager to

the State of Bihar and the Encumbered Act ceased to apply.

6. It will be relevant to quote Section 42 of the Bihar Land Reforms Act at this stage:

When the interest of an intermediary in an estate or tenure, which is under the management of the State Government under the Court of Wards

Act, 1879 (Bengal Act 9 of 1879) or the Chota Nagpur Encumbered Estates Act, 1876 (6 of 1876) or under any law for the time being in force

relating to the management of private estates by the Government, is transferred to the State under the provisions of this Act, then notwithstanding

anything contained in the aforesaid Acts, the estate or tenure shall vest in the State and the provisions of the said Acts shall cease to apply to the

said estate or tenure and all the provisions of this Act shall apply thereto.

What Section 42 speaks of is that that after an "estate" or "tenure" is transferred to the State of Bihar under the Land Reforms Act,

notwithstanding such "estate" or "tenure" being under management under the Court of Wards Act or Chotanagpur Encumbered Estates Act, it

shall vest in the State, and its natural consequence will be that the Court of Wards Act and the Encumbered Act will not be applicable, as the

"estate" or "tenure" no longer belonged to the disqualified proprietor, but vested in the State, On publication of notification u/s 3 of the Land

Reforms Act by the State, the "estate" or "tenure" of the proprietor, landlord or tenure holder vests in the State free from all encumbrances from

the date of Vesting as provided u/s 4(a) of the said Act. Under Clause (g) of Section 4 the Collector has powers to take possession of such vested

"estate" or "tenure" from those who might be in possession thereof. The expressions "estate" and "tenure" have been defined u/s 2(i) and (a) of this

Act and the proprietor or tenure holder of such "estate" or "tenure" ceases to have any control on such "estate" or "tenure". In other words, the

intermediary's interest is extinguished. The notification under the Land Reforms Act has no effect on his other properties. That is to say, his non-

Milkiyat properties, such as properties outside his intermediary interest in the Tauzi or tenure do not vest in the State under the said Act. This

position has not been challenged before us.

7. Even the vesting of the "estate" or "tenure" under the Land Reforms Act does not deprive the proprietor Landlord or tenure-holder of

possession of all immovable properties in such "estate" or "tenure", although after vesting the character of his possession changes from that of an

intermediary to that of a tenant, raiyat or lessee under the State as the case may be. Under Sections 5 and 7 the homesteads in possession of

intermediaries and also lands and holdings used as Gola, factories, etc. will be deemed to be settled with the intermediaries as tenants under State.

The Lands used for agricultural and horticultural purposes in Khas possession of the intermediaries is also settled with them from date of vesting as

raiylats with right of occupancy therein. Similarly, mines which were worked directly by the intermediary as also land and buildings connected with

the working of such mines are also leased back under Sections 9 and 11 in favour of the intermediary. Thus vesting of the "estate" or "tenure" and

these statutory settlement and lease back take place simultaneously. Section 2 of the Encumbered Act not only envisages placing of immovable

properties in possession of the holder under the management of a Manager and vest in him, but also such properties which the holder is "entitled in

his own right, or which he is entitled to redeem, or which may be acquired by or devolve on him or his heirs during the continuance of such

management," can be placed under the management of the Manager. The notification u/s 2, in the instant case, has not been placed before us to

show the nature and extent of the vesting order u/s 2. I am aware of the letter dated the 16th April, 1955, of the Manager of the Encumbered

Estates, informing the: executing court that the management of Tauzi No. 21 had been taken ""over, but that was because of the fact that this

particular Tauzi was sought to be proceeded in execution of the decrees. It does not mean that this Tauzi was all the immovable property which

was under his management. Nothing has been placed before us on behalf of the appellant to show that the management u/s 2 was confined to

Milkiyat property only. As discussed above, even this will not be conclusive as even after vesting the intermediary is left in possession of

immovable properties in which he acquires tenancy right under the Land Reforms Act.

8. As already pointed out, the application of the Encumbered Act is also in no way restricted to Milkiyat properties of a holder. From the scheme

of this Act, as discussed above, it is clear enough that it includes all debts and properties of the "holder". Factually also the management of the

judgment-debtor's properties is with the Manager as pointed out in paragraph 13 of the order under appeal, against which nothing has been

pointed out to us. Section 42 of the Land Reforms Act only clarifies the position regarding consequences following the issue of notification vesting

the "estate" or "tenure" u/s 3 read with Section 4 of the Land Reforms Act vis-a-vis the management of the "estate" or "tenure" of disqualified

proprietors under the Court of Wards Act and the Encumbered Act from the date of vesting. Thus, from the aforesaid discussions it will be

apparent that there is no substance in the submission of the learned Counsel that in view of Section 42 of the Land Reforms Act, the Encumbered

Act will cease to apply and no order u/s 12 of the Encumbered Act is necessary.

9. Mr. Choudhury next urged that the executing court was wrong in dismissing the execution cases. He submitted that u/s 3 of the Encumbered

Act, no doubt, it has been provided that after issue of notification u/s 2 all proceedings pending against the judgment-debtor shall become ""barred

and "null and void". These expressions only mean that the proceedings will be stayed. And on more than one occasion it has been observed that

the Act has been inartistically drafted and these expressions only mean stay of the proceedings. Learned Counsel relied on the two Bench

decisions of this Court in the cases of Raja Jyoti Prasad Singh Deo Vs. Ranjit Singh, and Mathura Prasad Singh and Others Vs. Jageswar Prasad

Singh, Mr. Lalnarayan Sinha, appearing for the respondents, has also fairly conceded that the effect of the issue of the notification u/s 2 of the

Encumbered Act will be the stay of the execution proceedings and the order of the court below in dismissing the execution cases was not correct.

Thus, the order of the court below dismissing the execution cases Nos. 490 of 1934 and 105 of 1937 has to be set aside.

10. Mr. Choudhury then urged that the executing court was in error in holding that the application for the amendment of the execution petition by

substituting compensation money and the attachment of the bonds could not be maintained. He submitted that the order of amendment of the

execution petition was passed on the 9th November, 1960, without any objection from the judgment debtor and the order for attachment of

compensation money was issued on the 21st of November, 1960. No objection having been raised; on behalf of the judgment-debtor to these

orders, the judgment-debtor is precluded, on the principles of constructive res judicata, from reagitating these questions. This argument of the

learned Counsel is confined to execution case No. 105 of 1937 only, as no such petitions were tiled in the other execution case No. 490 of 1934.

u/s 21-B of the Encumbered Act, during the continuance of the management every suit or appeal by the holder has to be instituted in the name of

the Manager and in every suit or appeal in which the holder is a plaintiff or a defendant, the Manager shall remain the representative of the holder,

for the purpose of the suit or the appeal, and no other person than the Manager could be sued or sue as the next friend and guardian of the holder

in the suit. Therefore, from the aforesaid provision, it is clear that after the notification u/s 2 of the Encumbered Act the Manager was the proper

person to be substituted in the proceedings and he was the real person to be added in the proceedings to represent the judgment-debtor and any

order passed in his absence cannot be said to operate as res-judicata against the judgment-debtor. The whole scheme of the Act is to afford relief

and immunity to the judgment-debtor by placing his property under the management under the Encumbered Act. As has already been pointed out,

by order No. 248 dated the 17th June, 1955, the executing court had earlier stayed the proceedings in the execution cases to be revived after the

release of the estate. The orders of amendment and attachment seem to have been passed in ignorance of the earlier orders staying further

proceedings by the executing court itself after the notification u/s 2 of the Encumbered Act. As for order of attachment, in the first instance, it was

issued in respect of cash amount, as is apparent from order No. 359 dated the 21st December, 1965, which is quoted below:

The letters received from the Deputy Collector, Legal Section, Dhanbad, on 30-9-63, is put up.

Attachment order in respect of cash amount was issued. But it appears that there was no cash in the hand of the Land Reforms Department,

Bonds are being issued to the intermediaries. Therefore, the attachment has become practically ineffective. Decree-holder has got to take steps for

attachment of the bonds, if any, Decree-holder to take necessary steps by 31-1-64.

From this order it is apparent that the court held that the attachment of the cash amount was ineffective and the decree-holder was to take steps for

attachment of bonds, if any. It is, therefore, clear that the order of attachment, if any, was vacated by the court below by the order dated the 21st

December, 1963, by which the court held that the attachment of the cash amount was practically ineffective as no cash amount was available for

attachment in the Land Reforms Department and compensation bonds were issued in the name of the ex-intermediaries. Thereafter, an application

was filed on the 20th February, 1964, as already mentioned, for the attachment of the compensation bonds standing in the name of the judgment-

debtor. This application for attachment has been rejected by the court below by order dated the 14th April, 1964, which is the subject matter of

the appeals, holding that so long as the management has not been brought to an end, the execution proceedings cannot proceed for realisation of

the debts. Therefore, there is no question of the application of the principle of constructive res judicata regarding order of attachment of the

compensation money, which was not available for attachment, as observed by the learned Subordinate Judge, and he was not in error in rejecting

the application filed on the 20th February, 1964, for attachment of the compensation bonds so long the management of the properties of the

judgment-debtor, which were vested in the Manager, was not " brought to an end u/s 12 of the Encumbered Act.

11. The learned Counsel next contended that the bar of Section 3 applies only to decrees of the civil courts and as the decrees in question were of

the original side of the Calcutta High Court, the provisions of the Encumbered Act have no application. It has also been urged that the decrees of

the Calcutta High Court cannot be affected by any local Act such as the Encumbered Act. This submission of the learned Counsel is equally

without any substance.

12. Section 2 of the Encumbered Act provides for several alternative contingencies under which the management of the immovable properties of a

holder is vested in the Manager appointed by the Commissioner for the management of the properties. It is no doubt true that in Section 2(1) a

reference is made to & decree or order of civil or revenue court, but that is one of the several eventualities under which the Commissioner can

apply Section 2 to the holder of immovable properties. Section 2 does not only say that in case of a decree or a civil court only the Commissioner

will have power to vest u/s 2. We do not know, under what circumstance, the Commissioner has acted u/s 2 of the Encumbered Act. As already

pointed out, the notification vesting or necessary materials have not been shown to us to find out as to in what connection this vesting order has

been passed. The effect of the vesting order u/s 2 has been provided in Section 3, which has already been referred to. It speaks of all proceedings

in any civil court in Part A or Part C States or in any revenue court in Bihar or West Bengal or that part of Orissa which in the year 1909 was

included in the Presidency of Bengal in respect of such debts and liabilities shall be barred so long the management continues under the Manager

u/s 2. It also provides that the holder shall be immune from arrest and his movable and immovable properties shall also be immune from attachment

under any processes of any civil or revenue court as aforesaid in respect of such debts or liabilities. Therefore, what Section 3 prohibits is

proceedings with respect to ""such debts or liabilities"" and has no reference to any decree of civil courts. It only speaks of processes issued by civil

and revenue courts in respect of . such debts or liabilities, i.e. all debts or liabilities, and does not confine its operation to the decrees of the civil

courts, as argued by the learned Counsel for the appellant. The Encumbered ""Act. was passed for giving relief to the land holders in Chotanagpur

and protection from sale of their immovable properties, as far as possible, by placing them under better management of a Manager appointed by

the Commissioner. The Act, in so far as it gives protection to the land-holders of"" Chotanagpur in respect of properties situated in the State of

Bihar, cannot be said to be a legislation affecting properties outside Chotanagpur. It has been well-settled by a series of decisions that the

Encumbered Act is a -valid piece of legislation with respect to land-holders and properties situated in Chotanagpur. It has also been held that it is

not a legislation dealing with immovable properties situated outside Chotanagpur. In the case of Raja Jyoti Prasad Singh v. Kumud Nath Chatterji

and Ors. AIR 1918 PC 41 after elaborately discussing the various provisions of the Encumbered Act, their Lordships of the Judicial Committee

observed as follows:

After considering the Act as a whole, their Lordships have arrived at the conclusion that the primary intention to be collected from its language is

that of providing, by a measure of local application, for the relief of the burdens affecting the land within Chotanagpur owned by a class of land-

holders there. The governing purpose related to a particular locality.

Their Lordships approved of the decision of the Calcutta High Court in the case of Bhicha Ram Sahu v. Bishambor Nath Sahi XVII C.W.N. 754

as regards the scope of the Act that it has no application to immovable properties outside the Chotanagpur. The aforesaid Privy Council decision

has been followed in a Bench decision of the Calcutta High Court in the case of Protap Chandra Deo Dhanbal Deb Vs. Sri Raja Jagadish Chandra

Deo Dhabal Deb, .

13. Learned Counsellor the appellant relied on a Bench decision of the Calcutta High Court in the case of Madangopal Bagla Vs. Lachmidas and

Others in. support of his submission. That decree of the, Calcutta High Court can not be affected by the Encumbered Act; a local enactment. He

also referred to cases relied on in the Calcutta decision, which need not be considered separately as they are not on point and do not support the

extreme submission of the learned Counsel for the appellant. Even the ratio decidendi of the Calcutta case does not support his extreme contention

and the observation in the Calcutta case has to be considered in the light of facts of that case which are set out hereinafter. In that case, one

Madangopal Bagla of Calcutta had obtained a"" decree against Ramkissandas and Lachmidas, along with Narottamdas and Purushottamdas, who

carried on partnership business at Calcutta in the name and style of Narottamdas Gujrati. This decree was transferred by the Calcutta High Court

for execution to the District Judge of Benaras and a sum of Rs. 1,108/2/- was realised in 1931, and, thereafter the District Judge of Benaras sent

back the decree to the "Original Side of the Calcutta High Court. The decree was thereafter transferred for execution to the Subordinate Judge at

Howrah, and a prayer by the decree-holder was made for attachment of certain properties of Ramkissandas and Lachmidas as two partners of the

firm Narottamdas Gujrati. In this execution proceeding an objection was filed by Lachmidas that the decree passed by the Calcutta High Court

was no longer in existence as the Special Judge at Benaras had already passed a decree in respect of the debt due to Madangopal Bagla under the

provisions of the U. P. Encumbered Estates Act and that the decree-holder having applied for execution of the decree passed by the Special Judge

of Benaras was precluded from executing this decree (of the Calcutta High Court). This objection was upheld by the learned Subordinate Judge at

Howrah and thereafter there was an appeal to the Calcutta High Court. It was in this context that, referring to the various provisions of the U. P.

Encumbered Estates Act, their Lordships observed:

No doubt the scheme is to confer on the Special Judge exclusive jurisdiction and for that purpose the jurisdiction of the ordinary courts are

excluded. As the jurisdiction of courts, civil and revenue, in the United Provinces only is excluded by Section 7, and could be excluded by the

Legislature of that Province, the exclusive jurisdiction intended to be conferred on the Special Judge by that process of exclusion would extend

only over such debts for the enforcement of which the creditors would have had to take recourse to courts, situated in the United Provinces only

and could not have had the right to take recourse to any court outside that Province. This, in our opinion, is not only a reasonable construction, but

the only construction, possible, for that Legislature could not in law take away or curtail the jurisdiction of courts situate outside the Province.

and accordingly held that the Special Judge of Benaras had no jurisdiction to adjudicate upon the claim of the appellant Madangopal Bagla. This

case came to be considered by their Lordships of the Supreme Court in the case of *The State of Bihar and Others Vs. Charusila Dasi*, and their

Lordships of the Supreme Court observed as follows:

The decision in *Madangopal Bagla Vs. Lachmidas and Others* and the decision in AIR 1954 Pat 164 both related to the interpretation of some of

the provisions of the United Provinces Encumbered Estates Act (U. P. Act 25 of 1934). In the former case the limited question for decision was if

the decree-holder under a decree of the Original side of the Calcutta High Court was precluded from executing the decree by reason of certain

proceedings which had taken place before the Special Judge, Benaras, under the United Provinces Encumbered Estates Act, 1934. The answer

given was that the decree-holder was not so precluded and the decision proceeded on a construction of Section 18 of the United Provinces

Encumbered Estates Act, 1934, read with Section 7, 13 and 14(7) of that Act. It was held that the exclusive jurisdiction intended to be conferred

on the Special Judge in supersession of those of civil and revenue courts extended, as indicated by Section 7, only over debts enforceable through

the courts within the Province and the word "creditor" in Section 10 must be limited to those of them who would have to enforce their rights

through such courts alone. In the Patna case the question for decision was if Section 14(7) of the U. P. Encumbered Estates Act, 1934, should be

construed to mean that the decree of a Special Judge is to be deemed to be the decree of a civil court of competent jurisdiction even beyond the

territorial jurisdiction of the State Legislature. It was held that the decree passed by the Special Judge of Benaras had not the effect of a decree of

a civil court outside the territorial limits of the United Provinces and the Subordinate Judge of Purnea in Bihar had no jurisdiction to execute such a

decree or to direct that the properties of a judgment-debtor in Purnea should be attached in execution of the decree. As we have said earlier, these

decisions relate to an altogether different problem, namely, the proper construction of certain sections of the Bengal Wakfs Act or of the United

Provinces Encumbered Estates Act. The problem before us is of a more general nature and the aforesaid decisions are no authorities for the

solution of that problem.

The order passed by the Special Judge of Benaras, in the Calcutta case was sought to be read in the court of the Subordinate Judge at Howrah in

modification of the decree of the Calcutta High Court, which is not the position in the instant case. Thus, the decision in the Calcutta case is

distinguishable on facts and relates to the provisions of the United Provinces Encumbered Estates Act, which are not similar to those of the

Chotanagpur Encumbered Estates Act. The Supreme Court decision, referred to above, on the other hand, is a complete answer to the submission

of the learned Counsel. In the Supreme Court one of the questions for consideration was, whether by reason of Section 3 of the Bihar Hindu

Religious Trusts Act (Bihar Act I of 1951), "the said Act applied to Trust properties situated outside the State of Bihar. In that case one of the

properties of Shrimati Charusila Trust, which is a Hindu Religious Trust at Deoghar in the State of Bihar, lay in the town of Calcutta. Question

arose with respect to the validity of the Bihar Hindu Religious Trusts Act in so far as it affected the Trust property at Calcutta. Their Lordships

answered the question in the affirmative and upheld the vires of the Bihar Hindu Religious Trusts Act observing as follows:

We accordingly hold that Section 3 makes the Act applicable to all public religious trusts; that is to say, all public religious and charitable

institutions within the meaning of the definition clause in Section 2(1) of the Act, which are situate in the state of Bihar and any part of the property

of which is in that State. In other words, both conditions must be fulfilled before the Act can apply. If this be the true meaning of Section 3 of the

Act, we do not think that any of the provisions of the Act have extra/territorial application or are beyond the competence and power of the Bihar

Legislature. Undoubtedly, the Bihar Legislature has power to legislate in respect of, to use the phraseology of item 28 of the Concurrent List,

"Charities charitable institutions, charitable and religious endowments" and religious institutions" situate in the State of Bihar. The question,

therefore, narrows down to this: in so legislating, has it power to affect trust property which may be outside Bihar but which appertains to the trust

situate in Bihar? In our opinion the answer to the question must be in the affirmative. ...In any case, the circumstance that the temples where the

deities are installed are situate in Bihar, that the hospital and charitable dispensary are to be established in Bihar for the benefit of the Hindu public

in Bihar gives enough territorial connection to enable the legislature of Bihar to make a law with respect to such a trust. This Court has applied the

doctrine of territorial connection or nexus to Income Tax legislation sales-tax legislation and also to legislation imposing a tax on gambling. In Tata

Iron and Steel Co. Ltd. v. State of Bihar AIR 1958 SC 452 at 461 the earlier cases were reviewed and it was pointed out that sufficiency of the

territorial connection involved a consideration of two elements, namely, (a) the connection must be real and not illusory, and (b) the liability sought

to be imposed must be pertinent to that connection. It cannot be disputed that if the religious endowment is itself situated in Bihar and the trustees

function there, the connection between the religious institution and the property appertaining thereto is real and not illusory; indeed, the religious

institution and the property appertaining thereto form one integrated whole and one cannot be dissociated from the other. If, therefore, any liability

is imposed on the trustees, such liability must affect the trust property.

14. Thus, it is apparent that there is no substance in the submission of the learned Counsel that in the instant case the decree of the Calcutta High

Court has in any way been modified as a result of the Encumbered Act. As already pointed out, what Section 3 provides is that so long the

management is in charge of the Manager, all proceedings in respect of a debt or liability shall remain stayed and there would be immunity from

attachment of the properties movable and immovable, of the judgment-debtors and they shall also be immune from arrest. This in no way modifies

the decree. It provides that if any decree is sought to be executed against the judgment-debtor, who belongs to Chotanagpur in regard to his

properties situated in Chotanagpur, then, on the vesting of the management of the immovable properties, certain consequences will follow. There is

no dispute that Raja Shyam Sunder Singh belonged to Chotanagpur. Undisputedly, the decree in question is sought to be proceeded against his

properties situated in Chotanagpur. To such a situation the protection allowed by the Encumbered Act will be available, when the claim is sought to

be executed in a Chotanagpur court in respect of properties situated in Chotanagpur and no question of extra-territorial operation of the

Encumbered Act arises.

15. In the result, these appeals are dismissed subject to the modification that the order of the learned executing court dismissing the execution cases

as nonest, on an incorrect interpretation of the meaning of the expressions "barred" and "null and void" as occurring in Section 3, is set aside.

These expressions only mean that so long the order of management u/s 2 will be in force, the execution proceedings will be stayed and will remain

stayed till appropriate orders u/s 12 of the Encumbered Act restoring back the properties are not passed, and not dismissal, as held by the court

below.

16. In the circumstances of the case, each party will bear its own costs of these appeals.

Anwar Ahmad, J.

17. I agree.