(1927) 03 AHC CK 0034

In the Allahabad High Court

Abdullah and Another APPELLANT

Vs

Secretary of State and Another RESPONDENT

Date of Decision : 07-03-1927

Acts Referred:

Co-operative Societies Act, 1912 — Section 42

Citation : AIR 1927 All 532 : (1927) ILR (All) 701

Final Decision : Dismissed

Judgement

1. This is a plaintiffs'' appeal in a suit for refund of money realized from them by the sale of cattle. A Co-operative Bank in Bulandshahr went into liquidation and a liquidator was in due course appointed. He found that one Zahur was a debtor of the Bank. Proceedings in such a case are governed by the Co-operative Societies Act of 1912. Section 42 of this Act has been amended for the purposes of these Provinces by the United Provinces Act 3 of 1919 which has added to Section 42 a Sub-section 4(a) which reads as follows:

Any sum ordered under this section to be recovered as a contribution to the assets of the Society or as costs of liquidation may be recovered, on a requisition being made in this behalf to the Collector by the Registrar of Co-operative Societies, in the same manner as arrears of land revenue.

2. The Registrar of Co-operative Societies or the liquidator on his behalf invited the Collector to attach certain animals-cattle and horses-being the property of Zahur. An attachment was accordingly effected. Abdullah and Sultan, the present appellants lodged an objection before the Collector of Bulandshahr claiming the animals to be their own. This was dismissed on the 29th of August 1924. Subsequently, apparently in order to save the animals from injury in the custody in which they were, Abdullah and Sultan got them released on the security of one Hira Lal for Rs. 750/. Hira Lal had subsequently to pay Rs. 720 in satisfaction of Zahur''s debt. After an infructuous suit had been filed which was allowed to be withdrawn with permission to file a fresh suit owing to the Secretary of State not having been made a party, the present suit was filed by Abdullah and Sultan, and

Hira, the surety against the Secretary of State, the Liquidator and Zahur. The first Court dismissed the suit in toto. On appeal the learned Additional Subordinate Judge dismissed the appeal as regards the claim against the Secretary of State and the liquidator, but decreed the appeal to the extent that he gave the plaintiffs a declaration to the effect that they were entitled to recover Rs. 720 from Zahur, Defendant No. 3, on the payment of requisite Court-fees therefor. Against this decree Abdullah and Sultan have appealed marking the Secretary of State and the liquidator respondents to the appeal. Zahur, Defendant No. 3, has not filed any appeal. Both the lower Courts, have held that no civil suit would lie in a matter of this nature against the Secretary of State or the liquidator.

3. We have cited the terms of Sub-section 4(a) of Section 42 of the Co-operative Societies Act as amended in these provinces. According to that amendment any sum ordered to be recovered as a contribution etc. may be recovered "in the same manner as arrears of land revenue." The section of the Land Revenue Act applicable is Section 149. That enacts that the Collector may attach and sell the movable property of the defaulter and that such attachment and sale shall be made according to the law in force at the time being for the attachment and sale of movable property under the decree of the civil Court.

4. The contention in this appeal has centered round the question whether the provisions of Order 21, Rules 58 and 63 of the CPC are applicable, in which case the remedy of the plaintiffs would be by bringing such a suit as that from which this appeal arises, or whether such a remedy is barred to them by the provisions of Section 233(m) of the Land Revenue Act, and their remedy, if any, lay by appeal to the Commissioner under Sections 210 and 211 of the Land Revenue Act from the order dismissing their objection.

5. We are unable to hold that the provisions of Section 233(m) do not forbid such a suit as the present. It is there clearly laid down that no person shall institute any suit in a civil Court with respect to claims connected, with, or arising out of the collection of revenue

other than claims under S,183 or any process enforced on account of an arrear of revenue or on account of any sum which is by this or any other Act realizable as revenue.

6. This is clearly a case in which a sum was being realized as revenue, and the claim is clearly connected with and arising out of that transaction. There is therefore nothing in the words of the section which would justify us in holding that it did not forbid a Suit in a civil Court in the circumstances of this case. We were referred for the appellants to Section 183 which expressly provides for a civil suit in certain circumstances, and it was urged that if a civil suit could be brought by a person who had defaulted in payment of revenue a fortiori it would be natural to expect that a suit in the present circumstances could be brought by a stranger who asserted that he had nothing whatever to do with the revenue or

the payment thereof.

7. But this argument overlooks the fact that Section 233(m) expressly excepts suits u/s 183 and the existence of that particular section emphasizes the intention of the Legislature to bar all other suits excepting suits u/s 183.

8. A similar question came before this Court and is reported in Secretary of State v. Mahadei [1896] 19 All. 127. In that case their Lordships commented on the hardship which a person suffered who was, in circumstances such as the present, debarred from filing a civil suit but they held that the law was clear that no other conclusion was possible. We ourselves are unable to find any adequate reason for differing from this conclusion.

9. We have noted above that the lower appellate Court has given a declaratory decree to the plaintiffs as against Zahur no doubt relying upon the decision in Tulsa Kuar v. Jageshar Prasad [1908] 28 All. 563. Zahur has not appealed and we have not therefore had to consider this question.

10. The appeal is, therefore, dismissed with costs.