

(1956) 10 AHC CK 0004
In the Allahabad High Court
Case No : Civ. Rev. No. 1156 of 1951

Bageshwar Rai and Others

APPELLANT

Vs

Bhabhuti Rai and Another

RESPONDENT

Date of Decision : 28-10-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Uttar Pradesh Agriculturists Relief Act, 1934 — Section 12, 2(2), 23
Uttar Pradesh District Boards Act, 1922 — Section 103, 108, 109, 110, 114
Uttar Pradesh Local Rates Act, 1914 — Section 3
Civil Procedure Code, 1908 (CPC) — Section 115
Uttar Pradesh Agriculturists Relief Act, 1934 — Section 12, 2(2), 23
Uttar Pradesh District Boards Act, 1922 — Section 103, 108, 109, 110, 114
Uttar Pradesh Local Rates Act, 1914 — Section 3
Civil Procedure Code, 1908 (CPC) — Section 115
Uttar Pradesh Agriculturists Relief Act, 1934 — Section 12, 2(2), 23
Uttar Pradesh District Boards Act, 1922 — Section 103, 108, 109, 110, 114
Uttar Pradesh Local Rates Act, 1914 — Section 3

Citation : (1957) 27 AWR 106

Hon'ble Judges : D.N. Roy, J

Bench : Single Bench

Advocate : Surendra Narain Singh, for the Appellant; S.N. Verma, for the Respondent

Final Decision : Allowed

Judgement

D.N. Roy, J.—Certain plots of land were mortgaged in 1921 with possession by Sheo Sarup Rai and Phuleshwar Rai in favour of Brijbasi Rai and Jogi Rai for a sum of Rs. 4499/14/6. The representatives of the mortgagors applied u/s 12 of the U.P. Agriculturists' Relief Act (No. XXVII of 1934) for an order directing that the mortgage be redeemed and they be put in possession of the mortgaged property. They pleaded that the mortgage debt had been fully paid up and satisfied by the usufruct of the property. The representatives of the mortgagees objected to the redemption on the ground that the mortgagors were not agriculturists within the meaning of that term under the U.P. Agriculturists' Relief

Act and that the usufruct of the property was not sufficient to discharge the mortgage debt. The trial court came to the conclusion that the applicants were agriculturists and were entitled to redemption u/s 12 of the Act. The trial court further came to the conclusion that upon proper accounting a sum of Rs. 1019/14/6 was still due. The trial court accordingly allowed redemption on payment of that sum within a specified time. An appeal was preferred against that decision to the District Judge u/s 23 of the U.P. Agriculturists' Relief Act. The District Judge was of the view that the applicants were not agriculturists within the meaning of that term u/s 2(2)(b) of the U.P. Agriculturists' Relief Act and consequently the application was not maintainable. The District Judge further came to the conclusion that if the mortgagors had been agriculturists as defined in the Act, the correct amount that was due on the mortgage was in the sum of Rs. 2423/14/6. The District Judge accordingly allowed the appeal and dismissed the application. As against that decision this revision has been preferred in this Court.

2. It has been contended for the opposite party that the order of the court below, right or wrong, is not revisable u/s 115 of the CPC. Reliance is placed on the case *Keshardeo Chamria Vs. Radha Kissen Chamria and Others*, . It is urged that the court could decide a question rightly or wrongly and by deciding a question wrongly the court did not act illegally or with material irregularity in the exercise of its jurisdiction which the court below undoubtedly possessed over the subject matter of dispute. It is true that the court does not commit any illegality or irregularity in the exercise of its jurisdiction on account of its deciding any question of fact or law wrongly; but it has been held by the Privy Council in AIR 1949 239 (Privy Council) that

If the erroneous decision results in the subordinate court exercising a jurisdiction not vested in it by law, or failing to exercise a jurisdiction so vested, a case for revision arises under Sub-section (a) or Sub-section (b) and Sub-section (c) can be ignored.

3. This principle of law had been endorsed by the Supreme Court in the case relied upon by learned Counsel for the opposite-party and referred to above. The Privy Council in continuation of the quotation made in the above noted case, however, further observed:

The case of *Babu Ram and Another Vs. Munna Lal and Others*, and *Hari Bhikaji v. Naro Vishvanath* ILR 9 Bom. 432 may be mentioned as cases in which a subordinate court by its own erroneous decision (erroneous that is in the view of the High Court), in the one case on a point of limitation and in the other on a question of *res judicata*, invested itself with a jurisdiction which in law it did not possess, and the High Court held wrongly, their Lordships think, that it had no power to interfere in revision to prevent such a result.

4. This was by way of illustrating the effect of what their Lordships held by saying that if the erroneous decision resulted in the subordinate court exercising

a jurisdiction not vested by law or failing to exercise a jurisdiction so vested, a case for revision would arise under Sub-section (a) or Sub-section (b) of Section 115 of the Code of Civil Procedure, though not under Sub-section (c) of that section. The Supreme Court by not repeating this illustrative observation of the Privy Council in its own judgment never intended to mean that this observation had not had its approval. I am therefore of opinion that there may be certain decisions which would, as these observations of the Privy Council indicate, very well come under the principle of law laid down by the Privy Council and approved by the Supreme Court that some types of erroneous decisions by a court of competent jurisdiction can lead to further assumption or non-assumption of jurisdiction and thus can give rise to cases for revision under Sub-section (a) or Sub-section (b) of Section 115, Code of Civil Procedure. Applying this principle to the facts of the present case, I am therefore of opinion that the order of the court below will be open to revision in case it is found by this Court that that order is wrong in law or in fact.

5. The case for the applicants in revision can be split up in two portions, one relating to the question whether they are agriculturists within the meaning of Section 2(2)(b) of the U.P. Agriculturists' Relief Act, and the other relating to the question as to what sum, if any, is due upon proper accounting. The finding on the second question formulated above is of course a finding of fact which ought not to be disturbed in revision. We are therefore left with the first question which is the main question in the case.

6. u/s 2(2)(b) of the U.P. Agriculturists' Relief Act, No. XXVII of 1934, a person is an agriculturist who in districts subject to the Banaras Permanent Settlement Regulations, 1795, pays a local rate u/s 109 of the District Boards Act, 1922, not exceeding Rs. 120/- per annum, the question is whether the applicants pay a local rate as aforesaid. The mortgaged land is situated in the Ballia district which is subject to the Banaras Permanent Settlement Regulations of 1795. The mortgagors have been paying a local rate of Rs. 3/1/5 per year. The mortgagors contend that they have been paying it in accordance with Section 109 of the District Boards Act of 1922. The mortgagees, on the other hand, contend that the payment of the local rate is not u/s 109 but u/s 110, and since Section 2(2)(b) of the U.P. Agriculturists' Relief Act refers only to Section 109 of the District Boards Act and not to Section 110, the mortgagors cannot claim to be agriculturists.

7. In order to determine this question we have to refer to the provisions of Sections 108, 109 and 110 of the U.P. District Boards Act, 1922. Section 103 of the Act relates to the Board's power of taxation. Clause (a) of that section lays down that a Board shall by notification in the Official Gazette, impose a local rate u/s 3 of the U.P. Local Rates Act of 1914 as modified by this Act. And Clause (b) lays down that a Board may continue a tax already imposed on persons assessed according to their circumstances and property preferred to as a tax on circumstances and property) in accordance with Section 114. There is a proviso

to this section to the effect that the tax on circumstances and property so imposed shall not be abolished or altered without the previous sanction of the State Government.

8. Section 109 of the U.P. District Boards Act, 1922, is headed as-"Imposition of local rates." The relevant part of the section material for our purposes may be quoted as follows:

For Section 3 of the U.P. Local Rates Act, 1914, the following shall be substituted, namely

3. (1)

(2) The District Board of any district shall impose in all local areas within the district, subject to the Banaras Permanent Settlement Regulations, 1795, a rate to be levied in respect of each estate within such local area and to be assessed in the following ways:

(a) at a prescribed uniform amount, not exceeding three annas nine pies per acre, upon the area under cultivation at, or within the three years immediately preceding the date of assessment, or

(b) At prescribed differential amounts per acre on the aforesaid area according to the nature or value of the crops grown on, or capable of being grown on, or according the rent realised, or capable of being realised from the several portions of such area, provided that the rate to be assessed under this clause on]any acre shall not exceed three annas nine pies.

(3) The rates mentioned in Sub-sections (1) and (2) shall be levied from such date as may be specified by the State Government in this behalf.

9. It is obvious that whereas the first part of Section 108, read with Section 109 speaks of imposition of a local rate to be levied by notification in the Gazette from such date as may be specified by the State Government, the second part of Section 108 speaks of the continuance of a tax known as tax on circumstances and property imposed on persons assessed according to their circumstances and property in accordance with Section 114 and not dependent upon any Notification in the Official Gazette such as is envisaged in Section 108(a) or upon the specification of a date such as is envisaged in Section 109 of the Act. The distinction between the two parts of Section 108 is real and genuine and the Legislature did intend that whereas the tax leviable u/s 108(a) read with Section 109 is to be imposed after Notification in the Official Gazette and is to be levied from such date as may be specified by the State Government after the Act came into force, the tax on circumstances and property is not to be hedged by these conditions.

10. Section 110 of the U.P. District Boards Act, 1922, however, provides saving clause and it is headed as: "Saving of local rate leviable at commencement of this Act." It says that the rate leviable in respect of the estates in a district at the

commencement of this Act u/s 3 of the U.P. Local Rates Act, 1914, shall be deemed to have been imposed by the Board of that district under Clause (a) of Section 108. Section 110 in my opinion is to be read along with Sections 108 and 109. Section 108 and Section 109, as I have already said, deal with the Board's power of taxation and imposition of local rates. Section 110 deals with saving of local leviable at the commencement of the Act. Obviously the provisions of Section 110 provide for those cases where a local rate under the U.P. Local Rates Act, 1914, did exist in a certain area and the same rate was leviable in respect of the estates in that area after the coming into force of the U.P. District Boards Act, 1922. In such a case the imposition shall automatically be deemed to have been made by the Board under Clause (a) of Section 108 without the same having been notified in the Official Gazette and without a date having been specified by the State Government from which it may be leviable.

11. It has been argued by learned Counsel for the mortgagees that since Section 110 refers only to Clause (a) of Section 103, it would not be permissible to introduce Section 109 in interpreting Section 110 of the Act, and it is urged that in applying the law to the present case the condition contained in Section 109, namely, that the rate shall be levied from such date as may be specified by the State Government remains unaffected. The lower appellate court gave effect to this contention when it came to the conclusion that the mortgagors under documents made prior to the year 1922 would not be included in the definition of "agriculturist" on the ground that the payment of local rate was not a payment u/s 109. Reading Sections 108, 109 and 110 of the U.P. District Boards Act I am able to give these sections the restricted meaning given to them by the lower appellate court. In my opinion Section 110 of the Act has to be read along with Clause (a) of Section 108 and by necessary implication also with Section 109. The imposition of the local rate is made in accordance with Section 109 and what Section 110 read along with Section 108 says is that in stead of the Notification contemplated in Section 108(a) imposing a local rate u/s 3 of the U.P. Local Rates Act, 1914, as modified by the U.P. District Boards Act, the rate leviable in respect of the estates in a district at the commencement of the District Boards Act u/s 3 of the U.P. Local Rates Act shall be deemed to have been imposed by the Board under Clause (a) of Section 108. Obviously the mortgagors in the present case who have been paying a local rate of Rs. 3-1-5 per year in regard to an estate in a district subject to the Banaras Permanent Settlement Regulations, 1795, have been agriculturists within the meaning of that term u/s 2(2)(b) of the U.P. Agriculturists' Relief Act of 1934 and they were entitled to apply for redemption of the mortgage u/s 12 of that Act.

12. In refusing the redemption the lower appellate court refused to exercise a jurisdiction that vested in it by law and the order of the lower appellate court is therefore revisable by this Court.

13. The redemption must be made on payment of a sum of Rs. 2423-14-6 as found by the lower appellate court.

14. Accordingly I allow the application, set aside the order of the court below and direct redemption of the mortgage dated the 14-8-1921 on payment of a sum of Rs. 2423-14-6 to the mortgagees within six months of this date upon which the mortgagors shall be put in possession of the property and in that event the mortgagors shall get their costs in all the courts from the mortgagees. In default of payment aforesaid within the time allowed, the application for redemption shall stand dismissed with costs.