
(1945) 07 AHC CK 0009

In the Allahabad High Court

Case No : Execution of Decree Appeal No. 41 of 1943

Bank of Upper India Ltd.

APPELLANT

Vs

Kushal Singh and Others

RESPONDENT

Date of Decision : 30-07-1945

Acts Referred:

Uttar Pradesh Encumbered Estates Act, 1934 — Section 7(2)

Uttar Pradesh Encumbered Estates Act, 1934 — Section 7(2)

Uttar Pradesh Encumbered Estates Act, 1934 — Section 7(2)

Citation : (1945) 07 AHC CK 0009

Hon'ble Judges : Ghulam Hasan, J

Bench : Single Bench

Advocate : M.M. Lal, for the Appellant; N. Banerji, for the Respondent

Final Decision : Dismissed

Judgement

Ghulam Hasan, J.—This is an execution of decree appeal filed by the decree-holder against an order passed by the Additional Civil Judge of Hardoi upholding the order passed by the Sub-Divisional Officer, Sandila staying the execution of the decree.

2. The order complained against was passed in the following circumstances :

The judgment-debtors applied in 1936 u/s 4 of the U. P. Encumbered Estates Act. On the 7th December, 1937 the appellant Bank obtained a decree for under-proprietary rent for three years, viz., 1341-1344 Fasli. The first execution application was consigned to the record in 1938. , To the second execution application filed in December, 1940, praying for execution by sale of the pukhtadari shares of the judgment-debtors the latter objected that the decree could not be executed in view of the provisions of Section 7 (2) of the U. P. Encumbered Estates Act and should be stayed. The Sub-Divisional Officer allowed the objection and stayed execution and this order was upheld in appeal.

3. In appeal it has been contended that the provisions of sub-Section (2) of

Section 7 are inapplicable as the decree of 1937 was not a decree obtained on the basis of any private debt incurred by the landlord. It is urged that the under proprietary rent is not a private debt; and in any case the decree was not passed on the basis of this debt but the debt was created for the first time by the decree itself. The first contention must be rejected in view of the definition of the word "debt" in Section 2 (a) of the U. P. Encumbered Estates Act, which includes any pecuniary liability except liability for unliquidated damages. That the judgment-debtors were liable to under-proprietary rent to the decree-holder who was the superior proprietor cannot be doubted. The under-proprietary rents not having been paid fell into arrears and it was open to the proprietor to claim them by enforcing the liability against the under- proprietors by a suit. The rent consequently became a pecuniary liability and the decree was passed on this basis and on no other. It is not possible for the decree holder to say that there was no antecedent liability and the liability was created for the first time by the decree. The decision of the Board of Revenue in *Ram Kishan v. Abdus Samad* 1942 AWR (Rev) 64 : OA (Sup) 70 : RD 127, affords no parallel. There the plaintiff had sued the defendant as a trespasser for ejectment and damages. The decree-holder applied for execution of the decree for damages by sale of the defendant's rights. It was held that the decree was for liquidated damages and fell within the definition of "debt" but the decree awarding damages was not a decree passed on the basis of any private debt. The decree in that case itself created a private debt in the form of damages awarded by the Court. In the present case it cannot be questioned that the liability for arrears of rent is a debt and a decree can be passed on the basis of this debt. (See also *Nageshwar Prasad v. Balbhaddar Singh* 1942 OA 40 : AWR (CC) 62 : OWN 55, and *Chandra Bhushan v. Putta Devi* 1942 OA 41 : AWR (C C) 63 : OWN 76, where debt has been held to include a claim on account of rents and arrears of maintenance). I hold, therefore, that the decision of the Courts below is correct and must be upheld.

4. The appeal fails and is dismissed with costs.