

(1919) 11 AHC CK 0016
In the Allahabad High Court

Hanuman Prasad Narain Singh

APPELLANT

Vs

Harakh Narain and Sheo Tahal

RESPONDENT

Date of Decision : 13-11-1919

Acts Referred:

Bundelkhand Land Alienation Act, 1903 — Section 16

Citation : AIR 1919 All 10 : 58 Ind. Cas. 551

Hon'ble Judges : Piggott, J;P.C. Banerji, J

Bench : Division Bench

Judgement

1. The facts which have given rise to this appeal are these. One Harakh Narain, a member of an agricultural tribe to whom the Bundelkhand Land Alienation Act applies, made a mortgage of certain property in favour of one Sheo Tahal on the 17th of February 1911, i.e. after the aforesaid Act had come into operation. Sheo Tahal obtained a decree for sale on the mortgage on the 19th of June 1916 and this decree was made absolute on the 3rd of March 1917. After the making of the decree Harakh Narain was adjudged an insolvent. The decree holder put the decree into execution and applied for sale of the mortgaged property. Thereupon Harakh Narain preferred an objection before the Court, on the ground that in view of the provisions of Section 16 of the Bundelkhand Land Alienation Act the property was not liable to sale and it should not be brought to sale by the Court. This objection was overruled by the Court of first instance, which sold the property. It was purchased by the present appellant. Harakh Narain appealed against the order of the Court of first instance, and the lower Appellate Court held that the property was not liable to sale but directed proceedings to be taken u/s 17 of the Bundelkhand Land Alienation Act. We may observe here that Section 17 of the Act is wholly inapplicable to the present case, inasmuch as that section provides for the case of a decree passed on a mortgage made before the commencement of the Act. The mortgage in the present case having been made after the commencement of the Act, Section 17 has no application to the decree obtained on the strength of such a mortgage. Section 16 of the Act provides that no land belonging to a member of an agricultural tribe shall be sold in execution

of any decree or order of any Civil or Revenue Court made after the commencement of this Act. The section clearly prohibits the sale by any Court in execution of any decree or order which may have been made by a Civil or Revenue Court after the commencement of the Act, The decree in the present case was made by a Civil Court after the commencement of the Act and, therefore, the section applies to that decree and forbids the sale of the property of Harakh Narain, who is a member of an agricultural tribe. It is contended on behalf of the appellant that as a decree had already been passed against Harakh Narain for sale of the mortgaged property, it was not competent to him to object that the property was not liable to sale. This contention has, in our opinion, no force. As we have already pointed out, the section positively prohibits the sale of the property of a member of an agricultural tribe in execution of any decree. Therefore, whether Harakh Narain could raise any objection or not, the Court had no power, by reason of the provisions of this section, to sell the property, which is admittedly the property of a member of an agricultural tribe.

2. It is next urged that Harakh Narain having been adjudged an insolvent, his property vested in the Receiver and the Receiver not being: a member of an agricultural tribe, the property in question was liable to sale and Section 16 did not apply. This contention also is in our opinion without force. In the first place, the property is to be sold as the property of Harakh Narain, and not as the property of the Receiver. In the next place, this property did not vest in the Receiver, inasmuch as Section 16, Sub-section (2) Clause (a) of the Provincial Insolvency Act provides that the property which is exempted by any enactment for the time being in force from liability to attachment and sale in execution of a decree shall not vest in the Receiver. The property in this case was property which by reason of Section 16 of the Bundelkhand Land Alienation Act was not liable to sale in execution of a decree and, therefore, this property did not vest in the Receiver. We are, therefore, of opinion that the objection raised, as regards the sale of the property, in the Court of first instance was a valid objection and the property was not liable to sale in execution of the mortgagee's decree. As the order, for sale was an invalid and illegal order the sale which has taken place in pursuance of that order must fall to the ground and must be deemed to be a nullity. The result is that this appeal fails and is dismissed with costs.