

(1956) 09 GAU CK 0003

In the Gauhati High Court

Case No : Second Appeal No. 50 of 1954

Harsukh Sarawgi and Another

APPELLANT

Vs

Mashulal Khemani and Another

RESPONDENT

Date of Decision : 07-09-1956

Acts Referred:

Medical Act, 1858 — Section 32

Citation : (1956) 09 GAU CK 0003

Hon'ble Judges : Sarjoo Prosad, C.J.; Ram Labhaya, J

Bench : Division Bench

Advocate : S.K. Ghose, J.P. Bhattacharjee and G.K. Das, for the Appellant; D.N. Medhi and N.M. Ganguly, for the Respondent

Judgement

Ram Labhaya, J.—This appeal arises out of an ejectment suit. The suit was dismissed by the Munsif. The decree was reversed on appeal and Plaintiffs were granted a decree both for ejectment, and compensation amounting to Rs. 240/-. Defendants have appealed.

2. The suit was instituted by Mashulal Kheniani, Managing Partner of t Messrs. Sewaram Hanumanbox, Dibrugarh and Messrs. Sewaram Hanumanbox, a registered firm consisting of four partners who were named in the title of the plaint. One contention raised was that Messrs. Sewaram Hanumanbox was a Mitakshara joint Hindu family and its property devolved on all coparceners of the family. The suit was bad for non-joinder as all members of this joint family were not impleaded. The Indian Partnership Act was not applicable.

3. The learned Munsiff found that the suit was not maintainable. He observed that the firm as it appeared from Ext. 1 was registered" in 1941-42 under certificate No. 12 of 24-6-1941. But this could not improve or change the status of the Hindu, joint family concern which does not require registration. As the concern was not a partnership, the suit should have been brought by the Karta of the family or by all its coparceners. Since it had not been so instituted, it was not properly constituted. He found that the notice issued by the registered firm also

would not be valid for the same reason.

The learned Sub-Judge has stated all the facts bearing on this point. The land in suit belonged to the joint family business which was being run in the name of Sewaram Honumanbox. Four sons of Honumanbox were members of the joint family. The Defendants first entered into the suit lands under Sewaram Honumanbox, a joint family concern by a registered deed of lease on 29-2-1940 (Ext 3). This lease deed was executed by all four members of the joint family business. It was for five years. The period of this lease commenced from 13-2-1940. The members of the joint family then decided to start a partnership business and converted the joint family concern into a firm of the name of M/s. Sewaram Honumanbox. They applied for registration of the firm. The firm was registered; vide Registration Certificate (Ext. 1) of 1941-42.

The certificate shows that all the members of the joint family applied for registration of the-partnership business. After the expiry of the first lease (Ext. 3) a fresh deed of lease (Ext. A) was executed. This time the lease was executed by Mashulal Khemani as the Managing Partner of the firm of Sewaram Hanumanbox on. 27-5-1946. The document shows clearly that Messrs. Sewaram Hanumanbox, a registered firm, were the landlords and not the joint family business of the name of Sewaram Hanumanbox which had ceased to exist. The lease deed executed on 27-5-1946 purports to be in express terms by M/s. Sewaram Hanumanbox, a registered Arm of the one part and Defendants of the other.

The Defendants got the property under this lease from the firm registered under the Partnership Act and not from a joint family concern. The learned Sub-Judge in these circumstances found that having taken the property on lease from a firm under the Partnership Act. the Defendants were estopped from contending that they were the ; tenants of a-joint family concern. "He overruled their contention. It appears that no objection-was raised as to the validity of notice sent by the; Plaintiffs" firm. He, therefore, decreed the claim both for ejectment and compensation, (3) The learned Counsel for the Appellants has challenged the correctness of the appellate decision, first, on the ground that the suit was not pro" perly constituted. The contention raised was that the Hanuman but disruption show if and versygor sect the; joint family of the Plaintiffs was in existence even at the time of institution of the suit; it had not been disrupted and, therefore, the registration of the firm under the partnership Act was of no avail to them. We do not find any substance in on his contention. The Plaintiffs executed the deed of lease, which forms the basis of the suit, as partners of Messrs. Sewaram Hanuman box. They have also sued in that capacity and under that title.

The learned" Subordinate Judge has expressed the opinion that there may be a joint family business of the name and style of Messrs. Sewaram Hanuman box with Mashulal Khemani as "Karta", but even if that were so, the Defendants would have to be treated as tenants of the Plaintiffs" firm so long as Ex. A, the

lease-deed in suit, was not cancelled.. There is no finding that there has not been even a partial disruption of the family. If specification of shares takes place in respect of a certain property, there would be partial disruption.

The certificate of registration affords evidence of at least partial disruption. The registration, in these circumstances, may not be regarded as wholly ineffective, but even if it is assumed that the Plaintiffs are still members of a joint Hindu family and that a partial disruption of the family has not taken place, the suit need not fail as all the necessary parties are before the Court. The suit is in a representative capacity on behalf of all the members of the family. They no doubt have been described as partners. This would be; a mis-description in the absence of even a partial disruption or partition. But this error of description should not prove fatal to the suit. The error, if any, does not affect the merits of the controversy or the jurisdiction of the Court. This contention, therefore, is repelled.

4. The second contention raised, however, is an important one and deserves careful consideration. During the pendency of this appeal, the Assam Non-Agricultural Urban Areas Tenancy Act, 1955 (Assam Act 12 of 1955) came into force. It received the assent of the President on 20-6-1955 and was published in the Assam Gazette on 6-7-1955. u/s 1(3), it was to "come into force from such date as" the State Government may, by notification in the official Gazette, appoint." It is admitted that it came into force during the pendency of this appeal.

5. Section 2 of the Act deals with the scope of the Act. It provides that "notwithstanding anything contained in any "contract or in any law for the time being in force, the provisions of this Act, shall apply to all non-agricultural tenancies, whether created before or after the date on which this Act comes into force. There are two provisos to this section, but they have no bearing on the controversy before us, and they need not be reproduced. The section has been made applicable to all non-agricultural tenancies, whether created before or after the date on which the Act came into force. Section 5 of the Act confers protection on tenants from eviction under certain circumstances. The provision of Sub-section (1) of Section 5 is that

not with standing anything in any contract or in any law for the time being in force, (a) where, under the terms of a contract entered into between a landlord and his tenant, whether before or the commencement of this Act, a tenant is entitled to build, and has, in pursuance of such terms, actually built within the period of five years from the date of such contract a permanent structure on the land of the tenancy for residential or business purposes, or where a tenant, not being entitled to build, has actually built any such structure on the land of the tenancy for any of the purposes aforesaid, with the knowledge and acquiescence of the landlord, the tenant shall not be ejected by the landlord from the tenancy except on the ground of non-payment of rent; (b), where a tenant has effected improvements on the land of the tenancy under the terms whereof he is not entitled to effect such improvements, thus tenant shall not be ejected by the landlord from the land of the tenancy unless compensation

for reasonable improvements has been paid to the tenant.

The effect of Clause (2) of this section is that "no-tenant shall be ejected by his landlord from the land of the tenancy except in execution of a decree for ejectment passed by a competent civil court". The provision of Clause (3) of this section is that in cases where a decree for ejectment has been passed on the ground of non-payment of rent, it cannot be executed within a period of thirty days from the date of the decree and if the tenant pays into the court whose duty it is to execute the decree the entire amount payable under the decree within the aforesaid period, the decree has to be recorded as satisfied.

In view of the protection conferred on tenants by this Act, additional grounds of appeal were put in on behalf of the Appellants. By these grounds one contention raised was that the decree against the Appellants passed by the learned Sub-Judge stood nullified and was also liable to be set aside. In any case the Appellants being non-agricultural tenants the decree was not executable against them. In the alternative it was claimed that the Appellants had become entitled to compensation for their permanent structures on the land.

6. The learned Counsel for the Appellants has contended that the Assam Non-agricultural Urban Areas Tenancy Act, 1955 hereinafter called the Act, applies to the tenancy on which the suit has been based. Notwithstanding the contract between the parties, the Defendants are protected from eviction u/s 5(1) (a). The question at this stage is whether the provisions contained in the Act should be applied to pending cases. Since Section 2 of, the Act makes the Act applicable to all tenancies which came into existence before the Act came into force, the question of its applicability may arise with reference to three different classes of cases, namely.

(1) in regard to tenancies on which no suit had been instituted before the Act came into force.

(2) in regard to tenancies on which a suit, appeal or a second appeal may be pending. The present case will be covered by this category.

(3) in regard to execution of decrees passed before the Act came into force.

7. The Act no doubt takes away or impairs the rights of the landlords. They cannot now eject a tenant who has in pursuance of the terms of a contract actually built on the land within a period of five years from the date of contract a permanent structure on it for residential or business purposes, and also a tenant who is not entitled to build, but has built any structure on the land of the tenancy for aforesaid purposes with the knowledge and acquiescence of the landlord. He is not liable to be ejected from the tenancy except on the ground of non-payment of rent.

Section 5 modifies all agreements creating tenancies which came into existence before the Act. To that extent it operates retrospectively in express terms. The legislature, has the undoubted right to take away, abridge or impair vested rights

in property or under the contracts. It has chosen to do so in public interest. Retrospective effect therefore has to be given to the extent that the language of S. 5 requires. The result is that all subsisting agreements stand modified to the extent rendered necessary by S. 5.

The right of ejectment is impaired by these provisions in all cases of tenancies where no litigation for ejectment was commenced before the Act came into force. All cases coming under the first category referred to above, therefore, are within the scope of Section 5. The legislature has expressed itself adequately and with sufficient clarity, so far as cases falling under this category are concerned. The presumption against retrospective operation is completely rebutted by the terms of Sub-section (1). It being obvious that the Act has been made applicable to non-agricultural tenancies which were created before the commencement of the Act, it would apply to suits founded on such tenancies, if instituted after the Act came into force.

8. The controversy in the case centres round the contention that the second category of tenancies on which suits were instituted before the commencement of the Act, are within the retrospective operation of Section 5, and the tenants in such cases, whatever the stage the litigation has reached, have become entitled to resist eviction, if they can show that their case fulfils the requirements of Section 5.

9. There is no provision in the Act which provides in express terms, for its application to pending suits. Mr. Lahifi argues that the intention of the Legislature to apply it to pending suits appears by necessary implication, if Section 2(1) and Section 5 are read together. His contention is that if the intention of the Legislature appears by necessary implication, its retrospective effect may be extended so as to apply it to pending suits, (10) In *Maxwell on the "Interpretation of statutes"*, 10th edition on p. 221, the general rule relating to pending actions has been stated in the following terms:

In general, when the law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights.

10. *Hutchinson v. Jauncey* (1950) 1 KB 574 (A), is an authority for the proposition that the intention may appear by Implication.

11. The tendency of the courts for a long time has been not to apply Acts which have retrospective effect to pending actions, unless the statute showed a clear intention to vary rights which parties to a pending suit had acquired. In *Lauri v. Renad*, (1892) 3 Ch 402 (B) it was held that

when the law is altered during the pendency of an action,, the rights of the parties are decided " according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights.

12. In *Thistleton v. Frewer* (1862) 31 LJ Ex. 230 (C), Section 32, Medical Act,

1858 (C. 90) as amended subsequent statutes enacted that no person should, after the 1-1-1959, recover any charge for medical treatment "unless he shall prove at the trial that he was on the Medical Register. This was held not applicable to an action for services rendered before the date.

13. In *Moon v. Durden*, (1848) 2 Ex 22 (D), the relevant provision provided that all contracts or agreements", whether by parol or in writing by way of gaming or wagering, shall be null and void and that no suit shall be brought or maintained in any Court of law or equity for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to decide the event on which any wager shall have been made. It was held that the section did not apply to suits which had been instituted though not decided; before the Act came into force, notwithstanding the fact that there was an express provision that no-; suit shall be maintained in " any court of law or equity for recovering any sum on agreements which were declared void.

In *Doolubdas Pettamberdass v. Ramlohl Thackoorseydass* 5 Moo Ind App 109 (PC) (E) the Act of the Indian Legislature No. 21 of 1948 provided that

all agreements, whether made in speaking writing, or otherwise, by way of gaming or wagering, shall be null and void; and no suit shall be allowed in any Court of Law or Equity for recovering any sum of money or .valuable thing alleged to be won on any wager, or entrusted to any person to abide the event of any game, or on which any wager is made.

It was held that there were no words in the Act sufficient to show the intention of the legislature-to affect existing rights. In the opinion of their Lordships the Act could not be construed as affecting existing contracts, at all events, not those contracts on which actions have already been commenced. In *Pardo v. Bingham*, (1869) 4 Ch A 735 (F), the principle governing the interpretation of statutes in regard to their effect was stated. It was observed by Lord Hatherley, L.C. that the statute is not to have a retrospective construction unless there was a clear indication of it from the subject matter or from the wording of a statute.

14. The decision in AIR 1936 49 (Privy Council) is a clear authority for the proposition that the legislative intent to vary rights even during " the pendency of an action need not appear in ex. press terms. In this case the enactment validated transfers made after a specified date. It was applied to transfers after that date even though suits had been instituted with regard to them before the Act came into force.

15. *Varadachariar J*, considered the effect of this decision in AIR 1941 16 (Privy Council) The question was whether Section 2 of the Act 14 of 1938 applied to pending suits. The provision of the section was that where rent had been remitted which took place before the commencement of the Act under the orders of the Provincial Government or any authority empowered by it on that behalf, such order whether passed before or after the commencement of the" Act, shall

not be called into question in any civil or revenue Court. The provision admittedly had retrospective effect given to it. The learned Judge when dealing with the question of its applicability to pending suits observed as follows (p. 47):

But the presumption against retrospective operation is said to be so strong that it has been recognized that even in construing an Act or a section which is to a certain extent retrospective, it ought not to be given a larger retrospective operation than the words clearly involve: see *Reid v. Reid*, (1886) 31 Ch D 402 (I). There are two recognized principles (1) that vested rights should be presumed not to be affected and (2) that the rights of the parties to an action should ordinarily be determined in accordance with the law as it stood at the date of the commencement of the action.

The language used in an enactment may be sufficient to rebut the first presumption, but not the second. Where it is intended to make a new law applicable even to pending actions, it is common to find the Legislature using language expressly referring to pending actions. But it will be seen from the decision of the Privy Council in AIR 1936 49 (Privy Council) that it is not necessary that the intention of the Legislature should always be expressed in that particular form. In that case, the enactment validated all transactions subsequent to a specified date and their Lordships held that the new law would apply to a transaction of that kind even if it had become the subject of an action prior to the date of the passing of the law. The usual presumption and looked to see whether there was any reservation in the Act in respect of pending actions.

The learned Judge however did not find it necessary to express any definite opinion on the question whether the impugned Act applied to pending suits as it was not necessary for the decision of the case. Gwyer C. J. also did not express any opinion on this question, Sulaiman J. in the same judgment at page 37 declined to apply the Act to pending actions. In his view

it was a well recognized rule that statutes should as far as possible be so interpreted, as not to affect vested rights adversely, particularly when they are being litigated. When a statute deprives a person of his right to sue or affects the power or jurisdiction of a Court in enforcing the law as it stands, its retrospective character" must be clearly expressed. Ambiguities in it should not be removed by Courts, nor gaps filled up in order to widen its applicability. It is a well-established principle that such statutes must be construed strictly and not given a liberal interpretation.

He also referred to the decision in 63 Ind App 47: AIR 1936 49 (Privy Council) and without making any comments on it did not apply its ratio to the case before him. He was of the opinion that the impugned Act not applicable to the appeal in the High Court.

16. The decision in 63 Ind App 47: (AIR 1936 ; PC 49) (G) has been followed only in *Habiba Bibi and Others Vs. Ram Ranjan Mullick and Others*, In this case the provision of law which came to be interpreted was as follows:

10-C. (1) Where any property is in charge of the Court of Wards no civil Court shall execute any decree or order against the person or property of the ward within four years from the date of the commencement of the Bengal Court of Wards (Amendment) Act. 1935 or from the date of the assumption of charge of the property by the Court of Wards, whichever is later, and for seven years thereafter if the interest due under such decree or order be passed in full every year during the said seven years.

From the language of the provision above reproduced it appears that the legislature had in this case expressed itself with sufficient clarity and the prohibition was against the execution "of decrees within four years from the date of the commencement of the Act. New as well as old executions were within the provision of the amended section. The approach indicated in 63 Ind Ann 47: AIR 1936 49 (Privy Council) was utilised.

17. In Sylhet Loan and Banking Co. Ltd. v. Ahmad Majtoba, AIR 1946 Cal 337 (K) Section 5, Assam Money Lenders (Amendment) Act was not applied to pending execution proceedings. The general rules of interpretation were stated and it was observed that the decision of the Judicial Committee in 63 Ind App 47: AIR 1936 49 (Privy Council) did not militate against the rules stated in the case. In Union of India v. Murlidhar Agarwalla, AIR 1952 Gau 159 (L) also this provision was not applied " to pending execution.

18. In Peoples Bank of Northern India Ltd. v.

Wahid Bux, AIR 1943 Lah 170 (FB) (M), a Full Bench decision, no reference was made to 63 Ind App 47: AIR 1936 49 (Privy Council) It was held that since there was no express provision in the Punjab Relief of Indebtedness Act which makes Section 35 retrospective and since there is nothing in the wording of Section 35 which compels a Court to hold that it was intended to have retrospective effect, the section was not retrospective and did not apply to execution proceedings pending at the time when the Act came into force, where attachment had already been effected. The effect of the provision was to exempt property from sale.

19. In Mahomed Amir Khan v. Mohd Khalil, AIR 1947 Lah 180 (N) a District Magistrate issued a notification under the Defence of India Rules during the pendency of a suit for ejectment. The notification provided that:

No tenant or sub-tenant shall be evicted from any such accommodation so long as he pays and is ready and willing to pay rent according to the terms of the tenancy and subject to the limit fixed in the Punjab Urban Restriction Act and otherwise in the opinion of the District Magistrate, Sargodha, conducts himself as a good tenant both as regards personal conduct and reasonable care of the property.

The provision was- not applied retrospectively to pending actions. The decision in 63 Ind Ann 47: AIR 1936 49 (Privy Council) was not referred to.

20. In *Sudkya Ramji Vs. Mahammed Issak*, it was held that "where the statute is passed pending an action as distinct from "after the date of the cause of action", strong and distinct words are necessary to alter the vested rights of either litigant as they stood at the commencement, of the action." Whilst the statement of law conforms to the substance of the rule generally followed, it adds to its rigidity. It seems to exclude expression of intention by necessary implication. It is not necessary to go so far.

21. In *Jagannath Vs. Board of Revenue, U.P., Allahabad and Others*, the decision in "*Quilter v. Mapelson* (1882) 9 QBD 672 (Q) was relied on and it was held that "it is no doubt a general rule that where the intention of the legislature is doubtful, an enactment will not be construed so as to affect vested rights of action; but the matter is one of construction and if upon a consideration of the enactment as a whole it" is apparent that it was the intention of the legislature that the provisions of the Act should be applicable to pending suits, they will be applied,"

The proposition has been stated in terms which presumably were not intended to mark any departure from the settled rule on the point.

22. It is however noteworthy that barring *Habiba Bibi and Others Vs. Ram Ranjan Mullick and Others*, and AIR 1941 16 (Federal Court) the decision of the Privy Council in 63 Ind App 47 AIR 1936 49 (Privy Council) was not referred to or considered even in casus where the question was whether a new Act applied to pending actions. In *Habiba Bibi and Others Vs. Ram Ranjan Mullick and Others*, though the reasoning which prevailed in 63 Ind App 47: AIR 1936 49 (Privy Council) was availed of, it was distinctly laid down that the general rule in regard to pending actions was that a statute which takes away or affects rights of action is presumed not to apply to pending actions. It would thus appear that the decision in *Mukherjee's case* (G) was not taken as introducing any alteration in the general rule.

In AIR 1941 16 (Federal Court) *Varadachariar J.* also merely read in the decision the rule that it was not necessary that the intention of the legislature should always be expressed in words expressly referring to pending actions. In his view the decision of their Lordships of the Privy Council recognized the position that the legislative intention to apply a new Act to pending actions may be expressed by necessary implication. Though this view had been expressed before, it received added support from the Privy Council decision. Their Lordships of the Privy Council read into the language used by the legislature in the Act before them a compulsion to apply it to the pending suits, Having interpreted the relevant provisions that way they reversed the usual presumption. The reversal was in the circumstances of that case. The expression of the legislative intent by necessary implication having been found, the usual presumption had to be displaced.

Where a presumption is so displaced the absence of a saving clause limiting the

retrospective application becomes material. Their Lordships of the Privy Council were not reversing the recognised presumption which governed the interpretation of statutes in regard to their applicability to pending actions. The decision was based on the peculiar circumstances of the case. No previous decisions were considered, nor was any general rule of interpretation stated. A reading of the judgment indicates unmistakably that the amending Act was interpreted and its necessary implication given effect to. Indian decisions after 1936 are not inconsistent with this view.

23. Whenever it is decided by the Legislature to take away or impair vested rights, the decision is taken in public interest. Hardship to individuals is caused, but their interests are subordinated to the public weal under the necessity or compulsion of circumstances. The general rule, therefore, has been that the intention of the Legislature to give retrospective effect to its enactments, where vested rights are taken away or impaired, must appear in express terms or by necessary implication. This necessary implication is a recognised mode of expression. It creates a similar compulsion for the Courts as the use of express terms. But the rule of interpretation which assists the Courts in determining whether a law can be retrospectively applied to pending suits, is stated differently from the general rule. In such cases, the rule is that pending cases should be decided in accordance with the law which was in force when the suit was instituted. Changes of the law during the pendency of the suit, unless purely procedural, do not affect its course or tenor, since application of a new law to a pending suit is an extreme form, which retrospective application of measures of the Legislature may take, a clearer statement of intention has generally been insisted on. Even here, the intention may be made manifest in express terms or by necessary implication. Where the intention of the Legislature is made clear in some known way, the Courts would be bound to give effect to it by applying it to pending suits. The freedom of the Legislature to express its mind in any form cannot be restricted or reduced. But if extreme retrospective effect is sought to be given by the application of a law to pending suits whatever the stage they have reached and vested rights are intended to be varied, Courts may expect a clear, adequate and unequivocal expression of intention, which should not be easy to mistake. For, if there is ambiguity or equivocation, retrospective effect could not be given to the law. In the ultimate analysis, the matter is one of construction, and if upon a consideration of the enactment, it is apparent that it was the intention of the Legislature that the provisions of the Act should apply to pending suits, they should be so applied.

Since the Legislature must be aware, when giving retrospective effect to its laws, that pending suits may possibly be affected, it is desirable, that it should, speak out its mind sufficiently and unequivocally on this aspect of the matter. The question, therefore, is whether there is anything in the Act which compels the Courts to apply it to pending suits.

24. Section 2(1) has retrospective effect. It applies to tenancies which came into

existence before the Act came into force. As stated above, the result is that existing agreements of tenancies stood amended by reason of the provisions contained in Section 5 of the Act. Something which these agreements did not contain, has to be read into them, with the result that the tenants under the agreements to which the Act applied, became non-evictable except for non-payment of Rent or on payment of compensation for improvements effected. The provisions of Section 5 have to be deemed to have incorporated in the agreements of the specified description. The mandate of the section is that a tenant shall not be evicted by the landlord from the tenancy except on the ground of non-payment of rent, if his case falls u/s 5(1)(a).

A higher status is conferred on the tenant regardless of the terms of the contract or the provisions of any existing law to the contrary. The modification in the contract has to take effect from the date of the agreement itself. The termination of the tenancy in some legal way before the Act came into force, should not, therefore, deprive the tenant of the protection conferred on him. For if merely on the ground of termination of the tenancy, the tenant is denied the protection which Section 5 affords him, retrospective effect would not be given to the provision for which the Legislature has expressly provided.

Even, if, therefore, the tenancy is terminated before the Act came into force, the tenant could claim the protection of Section 5, when the suit is instituted after the commencement of the Act. Once this is conceded it could be argued with considerable force that there is no justification for making a distinction between terminated tenancies on which suits have been instituted and those on which suits have not yet been instituted. The protection would be available to tenants of both the classes since the Legislature has made no distinction between them.

25. Both S. 2 and Section 5 have an overriding effect of a drastic character. They apply to leases or tenancies notwithstanding anything to the contrary in any agreement or law" for the time being in force. The provisions of the law creating a liability to eviction on termination of a tenancy, have been made subject to the operation of Section 2 and Section 5 of the Act. Even if, therefore, a tenant has incurred the liability to eviction under the law in force before the Act came into force, he shall not be evicted if he can show that he is not evitable u/s 5.

It is only by conceding to the tenant this privilege that full effect can be given to the language of the Legislature. It should, therefore, be regarded as implicit in the language of Section 5 that it should apply to such pending suits where its provisions could be availed of if no suits had been instituted before the Act came into force. When preventing ejection of tenants who have built permanent houses in pursuance of the terms of the lease within the time specified, the Legislature does not appear to have shown any respect for cases in which suits had been instituted before the commencement of the Act, and in the language of their Lordships of the Privy Council "V "this may not be assumed when substantive rights of the landlords and their accrued causes of actions were to be abrogated". It would, therefore, be correct to hold that the Legislature has, by

necessary implication, applied the Act to pending suits as well,; (26) In AIR 1952 Gau 159 (L), it was held that the relevant provisions of the Assam Money Lenders (Amendment) Act did not apply to pending actions. Mr. Medhi relied on this decision in support of his contention. This case is obviously distinguishable. The provisions of the Assam Money Lenders Act were very different. They are not in pari materia. There was an express provision- in that- Act which made it applicable to pending suits and appeals. There is no similar provision in the present Act. Besides, the question: in that case was whether the amending Act could apply to pending executions. This is not the question before us. Mr. Lahiri distinguished the decision? on the above grounds, and very rightly. This case is not of any assistance to us in interpreting the relevant provisions of the amending Act before us.

27. It may be remarked here that it is not necessary to pronounce on the question whether final decrees against tenants can be re-opened in execution by virtue of the provisions contained in Section 5. The question does not arise in the case. But I think I may add that pending executions stand on a very different footing from pending suits. An executing Court cannot go behind the decree. Nor can it re-open the matter at that stage. There is no express provision conferring power on the executing Court to entertain a plea by which liability to ejectment could be disputed on the ground of the provisions contained in Section 5 of the Act. Clause (2) of Section 5 seems also to indicate that the decrees passed by a competent Civil Court remain executable. These observations are made merely to indicate that though the Act may apply to pending actions, it does not necessarily follow that it applies to pending executions also.

28. The suit out of which this appeal arises is at the second appeal stage. If S. 5 is applied and the tenants are permitted to resist eviction, no procedural difficulty comes in the way, for both Section 2 and Section 5 operate notwithstanding anything contained in any law for the time being in force. Besides, under Order 41, Rule 33, Code of Civil Procedure, for the appellate Court has the power to pass any decree and make any order which ought to have been passed or made, natty pass of make ditch further of1 -other decree or order as the case may require. If any alteration in the conditions regulating the relationship of the parties has come about during the pendency of the appeal, the Court has the power to pass or make a decree or order as the circumstances of the case may require. By virtue of the provisions contained in Order 41, Rule 33, Code of Civil Procedure, the High Court is competent to pass a decree or order which may be suitable in the circumstances of the. case, although the decree of the lower Court was not open to any objection at the date it was passed, and the necessity for passing a decree or order to a different effect has arisen owing to subsequent happenings Doman Sahu and Another Vs. Gangu Nayek, The contention now raised may, therefore, be entertained and examined. There is no legal impediment in the way of its consideration.

29. The question whether the Defendant-Appellant is entitled to any relief u/s 5

of the Act, is a question of fact. It is for the Defendants to show that their case falls under Clause (a) or Clause (b)" of Section 5(1). This question cannot be decided by us at this stage. It requires an issue on which parties should have the opportunity of producing whatever evidence they may wish to adduce. It is necessary, therefore, to remand the case to the Court below for an enquiry on the issue now raised by the Defendants, The issue that arises is as follows:

Whether Defendants are protected from ejectment under Clause 5(1)(a) or entitled to any compensation for improvements u/s 5 (1) (b)? .

This issue is referred to the trial Court under Order 41, Rule 25, Code of CPC with the direction that the Court shall proceed to try the issue and shall return the evidence to this Court with its finding thereon and the reason therefor.

Sarjoo Prosad, C.J.

30. I substantially agree; but I am anxious to make it clear that, in my opinion, the decision of the Privy Council in 63 Ind App 47: AIR 1936 49 (Privy Council) furnishes a clear and definite guide to the interpretation of social legislations of the type, which is now under consideration before us. Where in a social legislation of this kind the Legislature intends to give protection¹ or confer a privilege on a class of persons which it otherwise did not possess, the legislation should be taken to apply ordinarily to the entire class unless there was some saving or exception meant by the terms of the legislation, itself.

The mere fact that there is a suit or proceeding pending against any member of the class should not in the usual course deprive him of the protection or privilege so afforded, unless the Legislature intended to make an exception in his case. All rules of interpretation are meant to bring out and give effect to the dominant purpose or intention of the legislation and to advance the remedy which it seeks to offer. There should be, therefore, no academic or rigid interpretation of its provisions. The law is not something static. It reflects and registers the growing needs of the people and their varying moods. Its language has, therefore, to be interpreted not as dead letters in black and white printed on the pages of the statute, but as the voice of a representative Legislature speaking through those pages, which it is always the privilege of the judiciary to interpret.

But if the language of the statute is itself so obscure that its dominant purpose cannot be effectuated, the Court must cry a halt. At some stage a line has to be drawn between interpretation and legislation & the Court cannot under the guise of interpretation do something, which the Legislature itself has not been able to fulfil. As to where the line has to be drawn is not always an easy matter, the best guarantee in such cases is the sound judicial discretion of the Judge himself.

31. Sir George Rankin in delivering the opinion of the Board in K.C. Mukherjee's case (G) (ibid) was faced with the interpretation of such a social legislation. What happened then was that when the appeal to the Judicial Committee was pending, the Bihar Tenancy (Amendment) Act, 1934 was passed, which by S. 10 inserted

certain sections into the Bengal Tenancy Act, 1885, in its application to Bihar and Orissa, Section 26 (N) of which provided that:

Every person claiming an interest as land-lord in any holding.....shall be deemed to have given his consent to every transfer of such holding made before January 1. 1923". The first question to which their Lordships had to address themselves was whether the Act did not take away the right which the landlord was proposing to enforce. Sir George Rankin after a careful examination of the relevant provisions of the Act held that "unless some saving clause can be implied as regards occupancy holdings which, at the date of the commencement of the Act, are in question in a pending suit, Section 26 (N) must be applied to the present case, and the Plaintiff's appeal must fail in limine.

It was held that the section was retrospective and was meant to apply to pending proceedings even though the Legislature did not expressly say so. His Lordship laid down the principle thus:

The object of this section can only be to quiet titles which are more than ten years old, and to ensure that if during those ten years the transferee has not been ejected he shall have the right to remain on the land. Within this class the Legislature has not thought fit to discriminate against the tenants whose right is under challenge in a suit, case which it may well have regarded as invidious or unnecessary. As substantive rights of landlords and their accrued causes of action were to be abrogated, respect for pending suits over old transfers cannot be assumed.

32. Another factor which seems to have weighed with their Lordships in coming to their decision is that if the saving to be implied in favour of pending suits is to attach to all suits brought prior to the coming into force of the Act, then the interval between the passing of the Act in November 1934 and the coming into force of the Act in June 1935 gave an opportunity to any landlord to bring an ejectment suit and defeat the rights conferred by the amending provision. This factor is even more prominently present in the case before us.

33. Varadachariar J. had occasion to comment on the above judgment of the Privy Council in his decision in AIR 1941 16 (Federal Court) Strictly speaking the point of retrospective operation did not arise in that case. His Lordship, however, thought it proper to examine the point and incidentally, he observed that there were two well-recognised principles: of interpretation of statutes: (1) that vested rights should not be presumed to be affected and (2) that the rights of the parties to an action should ordinarily be determined in accordance with the law as it stood at the date of the commencement of the cause of action.

He further pointed out that the language used in an enactment may be sufficient to rebut the first presumption, but not the second, because it is usually common to find the Legislature using language expressly referring to pending actions. At the same time, the learned Judge was impressed with the dictum of the Privy Council when he summed up his discussion of the matter in the following words.

But it will be seen from the decision of the Privy Council in AIR 1936 49 (Privy Council) that it is not necessary that the intention of the Legislature should always be expressed in " that particular form. In that case, the enactment validated all transactions subsequent to a specified date and their Lordships held that the new "law would apply to a transaction of that kind even if it had become the subject of an action prior to the date of the passing of the Act; and in those circumstances, they reversed the usual presumption and looked to see whether there was any reservation in the Act in respect of pending actions.

34. The rule, therefore, that when the Legislature intends to affect pending causes of action it must "expressly say so, is not an invariable rule. As early as in the case of (1882) 9 QBD 672 (Q), it was pointed out by Jessel, M. R. in the Court of Appeal in England:

"The question whether an Act of Parliament is retrospective in its operation must be determined by the provisions of the Act itself, bearing in mind that - a statute is not to be construed retrospectively, unless it is clear that such was the intention of the legislature". In all such cases the Court should consider the object of the enactment and the remedy which it sought to provide for the protection of a class of persons generally. The dictum of Bowen, L.J. in the above case is equally emphatic:

"No doubt, as a general rule, a statute does not affect pending proceedings, but that rule is only a guide where the intention of the legislature ; is obscure, it does not modify the clear words of a statute. Many clauses of this statute contain provisions clearly retrospective, which lessens the presumption against any particular clause being retrospective".

Therefore, where the wider application is more consistent with the principles of the statute, that construction should prevail even though in express terms the Legislature does not say so in regard to pending actions. The same principle was reiterated by the Court of Appeal in a very recent decision in 1950 1 All ER 165 (A). In that case, Sir Raymond Evershed, M.R. thus formulated the principle: .

"Having examined the many cases that the industry of counsel for the landlord has enabled him to lay before us, I doubt whether the principle ought to be expressed in quite so precise language as Sir George Jessel, M. R., stated it in Re: Joseph Such & Co. Ltd. 1875 1 Ch D 48 (S). It seems to me that, if the necessary intentment of| the Act is to affect pending causes of action, the Court will give effect to the intention of the legislature even though there is no express reference to pending actions."

35. It will be observed that the above cases are mostly cases of tenancy legislation. In K. C. Mukherjee's case (G), the Privy Council set in bold relief the above principles of interpretation and carried them to their " natural and logical conclusion when it held in effect that where on an examination of the relevant provisions of a legislation it appears that the intention of the Legislature was to

extend its protection to all members of the class in general without any invidious distinction, the ordinary presumption that it should not be held to apply to pending causes of action is no longer operative and one has to look to the provisions of the statute itself to find whether any saving or exception was implied.

That the above Privy Council decision has been followed in India with the respect which it deserves cannot be gainsaid; and if in some cases it failed to be considered, the fact does not detract from its high authority. Even in 1937, almost soon after the decision was pronounced it was considered by a Division Bench of the Calcutta High Court in *Habiba Bibi and Others Vs. Ram Ranjan Mullick and Others*, where R.C. Mitter, J. and B. K. Mukherji, J. (as he then was), readily adopted the lead of the principle indicated above. I might just as well take the liberty of culling out a passage from the judgment of the learned Judges here:

The principles governing retrospective operations of statutes are well settled. When a statute takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty or attaches a new disability in respect of transactions or considerations already past, the presumption is, but it is only a presumption, that it is not to have retrospective operation. It is also a general rule that a statute which takes away or affects a right of action is presumed not to apply to pending actions.

But these are general rules and are displaced when the intention of the Legislature, either expressed or to be gathered by necessary implication is otherwise, Where the intention of the Legislature to give retrospective operation is not indicated by express words, the scope of the Act must be aken into consideration in deciding whether retrospective operation was intended by necessary implication.

They further held on the language of the statute before them that it covered even execution proceedings as here was no saving in that respect by the legislature, that being the principle formulated by Sir George Rankin in 63 *Hid App 47: (Affi, 1933 PC 49) (G)*.

36. I do not want any further to add to the discussions or refer to a number of other cases on the point. But before I close, I should point out that I have no desire at present to commit myself on the point, whether the statute in question applies to execution cases.

37. For the reasons stated above, I agree with my learned brother that the Assam Non-Agricultural Urban Areas Tenancy Act, 1955 applies to this case and that the case should be remanded for the finding required before the appeal is finally disposed of. Here admittedly the lease of the disputed land was taken for erecting houses, etc. Therefore, it has to be seen whether the erections the come within the meaning of the Act so as to afford protection to the Defendants.