
(1946) 07 AHC CK 0004
In the Allahabad High Court
Case No : F.C. Appeal No. 168 of 1941

Irtiza Karim and others

APPELLANT

Vs

Misri Lal and others

RESPONDENT

Date of Decision : 29-07-1946

Acts Referred:

Uttar Pradesh Debt Redemption Act, 1940 — Section 21, 4

Citation : (1946) 07 AHC CK 0004

Hon'ble Judges : Ghulam Hasan, C.J.; Kidwai, J

Bench : Division Bench

Advocate : M. Wasim and Mr. M.Y. Siddigi, s, for the Appellant; S.M. Yusuf, for the Respondent

Final Decision : Dismissed

Judgement

Gualam Hasan, C.J. and Kidwai, J.—On the 23rd August, 1933, the Appellants borrowed a sum of Rs. 3,500 from the Respondents and executed a mortgage deed in their favor by which a house in Lucknow was hypothecated. The money due under the mortgage deed was not paid and so two of the mortgagees, Mst. Maika and Misri Lal, brought a suit in the Court of the Civil Judge of Lucknow claiming that a sum of Rs. 6,545 was due and praying for a decree for the said amount and for sale of the property mortgaged in default of payment. There was a further prayer that if the sale proceeds of the mortgaged property were not sufficient to pay the entire decretal amount, the Plaintiffs may be permitted to realize the balance either from the person or other property of the Defendants Nos. 1 and 3. In their written statement the Appellants, among other pleas, took the plea that they were agriculturists entitled to the benefit of the U.P. Debt Redemption Act as well as of the U.P. Agriculturists' Relief Act. After some contest the fact of their being agriculturists was admitted and a declaration was made by the mortgagees u/s 4 of the U.P. Debt Redemption Act in the following terms:

In case the Defendants prove themselves to be agriculturists the applicants-

Plaintiffs declare that if a decree is passed in their favor either for the whole or a part of their claim such decree shall not be executed against the land, agricultural produce or person of the agriculturists Defendants.

2. The learned Civil Judge, in view of this declaration, did not allow the Appellants the benefit of the provision relating to interest contained in the U.P. Debt Redemption Act, although he reduced interest under the Unions Loans Act. He also considered the question as to whether the Plaintiffs should be allowed the right to apply for a personal decree in case the mortgaged property is not found sufficient to discharge the entire amount decreed in the suit. He found that such a prayer was not barred by time and he accordingly ordered that a preliminary decree under Order XXXIV, Rule 4 should be prepared reserving to the Plaintiffs the right to apply for a personal decree in case the mortgaged property is not found sufficient to discharge the decretal amount. The decree has been prepared on the ordinary form and it contains a reservation of such right subject to the following condition:

Where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force.

3. The decree contains no reference to the declaration made by mortgagees. Defendants Nos. 1 to 3 have appealed to this Court. There are only two points involved in the appeals, the first is whether any personal decree can be passed at all and whether the reservation of the right to apply for a personal decree is proper, and the second is whether it is necessary that the preliminary decree passed should contain a direction that the decree shall not be executed against the land, agricultural produce or the person of the mortgagors.

4. As to the first point we do not think the declaration made by the mortgagees prevents the passing of a decree under Order XXXIV, Rule 6 of the Code of Civil Procedure, should the other circumstances justify the passing of such a decree. It only prevents the execution of any decree that may be passed against the land, agricultural produce or person of the agriculturist. It is only Section 21 of the Debt Redemption Act which prohibits the passing of a decree under Order XXXIV, Rule 6 of the Code of Civil Procedure in certain circumstances and, should the provisions of that section be applicable to the present case, we have no doubt that the matter will be considered at the proper stage which, to quote the words of Section 21, is

when the decree for sale has been executed and the net proceeds of the sale of the mortgaged property are insufficient to pay the amount due.

5. Mr. Wasim would have us hold that because the decree passed in a suit in which a declaration u/s 4 has been made cannot be executed against the person of the agriculturist, therefore, a "personal" decree as it is called would be wholly inapplicable. It is argued that such a decree can only be executed against the property other than the mortgaged property because the mortgagor has become personally liable and the effect of Section 4(1) of the Debt Redemption Act is to

extinguish this personal liability. We cannot accept this interpretation either of Order XXXIV, Rule 6 or of Section 4(1) of the Debt Redemption Act.

6. Under Order XXXIV, Rule 6 of the CPC decrees have always been passed against the legal representatives of the mortgagor with a condition that the execution is restricted to the assets of the deceased. The decree cannot be executed against the person of the legal representative but this does not prevent the passing of a "personae" decree.

7. On the interpretation of Section 4(1) of the Debt Redemption Act the same result follows. If the Appellants' arguments on this question were accepted the result would be that, when once a declaration under that section was made, no decree at all could be passed in a suit on the basis of a personal bond or a promissory note or any kind of debt in which property is not hypothecated. This is certainly not what Section 4(1) contemplates.

8. We do not think, therefore, that there is any force in the argument that no personal decree at all can be passed u/s 4(1) of the Debt Redemption Act.

9. As to the second question, namely whether a direction should be added to the decree u/s 4(4) of the Debt Redemption Act we are of the opinion that this is not the stage at which these matters should be decided. All that the decree of the trial Court says is that the right to apply for a decree under Order XXXIV, Rule 6 of the CPC is reserved if it "is not barred by any law for the time being in force." Section 4(4) means that the direction mentioned in it shall be recorded in the decree which may possibly be executed against the land or the agricultural produce or the person of the agriculturist and not in a decree which is operative only against other properties as the preliminary decree in this case is. Mr. Wasim relied upon a decision in *Lachhmi Narain v. Mst. Durga* 1945 O.A. 162 : A.W.R. (C.C.) 162 : O.W.N. 235 in which a Bench of this Court ordered that a preliminary decree containing a direction u/s 4(4) of the Debt Redemption Act should be substituted for the preliminary decree which had ordered the sale of agricultural land exclusively. We do not think that the decision is applicable to the facts of the present case. In that case the decree as framed directed the sale of agricultural land and consequently it had to be modified. Since it was a mortgage decree no other modification could be made except the addition of this direction u/s 4(4) which would prevent the decree operating against the property actually mortgaged. In the present case the only thing which has been directed by the decree, as it at present stands, to be sold is a house situated within the city of Lucknow. The decree does not contemplate the sale of any other property or any proceedings against the person of the agriculturists. That stage will only come if, and when, the proceeds of the sale of the house are found insufficient, and for all we know it may never come at all.

10. The decree in which the direction should be incorporated is the decree which may be executed against the land, the agricultural produce or the person of agriculturists, namely the decree under Order XXXIV, Rule 6 of the Code of Civil

Procedure.

11. Mr. Wasim stated that this appeal had really been filed by reason of an apprehension that the decree passed in this case might operate as res judicata when it came to the time for considering whether a decree under Order XXIV, Rule 6 should be passed. He has referred to Chitaley's Code of Civil Procedure, Volume III page 281", and to the rulings mentioned under note 11 of that page. We do not think that this apprehension is justified because unless the provisions of Section 21 come into play, the question here involved does not relate to the passing of the decree but only to the property against which is to be executed, and, moreover, the decree passed in this case under Order XXXIV, Rule 4 clearly reserves to the judgment-debtors the right to object to the passing of a decree under Order XXXIV, Rule 6 on the ground that it is barred by any law for the time being in force.

12. The appeal accordingly fails and is dismissed with costs.