

(1964) 10 BOM CK 0011
In the Bombay High Court
Case No : S. A. No. 424 of 1959

Laxmibai and others

APPELLANT

Vs

Ramarao Mhatarji and others

RESPONDENT

Date of Decision : 21-10-1964

Acts Referred:

Central Provinces and Berar Relief of Indebtedness Act, 1939 — Section 11(1), 15(2)

Citation : (1965) MhLj 694

Hon'ble Judges : L. M. Paranjpe, J

Bench : Single Bench

Advocate : S. N. Kherdekar, for the Appellant; R. N Deshpande, For respondents Nos. 1 to 5, for the Respondent

Final Decision : Dismissed

Judgement

L. M. Paranjpe, J.—This second appeal raises an interesting question regarding the construction of section 15 (2) of the C. P. and Berar Relief of Indebtedness Act, 1939, to which I shall refer hereafter by its popular name, Debt Relief Act.

2. The question of interpretation of section 15 (2) has arisen under the following circumstances. The plaintiffs Nos. 1 to 4 are the sons of the original defendant No. 2 one Mhatarji who was allowed to be transposed as the plaintiff No. 5 at the appellate stage. This Mhatarji and his two brothers applied u/s 6 of the Debt Relief Act for scaling down their debts. The Presiding Officer, Debt Relief Court, Buldana, framed a scheme in accordance with section 11 (1) of the Debt Relief Act with respect to the debts of Mhatarji and his brothers, on 28th August 1941. By this scheme, the debts of the creditor Shridhar Govind were ordered to be paid in 26 annual installments and consequently the scheme was to remain in force for 26 years. At the foot of the scheme, certain fields including two of the suit fields, survey Nos. 213/3-B and 213/1-A, were mentioned among the property belonging to the judgment-debtor. However, fields survey Nos. 213/4 and 213/2 which also were the subject-matter of the suit were not mentioned in that list of the Debtor's property in the scheme. Field survey No. 213/4 was

acquired by Mhatarji by inheritance from his aunt in the year 1944, that is about three years after the scheme was framed, but the date and the mode of acquisition of field survey No. 213/2 by Mhatarji are not disclosed. During the subsistence of this scheme, Mhatarji sold field survey No. 213/1-A to one Bhausingh on 2nd April 1947 for Rs. 400 and Bhausingh subsequently sold that field to the defendant-appellant Tedusingh on 3rd June 1962. Mhatarji sold field survey No. 213/3-B and a part of field survey No. 213/4 to the appellant Tedusingh for Rs. 2,000 on 18-12-1948. Similarly, Mhatarji sold field survey No. 213/2 and the remaining portion of field survey No. 213/4 to the appellant Yedusingh for Rs. 500 on 14-4-1951.

3. The four sons of Mhatarji filed the present suit against the appellant Yedusingh for possession of field survey Nos. 213/KA, 213/3-B, 213/2, 213/4, firstly on the ground that those sales were void as having been effected without permission from the Deputy Commissioner u/s 15 (2) of the Debt Relief Act and secondly, on the ground that the sales were without legal necessity. The appellant Yedusingh had denied that the fields were the property of the joint family of the plaintiffs and their father Mhatarji. According to him, these fields were the self-acquired property of Mhatarji and the sales were justified by legal necessity as per details stated by him. The scheme framed by the Debt Relief Court was not acted upon and was allowed to lapse and, therefore, the sales of these fields without the Deputy Commissioner's permission were not void.

4. Holding that the impugned sales taken by Yedusingh during the pendency of the debt relief scheme without obtaining permission from the Deputy Commissioner u/s 15 (2) of the Debt Relief Act were void, the learned trial Judge decreed the claim for possession in favour of the four sons of Mhatarji. The learned Assistant Judge, Khamgaon, affirmed the decree in favour of the four sons of Mhatarji, who were the original plaintiffs, as also in favour of the transferor Mhatarji, who was allowed by him to be transposed as the plaintiff No. 5. The defendant Yedusingh has come up to this Court to challenge the correctness and legality of these decisions by the lower Courts.

5. In view of the admitted fact that the fields survey Nos. 213/1-A and 213/3-B were specifically mentioned in the scheme, Exhibit P-1, framed by the Debt Relief Court u/s 11 (1) of the Debt Relief Act, Mr. Kherdekar did not want to question or challenge the findings of the Courts below that the sales of these two fields were void u/s 15 (2) of the Debt Relief Act as they were taken by Yedusingh during the pendency of the scheme without obtaining prior permission of the Deputy Commissioner. He accepted the decree with respect to possession of these two fields as correct and confined this appeal only to the decrees with respect to the other two fields which were not mentioned in the scheme,

6. In support of his contention that the sales of fields survey Nos. 213/2 and 213/4 were not void, Mr. Kherdekar advanced the following arguments. Section 15 (2) of the Debt Relief Act, which purported to apply to every transfer of immovable property made by a debtor during the subsistence of a scheme

framed under that Act, ought to be read as applying only to transfers of immovable property which was mentioned or included in the scheme. The Act was brought on the Statute Book for the benefit of debtors, and applying section 15 (2) literally would militate against the purpose of the Act and would amount to a clog on the right of a debtor to deal with his property as he liked. The earlier Debt Conciliation Act was also enacted for a similar purpose and the provision in that Act, that all the immovable properties of the debtor must be included in the agreement to be registered by the Debt Conciliation Board, ought to be postulated for schemes framed under the Debt Relief Act also. In the present case, the two fields were not mentioned in the scheme and, therefore, they ought not to be held as being subject to the provisions of section 15 (2) of the Act. Mr. R. N. Deshpande, Advocate for the respondents, contended, on the other hand, that it was not open or permissible for the appellant to read more in section 15 (2) than what was provided for therein. The section was in plain mandatory language and must be construed literally without importing any extraneous considerations or Merge with next row

Act which was superseded by the Debt Relief Act. Moreover, there were essential differences between the Debt Conciliation Act and the Debt Relief Act which would make it impossible to apply the analogy of the Debt Conciliation Act to the Debt Relief Act. There was nothing in the Debt Relief Act which required the mention of the immovable properties of a debtor in the scheme and consequently there was no question of saying that section 15 (2) should be made applicable only to the transfers of properties which were included or mentioned in the scheme.

7. Section 15 (2) of the Debt Relief Act, which Mr. Kherdekar was seeking to interpret in his own way, was in the following words:

Every transfer of immovable property made by a debtor in respect of whose debts a scheme has been prepared under sub-section (1) of section 11, shall be void unless made with the sanction of the Deputy Commissioner within whose jurisdiction the debtor ordinarily resides or earns his livelihood. The Deputy Commissioner shall not sanction any transfer of such property unless he is satisfied that such transfer will not defeat the claims of any creditor the payment of whose claims has been ordered by such scheme.

The language of this section was mandatory. The Legislature had provided therein that every transfer of immovable property made by a debtor during the subsistence of a scheme but without the sanction of the Deputy Commissioner shall be void. There was nothing in the section which would permit any whittling down of its provisions, so as to make them applicable only to certain kinds of property. The section clearly showed that the transfer of every property held by a debtor would be void if it was effected without obtaining the previous sanction of the Deputy Commissioner.

8. Mr. Kherdekar was contending that fields survey Nos. 213/2 and 213/4 did not

belong to Mhatarji on the date of his application or of the scheme but were acquired by him subsequently and, therefore, they were neither disclosed by him in his petition to the Debt Relief Court nor included in the scheme and, for that reason, the provisions of section 15 (2) were not applicable to the transfers of those two fields. His argument, in effect, meant that section 15 (2) should be read as containing some additional clauses which I have underlined below:

Every transfer of immoveable property which is disclosed by him in his petition u/s 5 (2) (b) or which is owned or held by him on the date of his application or which is included in the scheme, made by a debtor in respect of whose debts a scheme has been prepared under sub-section (1) of section 11 shall be void unless made with the sanction of the Deputy Commissioner.....

Mr. Kherdekar, however, did not show any warrant or authority for adding the aforesaid underlined clauses to section 15 (2). Adding such clauses would amount, not to interpreting section 15 (2), but to amending it. It is the duty of the Courts to interpret and apply legislations and not to make or amend laws. No Court can accept such an argument which has the effect of virtually legislating or of effecting amendments to legislations. A similar question had arisen before the Supreme Court in *British India General Insurance Co, Ltd. v. Itbar Singh* AIR 1969 SC 1331. In that case, the question of interpreting section 96 (2) of the Motor Vehicles Act had arisen. That section specifies the defences which an Insurance Company can raise upon service of a notice thereunder. The Insurance Company was seeking to raise certain defences which were beyond those specified by that section. While supporting the claim of the insurance Company that such other defences could also be raised by it, the Solicitor General had contended that the word "also" should be read after the word "grounds" therein. Their Lordships repelled this argument on making the following observations:

What the Legislature has done is to enumerate in sub-section (2) the defences "available to an Insurer and to provide by sub-section (6) that he cannot avoid his liability excepting by means of such defences. In order that sub-section (2) may be interpreted in the way the learned Solicitor-General suggests we have to add words to it. The learned Solicitor-General concedes this and says that the only word that has to be added is the word "also" after the word "grounds". But even this the rules of interpretation do not permit us to do unless the section as it stands is meaningless or of doubtful meaning neither of which we think it is. The addition suggested will, in our view, make the language used unhappy and further effect a complete change in the meaning of the words used in the sub-section.

The observations of their Lordships aptly apply to the submission of Mr. Kherdekar also. The wording of the section is neither meaningless nor of doubtful meaning and the addition of the clauses suggested by Mr. Kherdekar will effect a complete change in the provisions of section 15 (2). Consequently this submission of Mr. Kherdekar must stand rejected.

9. Mr. Kherdekar was then submitting that the addition of these clauses should be permissible on the analogy of the Debt Conciliation Act. There are, no doubt, some similarities in the provisions of the two Acts but there are also some material distinctions between the two. The important similarities between the two Acts are these: The preambles of both the Acts showed that they were enacted "as it was expedient to relieve agriculturists from their indebtedness". Under both the Acts, the debtors were required to disclose, on verification, in their applications all their properties including claims due to them together with the specification of the value of the properties and the place or places at which any such property is to be found. This similarity of disclosure of all assets was necessary for purposes of both the Acts in order that the Debt Conciliation Board and the Debt Relief Court should be in a position to fix reasonable and proper installments for payment of debts after knowing all the assets, liabilities and circumstances of the debtors. The further similarity in the two Acts was that the installments could be recovered by the creditors as arrears of land revenue by applying to the Deputy Commissioner and the Deputy Commissioner had power u/s 13 of both the Acts to certify that the installments were irrecoverable, so as to enable the creditors to take further steps for recovering the installments through the civil Courts.

10. Despite these similarities, there were several other material distinctions in the provisions of the two Acts. Though the two Acts were enacted as it was expedient to relieve agriculturists from their indebtedness, the preamble of the Debt Conciliation Act had restricted such relief to agricultural debtors to amicable settlements which were to be brought about between the debtor and the creditor by the Debt Conciliation Board. Under the Debt Relief Act, however, there was no question of any amicable settlement between the debtor and his creditors, and the question had to be decided judicially by the Presiding Officer. Under the Debt Conciliation Act, legal practitioners were not allowed to appear for either party and amicable settlements were brought about by the good offices of the Debt Conciliation Board without the aid of, or interference by, the legal advisers of the parties. The Debt Relief Act, however, permitted lawyers to appear before the Debt Relief Court in order to aid the Presiding Officer to arrive at a judicial decision about the settlement of the debts of the debtor after considering all his assets, liabilities and circumstances. The Debt Conciliation Act gave no power to the Debt Conciliation Board to satisfy or settle a debt by sanctioning a transfer of the debtor's property, whereas section 11 (2) of the Debt Relief Act permitted the Debt Relief Court to sanction a transfer for effecting a settlement of debts. Section 12 of the Debt Conciliation Act mandatorily required that the agreement to be effected and registered must contain the particulars of all the property of the debtor but the Debt Relief Act did not require mention or inclusion of a debtor's property in the scheme. u/s 12 (2) of the Debt Conciliation Act, the agreement brought about by the Debt Conciliation Board and containing all the immovable property of the debtor, was to have the effect of a notional decree of a civil Court but there was no such provision whereby the scheme framed u/s 11

of the Debt Relief Act ipso facto operated as a notional decree of a civil Court. Section 13 (3) of the Debt Conciliation Act authorized the Deputy Commissioner to certify that the installment was irrecoverable and thereupon the agreement ceased to subsist. Section 13 (4) of that Act further provided that upon an agreement so ceasing to subsist, any amount which was payable under the agreement, but had not been paid, shall be recoverable as if a decree of a civil Court had then been passed for its payment, with the result that the creditor could recover the defaulted amount by execution through a civil Court. That meant that the notional decree, which arose upon the registration of the agreement u/s 12 (2), could not be executed, but the amount remaining in arrears under the agreement (which was itself a notional decree) would be deemed to have been decreed upon the issuance of a certificate by the Deputy Commissioner when section 13 (4) came into operation. Section 13 (3) of the Debt Relief Act provided that in case the Deputy Commissioner found that an installment, which was sought to be recovered as arrears of land revenue, was irrecoverable, or that two consecutive installments had remained in arrears, he had authority to pass an order that the installments under the scheme shall cease to have effect and the balance remaining due shall be recoverable as if a decree and, in case of a mortgage, lien or charge, as if a final decree had been passed by a Court of civil jurisdiction. Thus, under the Debt Relief Act, the notional money decree in cases of simple debts which had remained in arrears, and the notional final decree in cases of mortgages, liens or charges was deemed to have been passed for the first time upon the Deputy Commissioner issuing a certificate that the scheme has ceased to have effect.

11. u/s 17 of the Debt Conciliation Act, transfers of property effected by a debtor with intent to defeat or delay the creditors during the subsistence of an agreement were only voidable at the option of the creditors so defeated or delayed. That meant that the creditor, who was defeated or delayed, may acquiesce in the transfer and may not seek to avoid it, with the result that such a transfer may stand despite the fact that it was made during the subsistence of an agreement. Moreover it was only the creditor defeated and delayed by a particular transfer, who could avoid that transfer; while other creditors, who were parties to the agreement, had no right to avoid that transfer if they were not so defeated or delayed. The provisions in the Debt Relief Act, however, were entirely different. Section 15 (2) of the Debt Relief Act provided that every transfer of immovable property made by a debtor during the subsistence of a scheme shall be void unless made with the sanction of the Deputy Commissioner.

12. It would be seen that these distinctions, which are far more than the similarities in the two Acts, have a definite purpose behind them. As adumbrated, the agreements effected under the Debt Conciliation Act, were by mutual amicable settlement between the debtor and his creditors, whereas the schemes under the Debt Relief Act were not the result of any such amicable settlement but were judicial decisions given by the Presiding Officers of the Debt Relief Courts on considering the circumstances and assets and liabilities of the debtors.

A creditor entering into an amicable settlement with the debtor under the Debt Conciliation Act, which had the effect of postponing the payment of his debts, would necessarily insist that all the immovable properties of his debtor should be made subject to the charge of his debts and, therefore, section 12 of the Debt Conciliation Act had provided that all the immovable properties of the debtor shall be included in the agreement which was to be registered and which was to have the effect of a notional decree u/s 12 (2). A scheme under the Debt Relief Act, however, was not to have the effect as a decree till after the Deputy Commissioner issued a certificate u/s 13 (3) of the Debt Relief Act, and that decree would also be a simple money decree with respect to unsecured debts. Consequently, the creditor would not bother to insist upon the inclusion of the debtor's immovable property in the scheme with respect to simple money debts. The schemes, so far as they related to mortgages, charges or liens would however operate as notional final decrees upon the issuance of a certificate by the Deputy Commissioner u/s 13 (3). Consequently, it would only be in the case of such mortgage debts or charges or liens that the creditor would insist; upon the immovable property of the debtor which was subject to such mortgages, charges or liens being included in the scheme. There was no warrant for the suggestion of Mr. Kherdekar that the properties of the debtors had necessarily to be included in the scheme irrespective of the nature of the debts. He did not show any provision in the Debt Relief Act or in the rules or instructions thereunder, which required the inclusion of properties in the scheme for payment of the debts by installments. A reference to the scheme, Exhibit P-1, would also show that the debts owing to the creditors Nos. 2 to 4 were simple debts, and only the debt of creditor No. 1, which was ordered to be paid in 26 installments in all, was due upon a mortgage and paragraph 3 of the scheme stated that the properties shown in the schedule therein would continue to be liable to the mortgage mentioned in it until the installments due to the mortgagee are fully paid off. The note below the details of the property would also show that the condition of the mortgage was of foreclosure. This specific entry in the scheme supports my view that it was only the properties subject to charges, liens or mortgages which were liable to be subject to a notional final decree that had to be mentioned in the scheme and it was not necessary to show in the scheme properties which were not subject to any mortgage, charge or lien.

13. In view of the fact that agreements under the Debt Conciliation Act were arrived at by amicable settlements, transfers of immovable properties by a debtor during the subsistence of an agreement were not declared to be void but were only voidable at the option of the creditor who was defeated or delayed. Since the scheme under the Debt Relief Act was not a result of an amicable settlement but was drawn up judicially by the Presiding Officer, it was necessary to protect the interests of the creditors who were forced to postpone recovery of their debts to a long time, 26 years in the present case. It was for that purpose that the Debt Relief Act provided that every transfer of an immovable property by a debtor during the subsistence of a scheme shall be void unless it was

effected with the prior sanction of the Deputy Commissioner. Section 15 (2) had provided a further safeguard that the Deputy Commissioner shall not sanction any transfer of such property unless he was satisfied that such transfer would not defeat the claims of any creditor, the payment of whose claims has been ordered by such scheme. If such a provision was not made, unscrupulous debtors would have first refrained from disclosing their properties and would then have parted with their properties in order to defeat or delay the claims of the creditors, and in that case, the creditors may have to find eventually that the debtors had left with them no property from which the outstanding claims could be recovered. The provision of a prior sanction by the Deputy Commissioner for such sales also meant that, in suitable cases, the Deputy Commissioner could have insisted on payment of the purchase price to the creditors who had been postponed for a long time. The restrictions in section 15 have obviously been included for safeguarding the interests of the creditors.

14. Mr. Kherdekar was then submitting that section 15 (2) would amount to a clog on the right of the debtor to deal with his property as he liked and such a clog ought not to be there when the legislation was for the benefit of the debtor. Mr. Kherdekar was not right in assuming that section 15 (2) would amount to a clog on the right of the debtor to acquire or to dispose of properties. There was no restriction on his right to acquire other properties. So far as the transfers of properties were concerned, the Debt Relief Act only insisted that these transfers should not be made in a manner to defeat or delay the creditors, the payment of whose debts had been postponed often to inordinate lengths. Granting relief to agriculturists did not mean that the creditor class was to be destroyed. Section 15 (2) was enacted to ensure that, while granting relief to agriculturists, the interests of the creditors were also safeguarded, so that both the debtor and the creditor would have a peaceful coexistence. Saving one class was not to be done by annihilating the other. The restriction was imposed reasonably and there was no force in the contention of Mr. Kherdekar that section 15 (2) was unjust to the debtor class. That section was not likely to hinder a genuine or a bona fide transfer which can always be effected with the permission of the Deputy Commissioner on satisfying him that it was not made or intended to defeat the creditors.

15. It would, therefore, be seen that drawing analogies from the Debt Conciliation Act was not helpful to the appellant. The two Acts were entirely different. Analogies can never be earned too far. If the Legislature had intended that only the properties held by the debtor on the date of the scheme or included in the scheme were subject to the limitations of section 15 (2), there was nothing to prevent the Legislature from saying so in so many words. The fact that the Legislature did not make any such provision, must necessarily mean that such a provision as Mr. Kherdekar was wanting to postulate, was not intended to be made by the Legislature. It cannot, therefore, be engrafted on the Debt Relief Act in the absence of any specific words to that effect in that legislation.

16. Mr. Kherdekar was then wanting to rely on a decision in Second Appeal No. 245 of 1952 decided by Mr. Justice P. P. Deo, on 27-3-1953. That decision was with respect to section 15 (3) of the Debt Conciliation Act and it had no application to the facts of the present case. In Pratapmal v. Laxman 1950 NLJ 698, Mr. Justice V. R. Sen had held that the transfer of his property by a debtor during the pendency of the scheme u/s 11 (1) was void irrespective of whether the full property was or was not disclosed before the Debt Relief Court. In Rogho v. Sadasheo (1951 NLJ Note No. 262) 3. A. No. 489 of 1949, D/- 15-10-1954, Mr. Justice Choudhuri had also held that section 15 (2) of the Debt Relief Act operated as a bar against transfer in respect of the property acquired by the debtor subsequent to the scheme prepared u/s 11 (1) of the Debt Relief Act and the transfer of such property without the sanction of the Deputy Commissioner was void. With respect, I agree with the views in the aforesaid two decisions, for the reasons which I have elaborately stated above.

17. Mr. Kherdekar did not show any sustainable ground on which the decrees of the Courts below could be challenged. They had rightly declared the transfers of the debtor's fields in violation of the provisions of section 15 (2) of the Debt Relief Act as void. Their decisions are correct and there is no reason to interfere with them.

18. The appeal is dismissed with costs.