

(1910) 09 CAL CK 0028
In the Calcutta High Court

Maharaj Protap Udai Narain Shahu Deo	APPELLANT
Vs	
Thakur Madan Mohan Nath Shahu	RESPONDENT

Date of Decision : 01-09-1910

Acts Referred:

Chota Nagpur Encumbered Estates Act, 1876 — Section 3

Citation : 7 Ind. Cas. 787

Hon'ble Judges : Richardson, J;Chatterjee, J

Bench : Division Bench

Judgement

Chatterjee, J.—The appellant obtained a decree for arrears of rent on the 19th of April 1905. The estate of the judgment debtor was in charge of the Encumbered Estates Department at Manbhum from 23rd May 1906 to 21st April 1908 on which last date it was released.

2. The decree-holder applied for execution on the 13th February 1909, i.e., more than three years from the date of the decree. The judgment-debtor pleaded limitation and the decree-holder seeks to save his application from the bar on the ground that he was debarred, by the provisions of the Encumbered Estates Act, VI of 1876, from taking out execution during the period of the management under the Act. The Court below has given effect to the plea of the judgment-debtor holding that under a certain interpretation of the Act by the Legal Remembrancer of Bengal, followed by a legislative recognition of that interpretation by the amendment of the Act of 1876, the decree-holder was not debarred from executing his decree and that the application is, therefore, barred. On appeal it has been contended by the decree-holder that the lower Court is wrong. Section 3 of Act VI of 1876 enacted that as soon as an estate is taken charge of under the Encumbered Estates Act, all proceedings pending in Civil Courts in respect of the debts and liabilities of the disqualified owner shall be barred; he shall not be arrested for such debts, his movable property shall not be attached by the Civil Court: and his immovable property shall be exempt from Civil process. This was the state of the law when the Legal Remembrancer in

1908 gave an opinion that the word Civil Court in the section meant Civil Courts pure and simple and did not include Revenue Courts dispensing Civil justice and the Act was amended in 1909, by the addition of the words Revenue Court" & co. The appellant contends on the authority of Nilmoni Singh Deo v. Taranath Mukerjee 9 C. 295 : 12 C.L.R. 361 : 9 I.A. 174, that the word Civil Court in Section 3 of Act VI of 1876 is comprehensive enough to include the Revenue Court deciding rent suits and executing rent decrees, that the opinion of the Legal Remembrancer is wrong and that the amendment of Section 3 by Act III of 1909, only clears up the meaning of the original section. On the other hand, it is contended by the respondents that the amendment shows that the Revenue Courts could not have been meant to be included in the word Civil Courts. The object of the Act being to give relief to encumbered zemindar against all sorts of claims, it cannot for a moment be believed that the Legislature did not mean to keep the zemindar from all sorts of debts and liabilities including rent suits and decrees. The judgment of their Lordships of the Privy Council makes this quite clear and any opinion of Mr. Chapman to the contrary is, therefore, wrong. The amendment u/s 4 of Act III of 1909, (B.C.) was made for the purpose of meeting this difficulty and removing all doubts. The amendment virtually adopted the decision of the Privy Council and cannot be said to have altered the law. u/s 12 of the Act, the debts etc. barred u/s 3 are revived when the estate is released and as the release was in 1908, the application for execution in 1909, was quite within time.

3. It also appears that the judgment-debtor mentioned the decree of the decree-holder as one of his debts in his petition for relief under the Encumbered Estates Act in 1906. That might amount to an acknowledgment of debt by the judgment-debtor which would most probably give a fresh start to the decree-holder. If it were necessary to go into this question, we should have remanded the case or called for further evidence as the documents containing these acknowledgments are not on the record although they are said to have been before the Court below. As, however, we hold for the decree-holder on the first point, it is not necessary to remand the case. The appeal is decreed with costs, 10 gold mohurs. The records will be sent down without delay.

Richardson, J.

4. I concur in my leaped brother's conclusions. The debt here is a judgment-debt supported by a decree of a Revenue Court being a Court for the recovery of rent. While the debtor's estate was under the charge of the Encumbered Estates Department, the Court which passed the decree was, in my opinion, debarred from executing it by the provisions of Section 3 of the Chota Nagpur Encumbered Estates Act (VI of 1876) before that section was amended by Act III (B.C.) of 1909. The mere fact that Revenue Courts of the description in question are governed by a special procedure does not prevent them from being Civil Courts. The term "Civil Courts " is wide enough to include such Revenue Courts, although for the purpose of the Civil Procedure Code, the term Revenue Courts does not

include Civil Courts of a particular kind, namely Civil Courts having original jurisdiction under the Code to try rent suits. To my mind there is nothing in Section 4 A of the Code of 1882, re-enacted in substance as Section 5 of the Code of 1908, which is inconsistent with the decision of the Privy Council in *Nilmoni v. Taranath* 9 C. 295 : 12 C.L.R. 361 : 9 I.A. 174, that the Rent Courts established by Act X of 1859 are Civil Courts. Section 4A was introduced into the Code of 1882, in the year 1888, apparently for the purpose of mitigating the consequence flowing from that decision viz., that the provisions of the CPC were capable of being applied to Rent Courts (or Revenue Courts for the recovery of rent) in those matters of procedure as to which the special Acts, creating them or by which they were governed, were silent. The consequence, so far as it extends, is accepted in the section and by way of mitigation, a power is given to the Government where provisions of the Code are applicable to Revenue Courts owing to the silence of the special enactments relating to those Courts, to declare that such provisions shall not apply to those Courts, or shall only apply to them with such modifications as may be prescribed.

5. In any case, the Act of 1876, with which we are concerned here, was passed before the decision of the Privy Council and was not amended in consequence of that decision. Nor does there appear to be anything in the law relating to the Rent Courts of Chota Nagpur which makes the principle of the Privy Council decision inapplicable to them. As to the amendment of the Law introduced by Act III (B.C.) of 1909, I do not think it can have the effect of taking out of the term "Civil Court" any Revenue Court previously included within that term, though it may have the effect of bringing within the operation of Section 3 of the Encumbered Estates Act any Revenue Courts in Bengal which are not also Civil Courts.

6. In regard to the provisions of Section 7 of the Encumbered Estates Act, it is clear that an execution barred by Section 3 is revived by Section 12 and it is, therefore, unnecessary for the purpose of the present case to consider the precise effect of the exclusion of rent due to the superior landlord" from the bar imposed by Section 7 of *Kameshar Prasad v. Bhikhan Narain Singh* (20 C. 609).