
(1939) 05 AHC CK 0013
In the Allahabad High Court

Parbhu Dayal

APPELLANT

Vs

Laldas Maganlal and Others

RESPONDENT

Date of Decision : 05-05-1939

Acts Referred:

Citation : AIR 1939 All 643 : (1939) 9 AWR 561

Hon'ble Judges : Mohammad Ismail, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mohammad Ismail, J.—This is an application by Pt. Prabhu Dayal under Order 39, Rules 1 and 2 find Section 151, Civil P.C. The facts that have been rise to this application may be briefly ntated. It appears that the applicant executed an equitable mortgage on 14th May 1930 in favour of Seth Lal Das for a large Hum of monoy. The properties hypothecated under this mortgage were situate within the United Provinces. On 9th October 1934 the applicant executed another mortgage in favour of Seth Lal Das and his wife. In this mortgage, some properties outside thin province were also included. The principal and interest due under the bond of 14th May 1930 formed part of the consideration of the latter mortgage. It was stated in the deed that in consequence of the execution of the second mortgage the first mortgage was satisfied and discharged. Under the terms of the mortgage deed the applicant was required to pay certain amount periodically on account of interest due under the mortgage. It is stated by the applicant, and this statement is not disputed, that the applicant paid the installments till April 1938. Since then the payment of interest has been withheld. The applicant states that he was advised that ho was paying higher rate of interest than what he was bound to do as an agriculturist according to the provisions of the Agriculturists' Belief Act. He therefore called upon the creditors to render accounts to the applicant. As the creditors failed to render accounts a suit was filed by the applicant u/s 33 Agriculturists' Belief Act, in the Court of the Civil Judge, Agra, on 5th March 1937. On the objection of the mortgagees the

plaint was returned for presentation in the Court of the Munsif of Agra. The plaint was then presented in the latter Court on 10th February 1938. While this suit was pending in October 1938 the mortgagees brought a suit at Bombay for the enforcement of the mortgage of 1934. It is assumed for purposes of this application that the Bombay High Court has got jurisdiction to try the suit instituted by the mortgagees. The applicant made an application to the Munsif of Agra for the issue of an injunction restraining the mortgagees from proceeding with the Bombay suit. The Munsif rejected the application but the learned District Judge granted it. Ultimately the suit pending in the Court of the Munsif u/s 33, Agriculturists' Belief Act, was dismissed. The applicant then filed an appeal from the decision of the trial Court in the Court of the District Judge which is still pending.

2. The injunction granted by the District Judge having come to an end with the termination of the suit, the applicant applied to the District Judge for the issue of an ad interim injunction. This application however was rejected. The applicant has filed a first appeal from order to this Court against the order of the District Judge refusing to grant injunction. This appeal has not been admitted yet. The applicant after filing the appeal made an application for the issue of a temporary injunction pending the disposal of the appeal. This was granted on 17th March 1939 by a learned Judge of this Court and notice was issued to the opposite party to show cause why the ex parte order granting a temporary injunction may not be confirmed. The opposite party has now appeared and contests the application of the applicant on several grounds. I have heard learned Counsel for the parties at considerable length and I now proceed to consider some of the points raised at the Bar.

3. Learned Counsel for the opposite party contends that the suit instituted by the applicant under the Agriculturists' Belief Act is not maintainable as some of the properties hypothecated are situate outside the United Provinces. In support of this contention, reliance is placed on a Bench ruling of this Court reported in Haji Sheikh Wahid-Uddin Vs. B. Makhan Lal and Another, . In that case properties in Meerut and Delhi were hypothecated by an agriculturist. The mortgagor brought a suit u/s 33 of the Act. The learned Judges held that the suit was not maintainable as the mortgage was indivisible and some of the properties were outside this province to which the provisions of the Act did not apply. Learned Counsel for the applicant has attempted to distinguish this ruling. In my opinion it is not proper for me to express any opinion on the merits of the case. This is a question that will have to be considered later. It is urged by learned Counsel for the opposite party that the suit in Bombay is for the enforcement of the second mortgage, while the suit under 8. 33 of the Code refers to the mortgages of 1930 and 1934 both. It is urged that the mortgage of 1930 does not subsist while the suit with reference to the second mortgage is not maintainable in view of the ruling cited above. This again is a matter which will have to be deter, mined later if the appeal filed by the applicant is admitted. It may be mentioned that the ruling of the Bench would be binding on me as a single Judge. As stated above, I

am not prepared to enter into the merits of the case.

4. The next point stressed by learned Counsel for the mortgagees is that Order 39, Rule 1 has no application to the facts of the present case and that this Court has no jurisdiction to issue an injunction restraining the mortgagees from seeking their legal remedy in the Bombay High Court. Learned Counsel for the applicant contends that his application is covered by Order 39, Rules 1 and 2. I now proceed to examine the aforesaid Rule. Rule 2 provides : "In any suit for restraining the defendant from committing a breach of contract or other injury of any kind...." The words "any kind" have been added in the present Code of Civil Procedure. They were absent in the old Code. In *Darab Kuar v. Gomti Kuar* (1900) 22 All. 449 it was held that Section 493 applied to suits restraining a defendant from committing a breach of contract or injuries akin to breaches of contract. The learned Judges declined to grant an injunction restraining the defendant from interfering in the management of the properties in dispute. This ruling however is no longer good law in view of the addition of the words "of any kind." The question is whether the lawful exercise of a right vested in a person can be legally restrained by the Court under this Rule. In my opinion this cannot be done. It must be conceded that the mortgagees have as much right to bring a suit in Bombay as the applicant has got a right to institute a suit at Agra. The mortgagors want to take advantage of a local legislation which is enacted exclusively for the benefit of the agriculturists. The mortgagees on the other hand are anxious to enforce the terms of a contract solemnly entered into by the parties. It is impossible to hold that the action of the mortgagees is illegal or dishonest. In my judgment Rule 2 does not help the applicant. Coming to Rule 1 I find it difficult to hold that the property in suit is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree. The mortgagees have not yet obtained a decree and therefore no question of execution arises. The enforcement of a mortgage can never be characterised as an attempt to waste or damage any property. Sub-clause (b) obviously has no application. In my opinion therefore Rule 1 in terms does not apply.

5. It may be urged that apart from the provisions of the Code this Court has power to restrain a party from proceeding with a suit in another Court. This view has been taken in several cases in Bombay. In *Narayan Vithal Samant Vs. Jankibai Sitaram Samant*, a Pull Bench of the Bombay High Court held that a single Judge sitting on the Original Side is competent u/s 151, Civil P.C., to restrain the parties in a suit before him from proceeding with a suit in a Subordinate Judge's Court in the mofussil and so in effect stay proceedings. The suit for the enforcement of the mortgage however is not pending in a Court subordinate to this Court and therefore this ruling is inapplicable. Similar view was taken in *Mulchand Raichand v. Gill & Co.* A.I.R. (1920) Bom. 296 at pp. 298 and 299. In *V.R. Naik Vs. Balvant Sitaram Mahindre*, it was held that the Bombay High Court had jurisdiction in the plaintiff's suit to pass an order restraining the defendant from proceeding with his suit in the Hyderabad Courts. The facts were

that the defendant filed a suit in Hyderabad State, being a resident of that State, against the plaintiff and subsequently the plaintiff filed another suit against the defendant in the Bombay High Court. The subject-matter of the suit was the same and the defendant entered appearance in the plaintiff's suit without protest and also made a counterclaim. On these facts an injunction restraining the defendant was issued. This case no doubt shows that the High Court has got inherent jurisdiction apart from the provisions of the Code. In *Vanechand v. Lakshmi Chand* AIR (1920) Bom. 309 Pratt, J., observed:

There is no doubt as to the jurisdiction of this Court to restrain a party from prosecuting a suit in a foreign Court. The principle on which this jurisdiction is exercised is set forth in the judgment of Lord Cranworth in *Carron Iron Co. v. Maclaren* (1855) 5 H.L.C. 416. It is that the Court acts in personam and will not suffer anyone within its reach to do what is contrary to its notions of equity merely because the not to be done may be in point of locality beyond its jurisdiction.

6. It will be observed that the only justification for the exercise of the equity jurisdiction by this Court is that a party to the suit is doing something which is against its notions of equity. The question therefore is whether the mortgagees in the case are guilty of any such conduct. After giving my ivory serious consideration to the able arguments advanced by learned Counsel for the parties, I am unable to say that the action of the mortgagees can be characterized as illegal or even improper. The Legislature in its wisdom has thought it fit to grant reliefs to certain class of persons. In conferring such a right the terms of the contract sintered into between the parties are to be ignored. Even the provisions of other enactments are superseded by this special enactments. The applicant is fully entitled to claim benefit of the provisions of the Act and no reasonable objection can be raised against his attempt to obtain a reduction of interest payable under the bond. On the other hand the mortgagees cannot be blamed for instituting a suit for the enforcement of their mortgage in a Court which will not recognize the provisions of the local Act. In my judgment, the applicant is within his rights in instituting the suit in Bombay and should not be restrained from taking such a course.

7. There is no doubt that the institution of two parallel suits in two Courts may lead to complications which if possible should be avoided. It is for the applicant to take such steps as may be open to him. This Court however will not be justified in restraining one of the parties from claiming his legal remedy. An order of injunction no doubt will be helpful to the applicant, but it will manifestly be detrimental to the interest of the opposite party. In my opinion there is no justification for such a discrimination. In the result I discharge the temporary injunction and dismiss the application with costs. I direct that the record be sent immediately to the Court below to enable the applicant to proceed with his appeal.