

(1956) 09 AHC CK 0009

In the Allahabad High Court

Case No : Ex. F.A. No's. 251, 252 and 495 of 1956

Raja Jwaleshwari Pratap Narain Singh

APPELLANT

Vs

B. Parchandbir Singh and Another

RESPONDENT

Date of Decision : 27-09-1956

Acts Referred:

Transfer of Property Act, 1882 — Section 82
Uttar Pradesh Zamindari Debt Reduction Act, 1953 — Section 10, 3, 4, 4(1), 4(2)
Transfer of Property Act, 1882 — Section 82
Uttar Pradesh Zamindari Debt Reduction Act, 1953 — Section 10, 3, 4, 4(1), 4(2)
Transfer of Property Act, 1882 — Section 82
Uttar Pradesh Zamindari Debt Reduction Act, 1953 — Section 10, 3, 4, 4(1), 4(2)

Citation : (1957) 27 AWR 224

Hon'ble Judges : Beg, J;Agarwala, J

Bench : Division Bench

Advocate : S.C. Asthana and Ambika Prasad, for the Appellant; J. Swarup, for the Respondent

Final Decision : Dismissed

Judgement

Beg, J.—We have before us three first appeals viz. First Appeals Nos. 251, 252 and 495 of 1955. The circumstances in which these three appeals have arisen may be briefly stated as follows:

2. One Raja Pateshwari Pratap Narain Singh was the owner of Basti Raj. He had three sons. The eldest was Jwaleshwari Pratap Narain Singh. The two younger sons were Parchand Bir Singh and Bijai Bir Singh. On 16-7-1927 Raja Patesnwari Pratap Narain Singh executed a will. Under this will he bequeathed his entire estate in favour of the eldest son. He further directed that the two younger brothers should live with the eldest son, who should provide reasonable expenses for their maintenance and upkeep. The will further provided that in case the younger brothers decided to separate, the eldest brother who was the holder of the estate would allot to them properties bearing certain amount of profits. The effect of the will was that in the event of separation Parchand Bir

Singh, the second son was to be entitled to property fetching an annual profit of Rs. 4,800/ -, and Bijai Bir Singh the third son was to be entitled to property fetching an annual profit of Rs. 2,400/ -. Raja Pateshwari Pratap Narain Singh died in the year 1928. The two younger brothers lived with the eldest brother upto the year 1934. In that year they decided to separate. Accordingly, in the year 1934, Parchand Bir Singh the second brother filed a suit (suit No. 65 of 1934) against the eldest brother to enforce the term of the will entitling him to property fetching an annual profit of Rs. 4800.

3. In this suit he prayed for the following reliefs:

(a) A decree awarding him possession over the villages specified in list B, the net income whereof after deducting the government revenue as well as other government dues and expenses relating to the Zamindari was Rs. 4,800/ - a year,

(b) In case relief (a) was not granted, he prayed for possession over the Zamindari ilaqa or over such other property or villages which yielded a net income of Rs. 4,800/ - a year after payment of government revenue and other dues and after meeting the necessary expenses of collection.

(c) An order awarding maintenance by way of mesne profits, pendente lite and future, from the date of the suit upto the date of actual possession.

(d) A simple money decree awarding 2,500/ - for the construction of a house.

4. For the purpose of this case we are not concerned with relief (d) above.

5. On 1-6-1936, suit No. 65 of 1934 was decreed, and the trial court allotted seven villages with a net income of Rs. 4,800/ - a year to the Plaintiff. An amount of Rs. 2,500/ - for construction of the house and maintenance by way of mesne profits was also decreed as prayed. On 23-7-1936 possession over the said seven villages was taken by the decree-holder and the money decree was also satisfied. Both the parties, however, were dissatisfied with the decree passed by the trial court. The matter was taken up in appeal before the High Court and eventually to Privy Council. The final result of these proceedings was that the property allotted to the Plaintiff was held to be deficient in value, and certain additional property was allotted to bring the value to the amount of Rs. 4,800/ - per year as directed in the will.

6. Subsequently, the Plaintiff brought another suit viz. suit No. 17 of 1942 alleging that the annual income of the seven villages allotted to him by the decree in suit No. 65/ 34 was only Rs. 2813/12/9, and so there was a deficiency of Rs. 145/9/3 per month, which the Plaintiff was entitled to recover. He was accordingly entitled to Rs. 13,708/6/ - the total amount of deficiency from 1936 to 1942. This suit was decreed for an amount of Rs. 10,308/6/ -. The matter was taken in appeal to the High Court but to no purpose. On 22-12-1945 this suit was decreed for an amount of Rs. 6649/10/6.

7. Thereafter three appeals were filed in this Court

(1) First Appeal No. 294 of 1946 related to suit No. 65 of 1934.

(2) First Appeal No. 291 of 1946 arose out of suit No. 17 of 1942.

(3) First Appeal No. 231 of 1946 arose out of suit No. 65 of 1934.

8. The decrees in suit No. 17 of 1942 and suit No. 65 of 1934 were put into execution. Thereafter on 29-10-1948 an amount of Rs. 9260/- was deposited in Court. On 20-12-1948, the decree holder was allowed to withdraw this amount after furnishing security. On 30-8-1954 the three aforementioned appeals came up for hearing in this Court, and they were all dismissed.

9. After the appeals were dismissed by the High Court, the judgment debtor in the two cases viz., Jwaleshwari Pratap Narain Singh made two applications under the U.P. Zamindari Debt Reduction Act (Act XV of 1953) before the court which passed the decree praying (1) that the decrees in suits Nos. 65 of 1934 and 17 of 1942 be reduced as they were decrees for arrears of maintenance allowance, and, as such, were liable to reduction under Sections 3 and 4 of the Zamindari Debt Reduction Act (Act XV of 1953) (2) and that the monthly allowance of Rs. 400/- amounting to Rs. 4800/- per year be also reduced to 960/- per year under the same Act. Both these applications were dismissed by the court by an order dated 9-5-1955. Dissatisfied with the said order the judgment debtor filed two appeals in this Court. Execution first appeal No. 251 of 1955 relates to decree in suit No. 17 of 1942 and execution first appeal No. 252 of 1955 relates to decree in suit No. 65 of 1934. With these two appeals there is before us also a subsidiary appeal-viz., execution first appeal No. 495 of 1955, which has been heard along with the aforesaid appeals. It arises out of an order dated 19-9-1955 allowing the decree holder to withdraw the amount deposited in court on the security of a number of Bhumidhari plots. In this appeal the grievance of the judgment debtor is that the security furnished by the decree-holder was insufficient, and the court erred in accepting the same.

10. The main question that we have to consider in these cases arises in the first two appeals - viz., execution appeals Nos. 251 and 252 of 1955.

11. Before the hearing of these appeals, a preliminary objection was taken before us by the learned Counsel on behalf of the Respondents that these appeals were not maintainable. Thereafter the learned Counsel for the Appellants made a prayer that these applications might be treated as revision applications. We granted the prayer, and allowed the said appeals to be treated as revision applications.

12. Having heard the learned Counsel in both the cases, we are of opinion that there is no substance in these applications. These applications were given under Sections 3 and 4 of the Zamindari Debt Reduction Act. Section 3 relates to cases in which the application is given prior to the stage of the passing of the decree, and Section 4 relates to cases in which the application is given after the decree has been passed. In both the cases out of which the aforementioned revisions

have arisen, the decrees having been already passed by the court, Section 3 would be obviously inapplicable. The only section of the U.P. Zamindari Debt Reduction Act (Act No. XV of 1953), therefore, which could be invoked by the applicant-judgment debtor for the purpose of reduction of debt would be Section 4. The question, therefore, that arises at the very outset is whether Section 4 of the said Act can be applied to decrees of the nature passed in the said two suits (suit No. 17 of 1942 and suit No. 65 of 1934). A perusal of the decrees passed in the two suits shows that they are money decrees, pure and simple. Section 4 of the UP Zamindari Debt Reduction Act (U.P. Act XV of 1953) runs as follows:

4. (1) Notwithstanding anything in the CPC 1908, or any other Law, the court, which passed a decree to which this Act applies relating to a secured Debt shall, on the application either of the decree-holder or judgment-debtor, proceed as hereinafter stated.

(2) Where the mortgaged property charged under the decree consists exclusively of estate and such estate has been acquired under the provisions of the UPZA and LR Act, 1950, the court shall

(a) if there is only one judgment-debtor entitled as owner to the estate, calculate the amount due on the first day of July, 1952, and then reduce it in accordance with the formula given in the schedule:

(b) if there are two or more judgment-debtors and all or more than one out of them were on the thirtieth day of June, 1952, entitled as owners to the mortgaged estate-

(i) calculate the amount due on the first day of July, 1952;

(ii) apportion between the judgment-debtors so entitled the amount due, where the decree defines their respective liability in the ratio of their liability, otherwise in proportion to their respective shares in such estate; and

(iii) after the amount due has been so apportioned reduce the amount in the case of each of the judgment-debtors in accordance with the formula given in Schedule I.

(3) Where the mortgaged property charged under the decree consists partly of estate and partly of property other than estate, the court shall-

(a) determine the amount due on the 1st day of July 1952, and distribute the same on the two properties separately in accordance with the principles contained in Section 82 of the Transfer of Property Act, 1882, as if the decree had been a debt and the two properties belonging separately to two persons with separate and distinct rights of ownership; and

(b) after the amount due as respects the estate has been so calculated,-

(i) If there is only one judgment-debtor who was on the 30th day of June 1952 entitled as the owner to the estate, reduce it in accordance with the formula

given in Sch. I;

(ii) If there are two or more judgment-debtors and all or more than one out of them were on thirtieth day of June 1952, entitled as owner to the estate, apportion the amount due aforesaid between them where the decree defines their respective liability, in the ratio of their liability, otherwise in proportion to their respective shares; and

(iii) after the aforesaid amount has been so apportioned reduce the amount in accordance with the formula given in Sch. I.

13. The reduction of debt under the above section is made under Sub-sections (2) and (3). The important point to note in this connection is that the condition precedent for the applicability of both these Sub-sections is that the mortgaged property should be "charged under the decree." Unless and until, therefore the decree itself shows or indicates the property which is the subject-matter of mortgage or charge, neither of the two Sub-sections can be applied. In the present case, as already stated, the decree is a money decree only. Under the circumstances, it appears to us quite clear that neither Sub-section (2) nor Sub-section (3) of Section 4 can be applied for reducing the debt of the applicant.

14. The fact that it is necessary that the decree itself should specify the property which is the subject-matter of charge is also borne out by a reference to Schedule I appended to this Act. The purpose of Schedule I is to enable the court to work out the amount of reduction by providing a formula for the same. According to this formula, in order that the amount of reduction to which the judgment-debtor is entitled should be ascertained, it is necessary first to ascertain the amount for which he is liable. This has to be multiplied by 8 and then divided by the figure which would be the prescribed multiple for determining the valuation of the estate under the U.P. Encumbered Estates Act, 1934. This estate is the property specified in the decree as the property charged. If no such property is specified in the decree itself as the property charged, it is not possible to ascertain the multiple. In the absence of this multiple, the amount by which the debt is to be reduced cannot be worked out. The result would be that there being no property specified as mortgaged property in the present decree, it would not be possible to work out the amount of deduction by a resort to Sch. I.

15. Learned Counsel for the Appellant, however, argued that in the present case the Sub-section applicable is not Sub-section (2) or (3), but Sub-section (1). This argument, in our opinion, has no force. Sub-section (1) of Section 4 does not provide for the reduction of debt at all. Nor does it lay down any procedure for this purpose. Sub-section (1) of Section 4 only specifies the forum for giving the application u/s 4 as the court which passed the decree to which the Act applies. After specifying the forum for the presentation of such an application, Sub-section (1) goes on to state that the procedure and method for the reduction of the secured debt should be "as hereinafter stated." i.e., as stated in Sub-sections (2) and (3). Under the circumstances, unless the case can be brought within the

four corners of Sub-sections (2) and (3), no reduction can be made.

16. Learned Counsel for the Appellant strenuously argued before us that Section 10 of the U.P. Zamindari Debt Reduction Act (Act XV of 1953) would be applicable to the present case. Section 10 of the said Act runs as follows:

10. The provisions of this Act shall mutatis mutandis apply to a suit or decree for recovery of arrears of guzara or maintenance allowance in which any estate whether alone or along with other property is mortgaged or is otherwise charged under any law, decree, agreement or document, as if the guzara or the maintenance allowance were a debt, and the whole of the immovable property so mortgaged or charged shall for purpose of Sections 3, 4 and 5 be deemed to be mortgaged property.

17. In this connection it was argued on behalf of the Appellant that the will which was the document that created the maintenance allowance did create a charge. On the other hand, it was argued on behalf of the Respondent that the will in question did not create a charge at all. We are, however, of opinion that it is not necessary for us to express any opinion on these rival contentions. Even supposing for a moment that a charge is created by virtue of the will as contended for by the learned Counsel for the applicant, it would be of no avail to him, unless he is further able to make out that the decree satisfies the requirements laid down in Sub-sections (2) and (3) of Section 4 viz. that the decree embodies the charge on property and specifies the property charged. Admittedly the decree in the present case is a simple money decree, and no property is charged in it. By assuming for the purposes of this case that will does create a charge, we should not, however, be taken to have expressed any opinion to the effect that the document in question does create a charge. The correctness of the assumption itself is open to serious doubt. But, as we have already observed, we do not consider it necessary to express any opinion on this aspect of the matter in this case. It is enough for the purposes of the present case to hold that a decree having been passed in the suit, Section 3 is not applicable, and that the case of the decree-holder having clearly fallen outside the purview of Section 4, he is not entitled to any relief of reduction under the U.P. Zamindari Debt Reduction Act (Act No. XV of 1953). In this view of the matter, both the applications must fail on this ground alone.

18. So far as the third case viz., Execution First Appeal No. 495 of 1955 (treated herein as a revision application), is concerned, it was argued on behalf of the Appellants that the bhumidhari rights being not transferable, they should not have been accepted as sufficient security for the withdrawal of the money by the decree-holder. This revision application is, however, merely consequential to the two main applications, and, with the dismissal of the principal applications, this revision has become infructuous. Accordingly it must also be dismissed.

19. For the above reasons, we are of opinion that there is no substance in these applications. We, accordingly, dismiss them with costs.