
(1945) 03 AHC CK 0041

In the Allahabad High Court

Case No : Execution of Decree Appeal No. 37 of 1942

Raja Sir MD. Ejaz Rasool Khan K. C. I. E., KT. C.S.I.

APPELLANT

Vs

Sheo Prasad and Others

RESPONDENT

Date of Decision : 14-03-1945

Acts Referred:

Encumbered Estates Act, 1934 — Section 11

Citation : (1945) 03 AHC CK 0041

Hon'ble Judges : Kaul, J

Bench : Single Bench

Advocate : M.H. Kidwai, for the Appellant; Manohar Lal, for the Respondent

Final Decision : Allowed

Judgement

Kaul, J.—This execution of decree appeal arises on the following facts :

2. The opposite-parties Sheo Pd. and others, made an application under .Section 4 of the E. E. Act which in due course was forwarded to the Additional Special Judge second grade, Bara Banki, for disposal. In the written statement filed by the applicants - u/s 8 of the E. E. Act they included among properties owned by them an item in respect of which a claim was made u/s 11 of the E. E. Act by the present appellant, Raja Sir Mohammad Ejaz Rasool Khan. This claim was thrown out by the first Court. It, however, succeeded in appeal and the Raja was granted a decree for costs amounting to Ks. 771/4. The Raja made an application for execution of his decree for costs in the Court of the Additional Special Judge. The application was dismissed on the 31st of July, 1941. It was held by the learned Additional Special Judge, (who was also Munsif, Bara Banki) that the execution of decree in question was barred by Sections 7 sub-Sections (1) and (8) 14 sub-Section (7) of the E. E. Act. The decree-holder unsuccessfully appealed against this order. The learned Civil Judge by whom the appeal was heard was of opinion that costs incurred by the landlord in claims u/s 10 and Section 11 should/be placed on the same footing. He observed :

There is no doubt that costs awarded against a landlord in decrees passed u/s 14 of the E. E. Act cannot be separately recovered. In the same way costs awarded against him u/s 11 claims cannot be separately recovered. Section 11 proceedings and Section 14 proceedings are both proceedings under the same special statute taken in a special tribunal constituted by that statute. That statute has laid down the manner in which the debts due by the landlord shall be recovered. It does not authorise the Special Judge to help a decree holder in recovering his decree debt. Therefore all debts due by the landlord must be recovered through the Collector.

3. With these observations the appeal was dismissed. Hence the present second appeal.

4. Having heard the learned Counsel for parties I am satisfied that this appeal should be allowed. On the face of it it is an extraordinary position that, though a decree was passed in favour of the Raja, he is not allowed to execute it. My attention has not been invited to any provision in the E. E. Act which would authorise a Collector to execute a decree like the present passed u/s 11 of the Act. When a decree is passed presumably it is fit for execution unless it is a declaratory decree or a decree of a character which, from its nature, cannot be executed. In the present case it was an ordinary money decree for costs. By the rules framed by the local Government under the E. E. Act the CPC is applicable to proceedings under the said Act except in so far as its provisions are inconsistent with the provisions of that Act or the rules made thereunder. u/s 88 of the CPC a decree may be executed by the Court which passed it or by the Court to which it is sent for execution. Under the provisions of Section 37, where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance is the Court which is deemed to have passed the decree for the purposes of execution. Accordingly, unless there is something in the law which barred the Additional Special Judge, second grade, from executing a decree passed by him the decree for costs in question should have been executed by that Court. The question for consideration is whether there is any provision which bars the Special Judge from executing a decree passed by him. Generally speaking decrees are passed by the Special Judge u/s 14 of the E. E. Act. But an order passed by the Special Judge u/s 11 is also deemed a decree of a Civil Court of competent jurisdiction. So far as the decree under the former section are concerned it is provided by Section 19 sub- Section (1) that the Special Judge shall send them to the Collector for execution in accordance with the provisions of Chapter V of the Act. There is no provision in the Act so far as I am aware for transfer to the Collector of decrees u/s 11. Presumably, therefore, the Special Judge can execute such decrees. It was argued that Section 7 is a bar to the execution of any decree by the Special Judge.- Even a cursory perusal of that section shows that the bar contained therein applies only to decrees obtained on the basis of any private debt incurred by the landlord after the passing of an order u/s 6 of the Act. It is well settled that a decree for costs is not a decree based on a private debt (See *Hart Saran Das v. Iqbal Kishan Das* 1941 OA 403 :

AWR (Rev.) 67 : OWN 632; Hart Saran Das v. Hari Kishan Das 1941 OA 22 : AWR (Rev.) 156 : OWN 103 ; Satgur Pd. v. Har Kishan Das 1944 OA 211 at 212 : AWR (CC) 211 and Birendra Bikram Singh v. Bajrang Bahadur Singh 1942 OA 495 : AWR (CC) 338 : OWN 648 at 651 Thus it is clear that Section 7 can be no bar to the execution of the present decree. Reference was also, made to Section 14 sub-Section (7), and reliance was placed on the provision which runs as follows :

Such decree shall be deemed to be a decree of a Civil Court of competent jurisdiction but no decree against the landlord shall be executable within the United Provinces except under the provisions of this Act.

5. It was contended that the words "but no decree against the landlord etc. etc." constitute a complete bar against the execution of any decree. It is well established that normally the Court would not construe an Act as depriving a subject of a right unless the language was clear, and it had often been held that a comparatively slight context would justify the Court in giving an opposite construction (See the observations of the Court of Appeal in *Billings v. Reeds*. Apart from this general principal it appears to me clear that the words relied on do not constitute a bar to the execution of decree other than those to which reference is made in that sub-section, I am confirmed in this view by ;the language used. The provisions of " Chapter V of the E. E. Act apply only to execution of decrees passed u/s 14 of that Act. Thus it is clear that the words in question cannot apply to decrees u/s 11. As Section 19 (1) makes provision for transfer of only the decrees passed u/s It to the Collector and no reference is made in that sub-section to decrees passed u/s 11, it follows that the words relied on in Section 14 (7) should in their application be limited to the decrees passed u/s 14 and to no others. In this view of the matter I am of opinion that the Additional Special Judge, second grade, Bara Banki, had jurisdiction to execute the decree.

6. It is not clear from the record whether cognizance of the application for execution which has given rise to this appeal was taken by the Court in exercise of its jurisdiction as Munsif or as Additional Special Judge, second grade, Bara Banki, If the application was considered as having been made to Munsif, Bara, Banki, an order shall be made for its transfer to the Additional Special Judge, second grade, who will execute it.

7. The order of the lower Court is set aside and the appeal is allowed with costs in both Courts.