
(1968) 02 AHC CK 0014
In the Allahabad High Court
Case No : First Appeal No. 329 of 1953

Seth Dwarika Prasad

APPELLANT

Vs

Jai Jai Shri Kunj Behari Lal and Others

RESPONDENT

Date of Decision : 22-02-1968

Acts Referred:

Uttar Pradesh Encumbered Estates Act, 1934 — Section 19(2), 47

Citation : AIR 1969 All 220 : (1968) 38 AWR 224

Hon'ble Judges : S.N. Dwivedi, J;Rajeshwari Prasad, J;M.H. Beg, J

Bench : Full Bench

Advocate : Gopal Behari, Raja Ram Agarwal, K.M. Sinha and S.S. Choudwaria, for the Appellant; Baleshwar Prasad, Badri Swarup Narain, Gopal Goushala, H.P. Sen, K.G. Srivastava, K.C. Saxena and Smt. Chandra Kuer, for the Respondent

Final Decision : Disposed Of

Judgement

S.N. Dwivedi, J.—We are required to answer this question:

"Whether, in the circumstances of this case, Section 47 of the Encumbered Estates Act bars the entertainment of the objection by the creditor relating to ownership of the property in dispute."

2. Let us first give the salient facts, One Jai Narain had a big estate; he had also considerable liabilities. In 1921 he gifted, inter alia, some of his zamindari properties (the property in dispute included) to his wife, Chimma Kunwar. She was made the absolute owner of those properties. In 1936 she made an application u/s 4 of the Encumbered Estates Act (hereinafter called "the Act"). In her written statement u/s 8 of the Act she mentioned the property in dispute in this appeal as her own. No objection was filed. In the list of properties sent to the Collector u/s 19 (2), the Special Judge included this property. The Collector auctioned-sold it. Sri Gopal Gaushala Society (hereinafter called "the Society") purchased it.

3. The sons and grandsons of Jai Narain also made an application u/s 4. In their

written statement u/s 8, they did not show the properties already gifted by Jai Narain in favour of Chimma Kunwar. So the disputed property also was not shown therein. In his written statement u/s 9, Dwarika Prasad, representing the Trust which held a decree for Rs. 52,000 against Jai Narain, showed the disputed property as liable to attachment, sale and mortgage in satisfaction of the debts of the applicants. The Trust's case was that Jai Narain's gift was fictitious, it was never acted upon and it was intended to defraud his creditors.

4. The Society lodged a claim. It was said that the Society was the owner by virtue of the auction-purchase and the gift was not fictitious nor fraudulent. It was also claimed that Section 47 of the Act barred the Special Judge from going behind its title founded on the auction sale by the Collector under the Act.

5. The Special Judge upheld the claim of the Society. In appeal the learned Judges who have referred the question to us have found that the gift made by Jai Narain in favour of Chimma Kunwar was "wholly fictitious and ineffective" and that he and his sons and grandsons continued to be the owners of the gifted property so that "the sale of the property as belonging to Smt. Chimma Kunwar was not capable of conveying any title to the purchaser Gaushala Society".

6. In view of these findings they have referred the aforesaid question for determination of the Full Bench.

7. We propose to start with survey of the case-law bearing on the interpretation of Section 47 or the other associated provisions. In *Maharaja Bahadur v. Sarjoo Singh* 1946 All LJ 385 : AIR 1947 All 188 , a Division Bench held that a person who failed to put forward a claim to the property before the Special Judge could not maintain a suit to establish his title to it in the Civil Court. In AIR 1948 271 (Oudh) , a Division Bench of the Oudh Chief Court disagreed with this view. Section 47, which was not noticed in the earlier case, was interpreted in this case. According to the Bench, Section 47 created a bar against the parties to the proceedings before the Special Judge or the Collector. *Krishna Pal Singh and Another Vs. Mt. Babban* , is not material for our purpose. In *Baladin Vs. Mst. Ram Piarey and Others* , a certain property was sold under the Act, although the landlord has claimed only a half share in it in his written statement u/s 8. It was held that a suit for a half share was maintainable by the true owner thereof, for the Special Judge had no jurisdiction to show this share in the list u/s 19 (2). The case is distinguishable on facts from the present one.

8. In *Bankey Lal Vs. Narendra Singh and Others* , certain properties of the landlord were shown in the list u/s 19 (2). While the Collector was proceeding with the liquidation of his debts, a son born after the list was sent to the Collector, instituted a suit for partition of his share in the said properties. It was held that neither Section 11 nor Section 19 (2) stood in his way.

9. In *Abdul Ghafoor and Others Vs. Abdus Salam and Others* , certain property was included in the statement u/s 8. Instead of claiming the property u/s 11 before the Special Judge, the true owner instituted a suit for a declaration that

the property belonged to him. It was held that the suit was maintainable. This case is also distinguishable on facts from the present case.

10. Syed Ali Miyan v. Syed Taslim Husain 1954 All LJ 705, is also distinguishable on facts from the instant case. There the property shown in the list u/s 19 (2) had not been sold.

11. Adverting to the Act, Section 8 requires the landlord to file a written statement, showing, inter alia, the nature and extent of his property which is liable to attachment and sale. Section 10 requires the creditors to file their claims. They may also show the nature and extent of the landlord's property. u/s 11 (1), the Special Judge shall publish a notice specifying the property mentioned by the landlord in his written statement or by the creditors in their claims. The notice is published in the Gazette. It is also published in a newspaper selected by the Special Judge. A copy of the notice is exhibited at his own office and at the office of the Collector within whose jurisdiction the property of the landlord is situate. It is also exhibited at a conspicuous place where the landlord is residing. Any person having a claim to the property may file an objection within a certain time.

Under Section 11 (3), the Special Judge decides the objection. Section 11 (4) provides that his decision shall be deemed to be a decree of a Civil Court of competent jurisdiction. So his decision will operate as res judicata between the landlord and the objector. Section 19 (2) enjoins upon the Special Judge to inform the Collector "of the nature and extent of the property mentioned in the notice u/s 11 which he has found to be liable to attachment or sale in satisfaction of the debts" of the landlord. Under Chapter V of the Act the Collector shall take steps to liquidate the debt of the landlord. Section 45 provides for appeals from the orders of the Special Judge and Collector. Section 46 provides for revisions against their orders. Section 47 is as follows:--

"Except as provided in Sections 45 and 46, no proceedings of the Collector or Special Judge under this Act shall be questioned in any Court."

12. If in the contest by the real owner the Special Judge gives a decision, he will be bound by it; he cannot reopen the issue collaterally. But what happens if he does not contest before the Special Judge? Is his title extinguished?

13. Section 13 expressly provides that every claim of debt decreed or undecreed against the landlord, shall, if not made within the time prescribed before the Special Judge, be deemed for all purposes and for all occasions to have been duly discharged. So the creditor's debt is extinguished by a statutory fiat. The Legislature has not enacted a similar provision in respect of the third person's claim to the property published in the Gazette as belonging to the landlord. It is, we believe, a fair inference that in this sphere the Legislature did not intend to rob Peter and pay Paul; it did not contemplate to extinguish the proprietary rights of third persons.

14. The list of property sent by the Special Judge to the Collector u/s 19 (2) will not bar a third person from claiming the property as his own in a collateral proceeding. It has been held in *Bankey Lal Vs. Narendra Singh and Others*, , that the word found" clearly indicates that, unless there is a judicial determination of his claim by the Special Judge, he is not shut out from claiming the property in the Civil Court.

15. Section 47 also does not bar him from claiming the property in a collateral proceeding. This section protects from challenge only a "proceeding -- and nothing more -- of the Collector and the Special Judge. When on sale of the property shown in the list u/s 19 (2) the true owner who has not already contested before the Special Judge asks for a declaration of his ownership, he does not question any proceedings of the Collector or the Special Judge. He does not question the order for sale, or the act of sale or the delivery of possession to the purchaser. He is only claiming his rights and consequently seeking to expose that the auction sale has passed no interest to the auction-purchaser because the landlord had no right in the property. Section 47 does not prevent him from exposing the real effect of the auction sale. The effect of sale does not form part of any "proceedings".

16. In an akin context, Mr. Justice Walsh said: "Certainly a Civil Court has no jurisdiction to set aside the proceedings in a Revenue Court, but I have no doubt that it has jurisdiction to declare that a course of conduct which eventuated in some decree or order in the Revenue Court..... was fraudulently devised or was the result of some wicked conspiracy to injure the plaintiff and to deprive him of his rights behind his back and without his knowledge: AIR 1922 All 294 . See to the same effect *Narendar Kumar and Others Vs. Custodian General of Evacuee Property in India*, "P" *New Delhi and Others*,

17. The Act is "a code for the administration of the assets of the landlord" Deputy Commr., Hardoi, in charge Court of Wards, *Bharawan Estate Vs. Rama Krishna Narain and Others*, . It bears affinity with the law of insolvency. A sale of property by the Insolvency Court or the Receiver appointed by it does not preclude the real owner if he has already not contested before that Court from, claiming the property as his own in the Civil Court. Why should a sale under the Act have a disparate effect? We can discern nothing in the nature, scheme and language of the Act (including Section 47) to warrant a different result.

18. If the true owner is not barred by Section 47, as we think, his creditor is also not barred from showing that he is the true owner of the property.

19. Our answer to the question referred to us is: No.

M.H. Beg, J.

20. I entirely concur with the view expressed by my learned brother Dwivedi, J. It is only a proceeding taken under the Act which can be questioned under either Section 45 or Section 46 of the U. P. Encumbered Estates Act The purpose of

Section 47 is to make it clear that, apart from the modes prescribed by the statute for questioning the proceedings of the Collector or the Special Judge under the Act, no other channels of relief under the ordinary procedural law are open. It is, however, a well-established proposition: Fraud is an extrinsic collateral act which vitiates the most solemn proceedings of Courts of justice." In *Duchess of Kingstone's case*, 2 Smith's L.C. 7, 13th Edn., p. 641 at p. 651, Lord Coke said: "It avoids all judicial acts, ecclesiastical or temporal". Therefore, if some property was fraudulently shown as the property of one person and sold in proceedings under the Encumbered Estates Act, whereas it was actually the property of another who had made a fictitious gift in order to defraud his creditors, the sale itself would be vitiated and will not constitute a "proceeding" under the Act even if it has been confirmed by a Court. In such an event, the creditor, who is a third person and a stranger who was no party to proceedings resulting in the sale but whose rights are sought to be defeated by a sale brought about as a consequence of fraud, could expose the fraud in collateral proceedings where the true character of what merely appeared to be a proceeding under the Act is determined by showing that it is really no proceeding under the Act in the eye of law. The Act was never meant to operate as an engine of fraud. My answer to the question referred to us is also in the negative.

BY THE COURT

21. Our answer to the question referred to us is: No.