

(1969) 10 SC CK 0074

In the Supreme Court Of India

Case No : Civil Appeal No. 2373 of 1966

Shankar Prahlad Deshpande & Ors

APPELLANT

Vs

Seth Gendalal Motilal Patni & Ors

RESPONDENT

Date of Decision : 29-10-1969

Acts Referred:

Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 — Section 19, 22

Citation : (1970) J LJ 814 : (1969) 3 SCC 691 : (1970) 3 SCR 177

Hon'ble Judges : K. S. Hegde, J; J. C. Shah, J

Bench : Division Bench

Advocate : C.B. Agarwala, G.L. Sanghi, P.N. Kukde and A.G. Ratnaparkhi, Nos. 1, 2 and 4 to 6 and R.M. Hazarnavis, for the Appellant; S.T. Desai, M.S. Gupta and S. K. Dhingra for respondent No. 1, N.S. Bindra and S.P. Nayar for respondent Nos. 2 and 3, for the Respondent

Final Decision : dismissed

Judgement

J.C. Shah, J.—Gendalal--hereinafter called 'the mortgage'--filed Suit No. 11 of 1939 for recovery of the amount due under a deed of mortgage of proprietary rights in certain villages executed in 1929 by Prahlad--father of the appellant. A preliminary mortgage decree was passed declaring that Rs. 2,16,309/11/9 were due on the mortgage. The decree was made absolute for sale. The mortgage commenced in 1948 proceedings for executing the decree.

2. On March 31, 1951, the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act 1 of 1951 was brought into force. By virtue of Section 3 of that Act the proprietary rights of holders of estates, mahals, alienated villages and alienated lands stood vested in the State. Chapter IV of the Act provided for "determination of debts". The mortgagor Prahlad applied on April 26, 1951 to the Claims Officer u/s 19 of that Act for "determination of the debt" due to the mortgagee and for scaling down the debt. The mortgagee contended that the debt had, by adjudication of the Court, been

merged into a decree and there was no "secured debt" which could be determined or scaled down. The Claims Officer held that there was a debt due to the mortgagee, that it was a secured debt, and that he had jurisdiction to "determine the debt". On November 19, 1951 the Claims Officer directed the mortgagee to submit a statement of the claim u/s 22 of the Act.

3. Against the order of the Claims Officer, the mortgagee appealed to the Board of Revenue. Following the judgment of the Nagpur High Court in *Ramkishan v. Board of Revenue*, Madhya Pradesh ILR [1954] Nag. 430 the Board of Revenue set aside the order holding that the Claims Officer had no jurisdiction to decide the question whether there was a secured debt, and that the Civil Court alone was competent to decide that question.

4. In the execution application filed by the mortgagee the Additional District Judge held that there was a secured debt within the meaning of Section 19 read with Section 17(1) of the Act due to the mortgagee under the mortgage, notwithstanding the decree passed by the Civil Court.

5. On October 3, 1955, the High Court of Nagpur in *Jethalal Bhawanji v. Prabhakar Sadashiv* I.L.R.[1956] Nag.147 overruled the Judgment in *Ramkrishna's case* ILR [1954] Nag. 480 and held that the Claims Officer had jurisdiction to decide whether a debt was a secured debt. The mortgagee then filed on January 23, 1958, a statement of his claim. On March 26, 1958, the appellant--son of the original mortgagor Prahlaad--contended that the debt stood discharged because the mortgagee had failed to file a statement of his claim as ordered on November 19, 1951 by the Claims Officer. By order dated December 24, 1962 the Claims Officer upheld the contention of the appellant. Against that order the mortgagee preferred an appeal to the Commissioner, Nagpur Division. At the hearing of the appeal, the appellant contended that the Commissioner had no jurisdiction to hear the appeal. The Commissioner rejected the contention of the appellant and set aside the order of the Claims Officer discharging the debt.

6. A petition moved by the appellant in the High Court of Bombay at Nagpur challenging the order passed by the Commissioner was summarily dismissed. With certificate granted by the High Court, this appeal has been preferred.

7. Counsel contended that the mortgagee failed to file a statement of account pursuant to the order dated November 19, 1951 by the Claims Officer, and by virtue of Section 22 of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act 1 of 1951 the debt stood discharged. But the order, of the Claims Officer holding that there was a secured debt was set aside in appeal by the Board of Revenue. Any proceeding consequent upon that adjudication was, in view of the judgment of the Board of Revenue, unauthorised. That decision of the Board of Revenue became final between the parties. It cannot be contended that because in another proceeding the High Court of Nagpur expressed the view that the judgment on which the Board of Revenue relied was erroneous, the direction of the Claims Officer requiring the

mortgagee to file his statement of account was revived, and if the directions of the Claims Officer were not complied with, the debt due to the mortgagee was discharged. The order of the Claims Officer was reversed by the Board of Revenue, and all directions given by the Claims Officer, pursuant to his order calling upon the mortgagee to file a statement of his claim, stood annulled. The Nagpur High Court in Jethalal Bhawanji's case I.L.R.[1956] Nag.147 it is true, decided that the Claims Officer was competent u/s 23 of M.P. Act 1 of 1951 to determine whether a debt is a secured debt. But the first order of the Claims Officer was annulled by order of the Board of Revenue and thereafter that Officer did not pass any order u/s 22 of Act 1 of 1951 directing that the proceeding shall continue, and further directing that a notice shall issue calling upon the mortgagee to file a statement of the claim. Until a notice, valid in law, directing that a statement be filed was served upon the mortgagee and he failed to comply with it, the debt could not be discharged. Section 22 enacts a penal provision and unless the conditions precedent are satisfied, the debt could not by operation of the statute be discharged).

8. The High Court was right in dismissing the petition. The appeal fails and is dismissed with costs.