
(1955) 09 AHC CK 0004
In the Allahabad High Court
Case No : Ex. S.A. No. 1022 of 1955

Sri Rajendra Pal alias Indra Pal and Another	APPELLANT
Vs	
Lala Savati Lal and Others	RESPONDENT

Date of Decision : 07-09-1955

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 189, 199
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 189, 199
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 189, 199

Citation : (1956) 26 AWR 785

Hon'ble Judges : Roy, J

Bench : Single Bench

Advocate : S.N. Kacker, for the Appellant;

Final Decision : Dismissed

Judgement

Roy, J.—This is a judgment-debtor's appeal arising out of execution proceedings.

2. The property which was sought to be attached in execution of the decree was the Bhumidhari rights now recorded in the name of the judgment-debtors. Objection was raised by the judgment-debtors in the courts below to the effect that such a right is not liable to attachment and sale in execution of a decree.

3. Both the courts below have repelled that objection. The judgment-debtors have accordingly come up to this Court in second appeal.

4. It was held by a Division Bench of this Court in Mst. Janatun Nisa v. Mustafa Husain Khan 1956 AWR (H.C.) 788, that the Bhumidhari rights can be sold in execution of a decree and Sections 152 and 154 of the UPZA and LR Act, 1950, cannot be interpreted to lay down any restrictions towards the same apart from the restriction which is laid down in Section 154 itself. It has been contended on behalf of the Appellants that in considering the relevant provisions of the UPZA and LR Act the learned Judges in deciding the case of Mst. Janatun Nisi v. Mustafa Husain Khan 1956 AWR (H.C.) 788, did not consider the provisions of

Sections 189 and 199 of the UPZA and LR Act. Section 189 says:

The interest of a Bhumidhar in his holding or any part thereof shall be extinguished--

(a) When he dies intestate having no heir entitled to inherit in accordance with the provisions of this Act,

(b) when the land comprised in the holding has been acquired under any law for the time being in force relating to the acquisition of land, or

(c) When he has been deprived of possession and his right to recover possession is barred by limitation.

5. Section 199 of the same Act says that no Bhumidhar shall be liable to ejectment.

6. Upon a reading of these sections I am of the opinion that the provisions thereof do not at all restrict the attachment and sale of Bhumidhari rights in execution of a decree. What Section 199 contemplates is this, the so long as the Bhumidhari rights subsist the Bhumidhar shall not be liable to ejectment. Section 189 necessarily envisages that when the interest of a Bhumidhar in his holding or any part thereof is extinguished in any manner in accordance with law and he has been deprived of possession and his right to recover possession is barred by limitation his interest in his holding or any part thereof is extinguished. The extinction of interest of a Bhumidhar in his holding within the meaning of Section 189 of the Act does not trench upon the rights of a decree-holder to attach and to put to sale the Bhumidhari rights in execution of his decree

7. Section 152 of the UPZA and LR Act lays down that Bhumidhari rights are transferable subject to certain restrictions. The amended Section 154 then says that no Bhumidhar shall have the right to transfer by sale or gift any land to any person (other than an institution established for a charitable purpose) where such person shall, as a result of the sale or gift, become entitled to land which together with land, if any, held by himself or together with his family will, in the aggregate, exceed 30 acres in U.P. This section clearly restricts the transfer of the rights of a Bhumidhar to this extent only that a Bhumidhar cannot make a voluntary transfer of his Bhumidhari interests by sale or gift to a person where such person owned more than 30 acres of land in U.P. if he makes the purchase. A person who, after purchase, will own less than 30 acres of land in U.P. may very well acquire Bhumidhari land by means of sale or gift. There is, therefore, no restriction for a will or gift being made by a Bhumidhar to a person who does not fall under the category of persons mentioned u/s 154. It is doubtful whether the restriction contained in Section 154 is applicable to an execution sale. But assuming that an execution sale must comply with the provisions of Section 154, the execution sale will be restricted to persons who do not fall within the mischief of Section 154. There is, therefore, no basis for saying that Bhumidhari rights cannot be sold in execution of a decree at all.

8. There is no force in this appeal and I dismiss it Under Order 41, Rule 11, Code of Civil Procedure. Leave to appeal is refused.