wMohd. Idris & Others

Vs

Sat Narain

Civil Appeal No. 962 of 1964

(CJI P.B. Gajendragadkar, K.N. Wanchoo, M. Hidayatullah, V. Ramaswami-I, R. Satyanarayan Raju JJ)

10.12.1965

JUDGMENT

HIDAYATULLAH, J. -

This is an appeal by special by leave against an order passed by the Allahabad High Court in Civil Revision No. 1077 of 1957 dated October 9, 1961 in a suit in which a decree for redemption on an application under s. 12 of the U.P. Agriculturist Relief Act has been passed. The appellants are the successors-in-interest of one Suleman who was the original mortgagee. The original respondent in this appeal Sat Narain was the successor-in-interest of one Jantari who was the original mortgagor. Subsequently, Sat Narain sold his interest to others who have been ordered by us to be joined as respondents under O. 22 r. 10 of the Code of Civil Procedure on their application in this behalf (C.M.P. No. 2081 of 1965). The land in dispute measures 5 bighas and 3 biswas (Khata No. 2 situate in Bhagwatipura, pargana Kewai, district Allahabad) and consists of 5 plots Nos. 26, 27, 29, 30 and 32. Jantari had mortgaged the said land with Suleman on October 4, 1929 and the mortgage, now it is admitted, usufructuary in nature. It is also admitted now that the land was Sir Sankalap of Jantari.

On May 27, 1952, Sat Narain filed an application under s. 12 of the U. P. Agriculturist Relief Act in the court of the Munsif (East) Allahabad on the allegation that the mortgage has been paid off from the usufruct of the land and he was entitled to redeem it. As required by the Agriculturist Relief Act the claim was made in the prescribed from and set out the accounts by reason of which it was claimed that the mortgage was satisfied. The defendants, who represented Suleman (the mortgagee) opposed the application. Two written statements were filed on October 4, 1952 and March 31, 1953. Both the statements alleged that the plaintiff was not an agriculturist and hence the suit was not maintainable under s. 12 of the U.P. Agriculturist Relief Act. They also stated that the mortgage was not satisfied from the usufruct as the land was not productive. One of the written statements denied even the mortgage. All the defendants claimed that they had become Sirdars by reason of the U.P. Zamindari Abolition and Land Reforms Act and that the suit was not, therefore, maintainable. Although the Abolition Act had come into force from July 1, 1952 no other claim was set up. Nor was the suit challenged as incompetent by reason of any provisions of the Abolition Act.

The learned Munsif framed five issues which he decided in favour of the plaintiff before him. He held that there was a mortgage as alleged; that the mortgage had been satisfied from the usufruct. He also held that the defendants (mortgagees) had not become Sirdars and the suits was maintainable. In the result he passed a decree in favour of the plaintiff on November 24, 1953. The defendants appealed to the District Court but by a judgment dated April 17, 1957 their appeal was dismissed. All the above findings were confirmed by the Civil Judge, Allahabad who disposed of

the appeal. The main point which was urged before the appellate Court was that as the U.P. Agriculturist Relief Act was repealed by an Act in 1953 which amended the Abolition Act, the suit under s. 12 of the U.P. Agriculturist Relief Act was rendered incompetent and the plaintiffs could not eject the representatives of the mortgagee except in accordance with the provisions of the Abolition Act. This contention was not accepted by the learned Civil Judge, Allahabad. An application for revision was then filed in the High Court but it was dismissed by the order impugned in this appeal as the decree of the Munsif had already been executed and possession had been delivered on May 1, 1957 to the successors-in-interest of the original mortgagor. Mr. Justice Mithan Lal who decided the revision, held that no interference was called for as the property had gone back to the original wonder an substantial justice had already been done. From the last order the present appeal has been filed by special leave of this Court.

The only question that has been urged before us is whether the suit is competent. The U.P. Agriculturist Relief Act was intended to confer certain benefits upon the agriculturists. One such benefit was that an agriculturist mortgagor was afforded an easy remedy to redeem a mortgage made by him. He could, under s. 12 of that Act apply, notwithstanding anything in s. 83 of the Transfer of Property Act or any contract to the contrary, for an order directing that the mortgage be redeemed, and, where the mortgage was with possession, that the mortgagor agriculturist be put in possession of the mortgaged property. It is clear that on May 27, 1952 when the application under s. 12 of the Agriculturist Relief Act was filed the provisions of that Act including s. 12 were available. The competency of the proceedings is challenged because in 1953 in amending the U.P. Zamindari Abolition and Land Reforms Act, 1950, the Agriculturist relief Act was repealed and certain kinds of suits were to go under s. 339 of the Abolition Act read with Schedule 3 List I before certain Revenue Officers. Item 13A was added in that List by s. 67 of the Act XVI of 1953 and it repealed the U.P. Agriculturist Relief Act. Schedule 2 List I of the Abolition Act conferred jurisdiction on Assistant Collectors First Class to eject asamis. The question which is raised in this appeal is whether after this was done, the suit which was still pending, could continue before the Munsif and on the application under the U.P. Agriculturist Relief Act. In support of their case the appellants contend that the ejectment of an asami or a Sirdar can only be under the provisions of the Abolition Act and no other law. The appellants claim to have become asamis by reason of the provisions of the Abolition Act although they had claimed in the High Court and the courts below that they had become Sirdars. We have, therefore, to consider in this appeal what was the status of the representatives of the mortgagor on the one hand and of the mortgagee on the other, and then to decide whether the Munsif was competent to pass the decree for redemption and to order the ejectment of the present appellants. It may be stated at once that we declined to hear arguments on the other pleas of the appellants which have now been concurrently rejected in the first two courts.

The claim that the appellants became the Sirdars of this land is abandoned before us because the land was the Sir Sankalap of the mortgagor and the provisions of s. 14(2)(a) exclude a mortgagee with possession from claiming that right in respect of such land. Section 14(2)(a) reads :

> "14. Estate in possession of a mortgagee with possession.
>
> (2) Where any such land was in the personal cultivation of the mortgagee on the date immediately preceding the date of vesting -
>
> (a) if it was sir or khudkasht of the mortgagor on the date of the mortgage, the same shall, for purposes of section 18, be deemed to be the sir or khudkasht of the mortgagor or his legal representative;

. . . ."##

By reason of this section the land continued to be the Sir or khudkasht of the mortgagor. The learned Munsif pointed out that, even though the representatives of the mortgagee had obtained a certificate as Sirdars, they could not enjoy that status, in view of s. 14(2)(a). The appellants now claim to be asamis under s. 21(1) (d). That provision runs :

"21. Non-occupancy tenants, sub-tenants of grove lands and tenant's mortgagees to be asamis.

(1) Notwithstanding anything contained in this Act, every person who, on the date immediately preceding the date of vesting, occupied or held land as -

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(d) a mortgagee in actual possession from a person belonging to any of the classes mentioned in clauses (b) to (e) of sub-section (1) of section 18 or clauses (i) to (vii) and (ix) of section 19.

. . . .##

They claim further that under s. 200 no asami can be ejected from his holding except as provided in the Abolition Act and refer to s. 202 (c) where the procedure for the ejectment of an asami who belongs to the class mentioned in cl. (d) of sub-s. (a) of s. 21 is provided. Section 202 (c) reads :

"202. Procedure of ejectment of asami.

Without prejudice to the provisions of section 338, an asami shall be liable to ejectment from his holding on the suit of the Gaon Samaj or landholder, as the case may be on the ground or grounds.

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(c) that he belongs to the class mentioned in clause (d) of sub-section (1) of section 21 and the mortgage has been satisfied or the amount due has been deposited in Court;

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They also refer to Schedule II of the Abolition Act which lays down that a suit for ejectment of an asami must go before an Assistant Collector (First Class). They contend, therefore, that the proceedings before the Munsif were incompetent after July 1, 1952 and no decree could be passed in favour of the representatives of a mortgagor.

The Zamindari Abolition Act came into force with effect from July 1, 1952. It has undergone numerous amendments and it is somewhat difficult to find out at any given moment of time what the state of law exactly was, because most of the amending Acts are made partly retrospective and partly not and considerable time is spent in trying to ascertain which part of the original Act survives and to what extent. We are concerned with a number of sections which have undergone changes again and again and we shall now attempt to examine what the position vis-a-vis the suit

pending before the Munsif was, as a result of the enacting of the Abolition Act and its numerous amendments.

This suit was filed on May 27, 1952 when the Abolition Act was not on the statute book. When the Abolition Act was passed it did not repeal to U.P. Agriculturist Relief Act. Both the Acts, therefore, continued on the statute book till July 12, 1953. On that date Act XVI of 1953 was passed. Section 67 of that Act repealed the U.P. Agriculturist Relief Act. While repealing the Act it was not stated whether the repeal was to operative retrospectively or not but by s. 1(2) the amending Act itself was deemed to have come into force from the first day of July, 1952, that is to say, simultaneously with the Abolition Act. It may, therefore, be assumed that the U.P. Agriculturist Relief Act was also repealed retrospectively from July 1, 1952. The question is : whether the right of the plaintiff to continue the suit under the old law was in any way impaired. Section 6 of the U.P. General Clauses Act lays down the effect of repeal and it is stated there as follows :-

> "6. Effect of repeal.
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> Whether any Uttar Pradesh Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not -
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> #. . . . .##
>
> (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
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> #. . . . .##
>
> (e) affect any remedy, or any investigation or legal proceeding commenced before the repealing Act shall have come into operation in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such remedy may be enforced and any such investigation or legal proceedings may be continued and concluded; and any such penalty, forfeiture or punishment imposed as if the repealing Act had not been passed".

The question is whether a different intention appears in either the Abolition Act or the amending Act XVI of 1953, for otherwise the old proceeding could continue before the Munsif. There is nothing in the Abolition Act which takes away the right of suit in respect of a pending action. If there be any doubt, it is removed when we consider that the U.P. Agriculturist Relief Act was repealed retrospectively from July 1, 1952 only and it is not, therefore, possible to give the repeal further retrospectively so as to affect a suit pending from before that date. The jurisdiction of the Assistant Collector was itself created from July 1, 1952 and there is no provision in the Abolition Act that pending cases were to stand transferred to the Assistant Collector for disposal. Such provisions are commonly found in a statute which takes away the jurisdiction of one court and confers it on another. From these two circumstances it is to be inferred that if there is at all any expression of intention, it is to keep s. 6 of the General Clauses Act applicable to pending litigation. The doubt, if any be left, is further removed if we consider a later amending Act, namely, Amending Act XVIII of 1956. By that Act Schedule II, which created the jurisdiction of the Assistant Collector in suits for ejectment of asamis was replaced by another Schedule. The entry relating to suits for ejectment of asamis, however, remained the same. But s. 23 of the amending Act of 1956 created a special saving which reads as follows :-

"23. Saving :-

(i) Any amendment made by this Act shall not affect the validity, invalidity, effect or consequence of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred or any jurisdiction already exercised, and any proceeding instituted or commenced before any court or authority prior to the commencement of this Act shall, notwithstanding any amendment herein made, continue to be heard and decided by such court or authority.

(ii) An appeal, review or revision from any suit or proceeding instituted or commenced before any court or authority prior to the commencement of this Act shall, notwithstanding any amendment herein made, lie to the Court or authority to which it would have laid if instituted or commenced before the said commencement".

The addition of this section clearly shows that by the conferral of the jurisdiction upon the Assistant Collector it was not intended to upset litigation pending before appropriate authorities when the Abolition Act came into force. Section 23 in terms must apply to the present case, because if it had remained pending before the Munsif till 1956, it is clear, the jurisdiction of the Munsif would not have been ousted. Although it was not pending before the Munsif it was pending before the appellate Court when the 1956 amendment Act was passed. It follows, therefore, that to such a suit the provisions of Schedule II read with s. 200 of the Abolition Act cannot be applied because the Legislature has in 1956 said expressly what was implicit before, namely, that pending actions would be government by the old law as if the new law had not been passed. In our judgment, therefore, the proceedings before the Munsif were with jurisdiction because they were not affected by the passing of the Abolition Act or the amending Act, 1953, regard being had to the provisions of s. 6 of the U.P. General Clauses Act in the first instance and more so in view of the provisions of s. 23 of the amending Act, 1956 which came before the proceedings between the parties had finally terminated. The appeal must, therefore, fail. It will be dismissed with costs.

Appeal dismissed.

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