

R B Chaudhary Raghuraj Singh

Vs

Murari lal & ors

Civil Appeal No. 952 and 953 of 1964

(V. Bhargava, K. N. Wanchoo JJ)

16.03.1967

JUDGEMENT

WANCHOO, J.-

These are two connected appeals by special leave from a common judgment of the Allahabad High Court. The facts necessary for present purposes may be briefly indicated. The appellant borrowed some money on a promissory note from the respondents predecessors. The decree provided for 20 installments payable half - yearly. The decree also provided for one or more installments for pendent life and future interest beyond the twentieth installment. The first installment was payable in November 1938 and thereafter each installment was payable on or before July 31 and December 31 each year. There was also a default clause providing that in case there were three defaults in the payment of installments, the whole decree could be executed. Finally the decree created a charge on 18 villages belonging to the appellant. It may be added that the charge was created under s. 3 of the U. P. Agriculturists' Relief Act, No. XXVII of 1934. The appellant paid the first 17 installments in time. He paid the eighteenth installment on July 31, 1948 but this was late as by then the 20th installment had also fallen due. As the 19th and 20th installments as well as pendente lite and future interest had not been paid the decree was put in execution by the respondents on April 26, 1951 for recovery of Rs. 49,000/-and odd by the sale of a Kothi and an Ahata belonging to the appellant. The decree - holder respondent also prayed that in case the whole amount was not realised from the sale of the above property, zamindari property on which a charge had been created might be put to sale.

The appellant raised objections under s. 47 of the Code of Civil Procedure against the execution. He also filed an application under ss. 4 and 8 of the U. P. Zamindar's Debt Reduction Act, No. XV of 1963, (hereinafter referred to as the Act). It is unnecessary to refer to the objections in detail, for in the present appeals we are concerned only with one point, namely, whether s. 4 of the Act applies to the present case. Under that section the appellant had allied to the court which passed the decree to reduce the amount was provided therein. Further in his objection under s. 47 of the Code of Civil Procedure the appellant claimed the same relief. That is how there were two proceedings in the first court, one under s. 4 of the Act and the other an objection under s. 47 of the Code of Civil Procedure. The first court held that s. 4 of the Act did not apply. In consequence it held that the amount for which execution had been taken out was not liable to reduction. It therefore dismissed both the application under s. 4 as well as the objection under 47 of the Code of Civil Procedure. There was also a question of limitation, but we are not concerned in the present appeals with that question.

This gave rise to two proceedings before the High Court. The appellant went in appeal against the dismissal of his objection under s. 47 of the Code of Civil Procedure. He also filed a civil revision

against the dismissal of his application under s. 4 of the Act. The two matters were heard together by the High Court, which held that s. 4 did not apply and therefore the amount could not be reduced. The High Court having refused to grant leave to the appellant, he secured special leave from this Court; and that is how the matter arises before us.

The Act was passed in 1953 to give relief to zamindars whose lands had been acquired by the State under the U. P. Zamindari Abolition and Land Reforms Act, No. 1 of 1951. Section 2 defines certain terms out of which it is necessary to refer to the following :-

" (m) 'secured debt' means a debt secured by mortgage of an estate and other immovable property;

(i) ' mortgage ' with its cognate expressions shall have the meaning assigned to it in the Transfer of Property Act, 1882 and includes a charge as defined in section 100 of that Act;

(o) 'suit to which this Act applies' means any suit or proceeding relating to a debt whether secured or otherwise;

(e) 'decree to which this Act applies' means a decree passed either before or after the commencement of this Act in a suit to which this Act applies;

(f) 'debt' means an advance in cash or in kind and includes any transaction which is in substance a debt but does not include an advance as aforesaid made on or before the first day of July 1952."

Certain debts are exempt from this definition but we are not concerned with them in the present appeals.

It will be seen from these definitions that a decree in a suit based on any debt is a decree to which the Act applies and such decrees can be of two kinds, namely, (i) those based on a secured debt, and (ii) those based on an unsecured debt. A secured debt is a debt secured by a mortgage and includes a debt secured by a charge under s. 100 of the Transfer of Property Act.

Then comes s. 3 which provides for reduction of debt at the time of passing of decree. Sub - section (1) thereof lays down that "notwithstanding anything in any law, agreement or document, in any suit to which this Act applies relating to a secured debt, the court shall, after the amount due has been ascertained, but before passing a decree, proceed as hereinafter stated". Then follow provisions as to the manner in which the debt, would be reduced, but we are not concerned with the details thereof. Section 3 therefore applies to a case where a decree relating to a secured debt had not been passed before the Act came into force. In such a case the court passing the decree has to reduce the amount in the manner provided in that section. It is however clear that before the court can act under s. 3 it has to come to the conclusion that the debt in question is a secured debt i.e. a debt secured by a mortgage or a charge under s. 100 of the Transfer of Property Act. The mortgage or the charge must be there on the date of the suit and the suit must be with respect to a secured debt. The date therefore on which the court has to see whether the debt in the suit before it is a secured debt or not is the date on which the suit is filed. The High Court seems to be in error when it held that under the definition of " secured debt" only such debts as are secured by a mortgage come in and not debts which are secured by a charge. It seems to have overlooked that part of the definition of the word " mortgage" which lays down that a mortgage will include a charge as defined in s. 100 of the

Transfer of Property Act. Therefore, even though a debt may be secured by a charge it will be a secured debt for the purpose of s. 3 provided the charge was there before the date of the suit. We have referred to s. 3 in some detail because we are of opinion that the interpretation to be put on s. 3 will have a direct bearing on the interpretation of the words of s. 4 where also the material words are the same as in s. 3. Section 4 provides for reduction of debts after passing of decrees, and sub-s. (i) thereof reads thus :

" (1) Notwithstanding anything in the Code of Civil Procedure, 1908, or any other law - the court which passed a decree to which this Act applies relating to a secured debt, shall, on the application either of the decree - holder or judgment - debtor, proceed as hereinafter stated".

Then come provisions as to the reduction of debt; but we are not concerned with the details thereof.

The question that has been posed before us is the meaning of the words " a decree..... relating to a secured debt". The comparable words in s. 3 are " a suit..... relating to a secured debt". As we have already said, so far as s. 3 is concerned it is the date on which the suit is filed which has to be seen to determine whether the suit relates to a secured debt as defined in the Act. It has been urged on behalf of the appellant that s. 4 applies undoubtedly to a case where the debt was a secured debt at the time the suit was filed. But it is further urged that in an application under s. 4, the court may also take into account the fact that though the debt may not have been a secured debt on the date the suit was filed in which the decree was passed, the decree having created a charge the debt becomes secured and the decree relates to a secured debt, the relevant date in such a case being the date on which the application under s. 4 has been made to the court. It is said that the words " a decree..... relating to secured debt" means a decree which has secured a debt whether the debt was secured before the suit was filed or not.

We are of opinion that this meaning cannot be given to the words. " a decree..... relating to a secured debt". We have already indicated that the comparable words in s. 3 are the same and there the words " a suit..... relating to a secured debt" clearly mean a suit was filed. On the same reasoning when s. 4 speaks of " a decree..... relating to a secured debt" it means a decree passed in a suit which was based on a secured debt as on the date of the suit. The legislature could not have intended by using these words in s. 4 that the fact that the decree created a charge should result in converting what was an unsecured debt into a secured debt for the purpose of s. 4. It seems to us that if one were to ask in a case of this kind whether the decree related to a secured debt or not, the answer would clearly be that the decree does not relate to a secured debt but to an unsecured debt based on a promissory note. It is true that the decree itself created a charge but that is very different from saying that the decree relates to a secured debt. We have no doubt that if the legislature intended that the decree which relates to an unsecured debt but which itself creates a charge for any reason would also be covered by s. 4. it would have used different and appropriate words to convey that idea. Thus to our mind, as the words " suit relating to a secured debt" mean a suit relating to a debt which was secured on the date the suit was filed, a decree relating to secured debt must also mean the same thing i.e. decree in respect of a debt which was secured when the suit in which the decree was passed was filed. The mere fact that the decree created a charge for certain reasons, as in this case, under the U. P. Agriculturists Relief Act, is no reason for holding that the decree relates to a secured debt. Whether the debt was secured or otherwise is a matter which in our opinion has to be tested both for s. 4 as well as for s. 3 on the date the suit is filed. If on that date the debt was secured, the suit would be relating to a secured debt and so would be the decree which might later be passed in that suit. But if on the date of the suit the debt was not secured it cannot be

said that the decree related to a secured debt simply because the decree created a charge for some reason or other. We are therefore of opinion a charge for some reason or other. We are therefore of opinion that the High Court was right in the view it took that this case was not covered by s. 4 of the Act.

The appeals therefore fail and are hereby dismissed with costs - one hearing fee.

V. P. S. Appeals dismissed.

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