

Mst. Jamshed Jahan Begum and Others

Vs

Lakhan Lal and Others

Civil Appeal No. 1016 of 1966

(J.M. Shelat, C.A. Vaidialingam, I.D. Dua JJ)

25.09.1969

JUDGMENT

VAIDIALINGAM, J. –

1. The question at arises for consideration in this appeal, by special leave, is as to whether the bhumidhari rights and trees belonging to the appellants can be proceeded against and sold for realisation of the debts due to the respondents under the U. P. Encumbered Estates Act, 1934 (Act XXV of 1934), as amended (hereinafter referred to as the Encumbered Estates Act.) The contention of the appellants is that they cannot be sold, whereas, according to the respondents, they can be sold.

2. The predecessors-in-interest of the appellants were landlords owning immovable properties, including agricultural land, trees, groves and well, situate in the various villages in the District of Saharanpur. They were very heavily indebted, the debts being both secured and unsecured, payable by them to the creditors. The respondents were among the secured creditors to whom large amounts were due. On or about March 26, 1936, the appellant's predecessors-in-interest filed an application under Section 4 of the Encumbered Estates Act to the Collector for determination of their debts. As required by Section 6 of the said Act, the Collector forwarded this application to the Special Judge, Saharanpur, appointed under Section 3 of the said Act and the said application was registered as Suit No. 23 of 1936. After complying with the other formalities under the Encumbered Estates Act, the Special Judge, on December 23, 1936, passed a decree under Section 14(7) of the Encumbered Estates Act. The said decree was amended on January 23, 1938. The Special Judge granted a decree in favour of respondents 1 to 3 for two sums of Rs. 36,000/- and Rs. 25,000/- on loans secured over properties mentioned in Schedules A, B and C of the decree. They were also granted a decree for which was the decree debt for the payment of which the mother of the daughters had stood surety. Over and above these amounts, the respondents were given a decree for Rs. 35,000/- for an unsecured debt.

The liquidation proceedings which were started under the Encumbered Estates Act and were pending before the Collector were stayed till 1954, in view of the contemplated legislation for Abolition of Zamindari, the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act, 1 of 1951), (hereinafter referred to as the Abolition Act), and the appellant's estate vested on July 1, 1952, in the State by virtue of the notification issued under Section 4(1) of that Act. The liquidation proceedings pending before the Collector under the Encumbered Estates Act were reopened in the year 1955. On May 15, 1959, the respondents made an application to the Assistant Collector of Saharanpur (to whom the powers of the Collector, for the purposes of Section 24 of the Encumbered Estates Act had been delegated) to recover the amounts decree to them by the Special Judge by proceeding against the bhumidhari rights and trees belonging to the appellants and to

auction the same under Section 24 of the Encumbered Estates Act. The appellants filed objections, briefly, to the following effect. The decree holder is not entitled to proceed against the bhumidhari rights or the trees in their possession. The decreeholder's debts are secured debts and they are entitled only to three-fourths of the Zamindari Abolition and Rehabilitation Grants and that they are not entitled to get anything more under the decree. The list forwarded by the Special Judge does not refer to any of their rights now sought to be attached and therefore no execution can be levied against such properties. Bhumidhari rights accrue only after the abolition of the Zamindari and, as such, they cannot be proceeded against for realisation of the decreed amounts. The Assistant Collector, by his order, dated February 21, 1961, upheld the objections of the appellants-debtors and dismissed the application of the decree-holders respondents for sale of bhumidhari and other rights in the properties mentioned by them. The basis on which the Assistant Collector declined to allow execution to proceed was that bhumidhari rights represent the proprietary rights which the Zamindars, on the abolition of the estate, were allowed to retain, by the Abolition Act. In substance, those rights were the original proprietary rights, though a new name of bhumidhari rights was given to them.

The respondents challenged this order of the Assistant Collector in appeal, under Section 45(3) of the Encumbered Estates Act, before the Commissioner, Meerut Division, who, by his order, dated March 24, 1965, reversed the order of the Assistant Collector and held that the trees and bhumidhari rights of the appellants could be sold in execution of the decree. The view of the Commissioner is that such rights are not rights other than proprietary rights. The prohibition contained in the Encumbered Estates Act is only regarding sale of proprietary rights and bhumidhari rights not being proprietary rights could be proceeded with in execution.

4. The appellants filed a revision, under Section 46(2) of the Encumbered Estates Act before the Board of Revenue. The two contentions, that were raised by the appellants, before the Board of Revenue were : (i) bhumidhari rights are proprietary rights in land and as such, no execution can levy against such rights; (ii) the bhumidhari rights sought to be proceeded against have not been mentioned in the list of properties sent by the Special Judge to the Collector under Section 19 of the Encumbered Estates Act and therefore they cannot be sold in liquidation proceedings under Chapter V of the Encumbered Estates Act. Both these contentions were rejected by the Board of Revenue who, by their order, dated October 15, 1965, confirmed the order of the Commissioner and dismissed the appellant's revision petitioner the Board of Revenue has held that bhumidhari rights are not proprietary rights and so long as there is no prohibition under the Abolition Act to proceed against them, the decree-holder was entitled to attach and sell those rights. The Board further held that the properties have been mentioned in the list sent by the Special Judge and the nature of the rights, viz., bhumidhari rights, could not have been mentioned on the date when the list was sent because such rights were obtained by the appellants long thereafter. It is against this order of the Board that the appellants have come up to this Court in appeal.

5. Mr. Goyal, learned counsel for the appellants, urged that the decree obtained by the respondents under the Encumbered Estates Act, as provided under Section 14(8) thereof, 'shall not be executable within U.P. except under the provisions of this Act'. Section 19 of the Encumbered Estates Act provides for the Special Judge informing the Collector of the nature and extent of the property mentioned in the notice under Section 11 which he has found to be liable for attachment and sale in satisfaction of the debts of the applicant. Section 24 provides for the Collector realising the value of such of the debtor's property other than the proprietary rights in land as shall have been reported by the Special Judge under the provisions of sub-section (2) of Section 19 to be liable to attachment or sale. Having due regard to these provisions, the counsel urged that the bhumidhari rights granted to

the appellants under the Abolition Act having not been admittedly reported by the Special Judge, cannot be proceeded against in execution under the Encumbered Estates Act. The counsel further urged that bhumidhari rights are special and new rights given under the Abolition Act to the former proprietor of the estate which vested in the State. Those rights cannot be proceeded against for realisation of the debts due to the respondent. Counsel referred us to the material provisions of the Encumbered Estates Act and the Abolition Act in support of the above contentions. Mr. Goyal also urged that the rights of the respondents, if any, are only to proceed against the compensation awarded under the Abolition Act. In support of his contention that the bhumidhari rights are new and special rights, Mr. Goyal referred us to two decisions of this Court in *Rana Sheo Ambar Singh v. Allahabad Bank Ltd., Allahabad* and *Krishna Prasad v. Gauri Kumari Devi*.

6. On the other hand, Mr. Gupte, learned counsel for the respondents, urged that the respondents are executing the decree strictly in accordance with the provisions of the Encumbered Estates Act. In this connection, counsel pointed out that whatever rights of the respondents, as mortgagees, originally might have been, the decree passed under the Encumbered Estates Act, under Section 14(7)(b)(i), in favour of the respondents is only a simple money decree. Therefore the provisions dealing with the rights of a mortgagee in respect of an estate under the Zamindari Abolition Act do not have any material bearing. He also referred to Section 18 of the Encumbered Estates Act to show that the effect of a decree of a Special Judge under Section 14(7) is to extinguish the previously existing rights of mortgage or security. The properties which are sought to be proceeded against are clearly referred to by the Special Judge in the decree sent to the Collector under Section 19 of the Encumbered Estates Act. Under clause (b) of Section 19(2) it was only necessary to state the nature and extent of the property and the Special Judge has informed the Collector of those particulars. Section 24 gives power to the Collector to realise the value of such of the debtors' property as has been reported by the Special Judge under sub-section (2) of Section 19. It is against such property that the respondents are proceeding against for realisation of their dues. Mr. Gupte further urged that the fact that at the time when execution is levied, the right of the appellants is the bhumidhari rights in those identical properties is not of any consequence. The decisions relied on by Mr. Goyal, the counsel points out, had no occasion to deal with the rights of a creditor under the Encumbered Estates Act. He further pointed out that there is no provision in the Abolition Act barring attachment and sale of bhumidhari rights. The counsel finally urged that the main purpose of the Encumbered Estates Act was to help to preserve the proprietary rights of landowners in U. P. and at the same time to evolve a machinery to liquidate their rights. It could not be the intention of the Legislature on the one hand to preserve property rights in land even though it is encumbered with heavy debts and on the other to provide the creditors no machinery for realisation of their due.

7. It will be seen from the rival contentions set out above that the main question that arises for consideration is as to whether the bhumidhari rights of the appellants obtained by them under the Abolition Act can be proceeded with or realisation of the decree obtained by the respondents under the provisions of the Encumbered Estates Act. This takes us to a consideration of the material provisions of the Encumbered Estates Act and the Abolition Act.

8. The object of the Encumbered Estates Act is to provide for relief of encumbered estates in U. P. Section 2 defines among other expressions, 'debt', 'land' and 'landlord'. Section 3 deals with the appointment of a Special Judge. Section 4 provides for the landlord who is subject to or whose immovable property or any part thereof is encumbered with private debts, for making an application within the time mentioned therein to the concerned Collector requesting that the provisions of the Encumbered Estates Act be applied to him. The landlord has to state in the application the amount of private debts as also his public debts, both decreed and undecreed. Section 6 deals with the

transmission to the Special Judge of the application received by the Collector under Section 4. The Collector has also to inform the Special Judge of any public debts outstanding against the landlord. Section 7 deals with the consequence of acceptance of an application by the Collector. In brief, all pending proceedings excepting proceedings by way of appeal or revision stand stayed and all attachments and other execution processes are declared null and void. No fresh suit or other proceeding excepting an appeal or revision against a decree or order can be instituted in any Civil or Revenue Court. Section 8 deals with the Special Judge who has received an application under Section 6 calling upon the applicant-landlord to submit a written statement containing full particulars regarding the public or private debts to which the landlord is subject or is immovable property is encumbered, the nature and extent of the landlord's proprietary rights in under Section 60, C. P. C., and the names and addresses of his creditors. Under Section 9, the Special Judge has to publish in the Gazette a notice calling upon all persons having claims in respect of private debts, both decreed every claim made under Section 9 should contain full particulars of the claim and also to the extent possible the nature and extent of the landlord's proprietary rights in land as also the nature and extent of the landlord's property other than proprietary rights. Section 11 requires the Special Judge to publish a notice specifying the property mentioned by the landlord under Section 8 and by a claimant under Section 10. It also provides for any person having any claim to the property mentioned in such of making an application to the Special Judge specifying his claim and for investigation by the Special Judge whether the property specified in the claim or any part thereof is liable to attachment, sale or mortgage in satisfaction of the applicant. Section 14 empowers the Special Judge, after giving the necessary notices in that behalf, to examine each claim and determine the amount, if any, due from the landlord to the claimant on the date of the application under section 4. Section 14 (7)(b) provides for the Special Judge, on finding that an amount is due to the claimant, to pass a simple money decree. Sub-section (8) states that every decree passed under sub-section (7) shall be deemed to be a decree of a Court of competent jurisdiction but shall not be executable within U. P. except under the provisions of the Encumbered Estates Act. Section 18, dealing with the effect of the finding of the Special Judge states that the existing relationship between the debt and the property which is charged or mortgaged for that debt are extinguished and that decree that is given by the Special Judge is stated to substitute for the previous rights a right to recover the amount of the decree in the manner and to the extent thereafter provided. It has already been noted that under Section 14 it is only a simple money decree that is passed by the Special Judge section 19 provides for the transmission of the decrees passed by the Special Judge to the Collector for execution in accordance with the provisions of Chapter V. The Special Judge is also to inform the Collector of the nature and extent of the property mentioned in the notice under Section 11 which he has found to be liable to attachment or sale in execution of the debts of the applicant. In the case before us there is no controversy that the Special Judge has complied with this provision.

9. Chapter V deals with execution of decrees and liquidation of debts and Section 24 provides for the Collector to whom the decree has been transmitted by the Special Judge under Section 19 to proceed to realise the value of such of the debtor's property other than proprietary rights in land as shall have been reported by the Special Judge under the provisions of Section 19(2) to be liable to attachment and sale. In this connection, it may be stated that the question that will arise for consideration is whether bhumidhari rights are 'the debtor's property other than proprietary rights in land'. If they are not proprietary rights in land then under this section they are liable been mentioned by the Special Judge in his report under Section 19(2) to be liable to attachment and sale.

10. From the provisions referred to above, the Scheme of the Encumbered Estates Act appears to be as follows. Any landlord who is encumbered with private debts can make an application to the prescribed authority for applying the provisions of that Act. The Special Judge, after making the

necessary publication, calls for claimants against the landlord and also ascertains the property of the debtor. He then examines the claimants and determines the amount of debt due and passes a decree under Section 7 of the Encumbered Estates Act if amounts are found to be due; but even though the amount may have been charged on the property, the Special Judge passes only a simple money decree. Under Section 14(8) the decree so passed is deemed to be a decree of a Civil Court of competent jurisdiction and it shall not be executable except under the provisions of the Encumbered Estates Act. Once the matter goes within the jurisdiction of the Special Judge the existing relations between the debt and the property which is charged or mortgaged for that debt are extinguished and the decree is only a simple money degree and not a mortgage decree. The mode of execution is then described in Section 19 under which the Special Judge transmits the decrees for to the Collector informing the latter among other matters of the nature and extent of the property which he has found to be liable to attachment or sale in satisfaction of the debts. The Collector, under Section 24, has to realise the value of the debtor's property other than proprietary rights in land. In the case before us we have already referred to decree being transmitted for execution, as well as the final order of the Board of Revenue, accepting the right of the respondents to levy execution against the bhumidhari rights in the land.

11. Under the Abolition Act, there is no controversy that the estate of the appellants vested in the State on July 1, 1952, by virtue of the notification issued under section 4. Section 3 defines the various expressions. Section 4 deals with vesting of estates in the State on the issue of a notification thereunder Section 6 deals with the various consequences of the vesting of an establish in the State. Clause (h) of Section 6 provides that no claim or liability enforceable or incurred before the date of vesting by or against such intermediary for any money, which is charged on or is secured by a mortgage of such estate or part thereof, shall, except as provided in Section 73 of the Transfer of Property act, 1882, be enforceable against the interests of such third person. Section 18 deals with settlement of certain items with intermediaries or cultivators as bhumidhars. It is the claim of the appellants that under this section they have been given rights of a bhumidhar in respect of the properties which are now sought to be sold by the respondents in execution. Section 199 provides that no bhumidhar shall be liable to ejectment.

12. We have not referred very elaborately to the provisions of the Abolition Act or its scheme, because these have been considered in the previous judgment of this Court in Rana Sheo Ambar Singh's case (Supra). It is enough to state that no provisions in the Abolition Act prohibiting the attachment and sale of the bhumidhari rights have been brought to our notice by Mr. Goyal.

13. In Rana Sheo Ambar Singh's case (Supra) the facts were briefly as follows. The proprietor of an estate had executed a simple mortgage of his proprietary interest in the estate consisting of 67 villages to the Allahabad Bank Ltd. The Bank obtained a decree and while execution proceedings were pending, the Zamindari Abolition Act was passed by virtue of which the estate vested in the State and, consequently, the decree-holder Bank could no longer sell the rights of the proprietor in the 67 villages, mortgaged to it. The Bank made an application to the executing Court to realise the amounts due to it by proceeding against the rights of the executing Court to realise the amounts due to it by proceeding against the rights of the judgment-debtor as reminded in him after the coming into force of the Abolition Act. One of the rights of the judgment-debtor which were sought to be proceeded against was the bhumidhari rights created under Section 18 of the Abolition Act. The case of the Bank was that the judgment debtor's proprietary rights in grove land and Sir and Khudkasht lands had been continued under Section 18 security in place of the original proprietary rights mortgaged. The judgment-debtor raised objections to execution being taken against his bhumidhari rights. The High Court upheld the view of the executing Court that execution could

proceed against the bhumidhari rights. This Court reversed the judgment of the High Court upheld the view of the executing Court that execution could proceed against the bhumidhari rights. This Court reversed the judgment of the High Court and held that the proprietary rights in Sir, Khudkasht lands and groves vested in the State on the issue of a notification under Section 4. This conclusion was reached after rejecting the contention of the degree-holder that the proprietary rights in Sir, Khudkasht and grove lands did not vest in the State and that those rights were continued in the landlord under section 18. This Court further held that the legislature was creating a new right under Section 18 and the old proprietary right in Sir, Khudkasht and intermediary grove land had already vested in the State under Section 6 and further observed, at p. 448 :

"We are of opinion that the proprietary rights in Sir and Khudkasht land and in grove land have vested in the State and what is conferred on the intermediary by Section 18 is a new right altogether which he never had and which could not therefore have been mortgaged in 1914."

In the later part of the judgment it was further held that the bhumidhari rights created under Section 18 are not compensation and that they are special rights conferred on the intermediary by virtue of his cultivatory possession of lands comprised therein and that the decree-holder cannot enforce his rights under the mortgage by sale of the bhumidhari rights created in favour of the landlord under Section 18, so far as Sir, grove land and Khudkasht lands are concerned and that he can only follow the compensation money under Section 6(h); the Court finally rejected the contention that bhumidhari rights can be followed as substituted security.

14. It will be seen that in the decision cited above this Court was considering the rights of a mortgagee as such to proceed against the bhumidhari rights and it was in that connection, in view of the specific provision under Section 6(h) of the Act and the nature of the new rights created under Section 18, that this Court held that the mortgagee was not entitled to levy execution against the bhumidhari rights. The said decision also lays down that the bhumidhari rights granted under Section 18 were new rights created by the Legislature and the old proprietary right in the land had already vested under Section 6 in the State. It is also clear from the said decision that bhumidhari rights created under Section 18 are not compensation and that they are special rights conferred on the intermediary by virtue of his cultivatory possession of the lands comprised therein and bhumidhari rights cannot also be considered as substituted security. The point to be noted, and which has been emphasised in that decision, is that all proprietary rights in the land had vested in the State and that no part of the proprietary rights remained in the landlord after the vesting of the estate in the State. It is further to be seen from that decision that the bhumidhari rights are no part of proprietary rights which the landlord had, prior to vesting.

15. In Krishna Prasad's case (Supra) the question that arose for consideration was whether under the Bihar Land Reforms Act, 1950 (hereinafter called the Bihar Act), it was open to a mortgagee-decree holder of an estate which had vested in the State to levy execution personally against the mortgagor by attachment and sale of other properties of the mortgagor. It was held by this Court, after a review of the provisions of the Bihar Act which were more or less substantially the same as those of the Abolition Act, that the compensation payable on acquisition of a mortgaged estate had been made a kind of substituted security against which the mortgage claim could be enforced under the Bihar act. It was further held that execution, by way of a personal decree, could only be done eventually if the realisation from the compensation amount was found insufficient to satisfy the decree.

16. We may also refer to the decision of this Court in Shivashankar Prasad Sah v. Baikunth Nath

Singh. That decision had, again, to deal with the rights of a mortgagee-decree-holder to proceed against the Bakasht land of the judgment-debtors and that right had to be decided under the Bihar Act. Section 6 of this act, corresponds more or less to Section 18 of the Abolition Act. In dealing with the scheme of the Bihar Act and in particular, the effect of Section 6 this Court observed :

"Reading Section 3, 4 and 6 together, it follows that all estates notified under Section 3 vest in the State free of all encumbrances. The quondum proprietors and tenure-holders of those Estates lose all interests in those estates. As proprietors they retain no interest in respect of them whatsoever. But in respect of the lands enumerated in Section 6, the State settled on them the rights of Raiyats. Though in fact the vesting of the estates and the deemed settlement of Raiyats in respect of the certain clauses of lands included in the Estates took place simultaneously, in law the two must be treated as different transactions; first there was a vesting of the estates in the State absolutely and free of all encumbrances. Then followed the deemed settlement by the State of Raiyat's rights on the quondum proprietors. Therefore in law it would not be correct to say that what vested in the State are only those interests not coming within Section 6."

Finally this Court held that the mortgagee-decree holders' only remedy was to establish their claim under the Bihar Act and get compensation and that they cannot levy execution against the Bakasht lands.

17. In our opinion, none of the decisions referred to above, assist the appellants. These decisions were directly concerned with the rights of the mortgagees as such to levy execution either as against the bhumidhari rights or personally against the mortgagor or against his other properties. The right to levy execution was claimed by the decree-holders as mortgagees after the estate mortgaged to them had vested in the State, under the relevant Acts. Under those circumstances, this Court held that the mortgagees' remedy was only to proceed against the compensation money as provided under the material provisions of the statute governing the same. None of those decisions had occasion to consider the question that now arises for consideration before us, viz., the rights of a decree-holder under the Encumbered Estates Act.

18. We have already referred to the nature of the decree that has been obtained by the respondents. Though at an earlier stage they were mortgagees, it was only a simple money decree that was granted to them under Section 14(7) of the Encumbered Estates Act and their rights as against the mortgage securities has been extinguished under Section 18 of the Encumbered Estates Act. In this view, Section 6(h) of the Abolition Act, relied on by Mr. Goyal, does not assist him. It is no doubt true that the decree obtained by the respondents shall not be executable except under the provisions of the Encumbered Estates Act. The nature and extent of the property liable to attachment and sale in satisfaction of the debts due to the respondent, as required under Section 19(2)(b) of the Encumbered Estates Act have all been furnished in the decree granted under Section 14(7) by the Special Judge and transmitted to the Collector under Section 19. Therefore, when the respondents approached the Assistant Collector on May 15, 1959, with an application to recover their debts from the bhumidhari rights of the appellants, they were only in the position of holders of simple money decrees. If so, execution can be levied normally from any property or rights which are liable to be attached or sold unless there is any prohibition imposed by the statute. Section 18, after extinguishing the rights in the property that may have been held under a mortgage or security, specifically provides that where any decree is give by the Special Judge they are in substitution of rights of a mortgagee or security-holder and the decree-holder has got the right to recover the

amount of the decree in the manner and to the extent prescribed. Section 24 gives a right to the decree-holders to recover their dues from the property of a debtor other than proprietary rights in land. Therefore the question is whether the bhumidhari rights conferred on the appellants under Section 18 of the Abolition Act are property other than proprietary rights in land. If they are rights other than proprietary rights, they can be proceeded against under Section 24 read, with Section 18 of the Encumbered Estates Act.

19. The decisions of this Court, referred to above, clearly lay down that the proprietary rights of the landlord in the land vest in the State on the passing of the relevant Abolition Acts. It has also been emphasised in Rana Sheo Ambar Singh's case (Supra) - and as is also clear from Section 6 of the Abolition Act - that all rights, title and interest of all the intermediaries in every estate shall vest and be vested in the State, on the issue of a notification under Section 4 of the Abolition Act. If so, it follows that after the estate vested in the State, the appellants had no proprietary rights left in them; and the bhumidhari rights, as held by this Court, being new rights created for the first time in favour of the appellants are entitled to proceed against those rights under Section 24 of the Encumbered Estates Act.

20. Mr. Goyal next urged that the bhumidhari rights have not been mentioned in the decree granted under Section 14(7) nor have they been reported by the Special Judge under Section 19(2) as being liable to attachment and sale as is necessary under Section 24. True it is that these rights, as such, have not been mentioned. But a perusal of Section 19(2)(b) clearly shows that it was not necessary that the interest or rights of the debtor should be mentioned in the decree, because the requirement is only regarding the nature land extent of the property and that has been mentioned in the decree granted in favour of the respondents by the Special Judge under section 14(7), and it has also been reported to the Collector under Section 19(2). If so, the requirements of Sections 19 and 24 have been complied with. Hence it follows that this contention of Mr. Goyal cannot be accepted. There is also another reason for rejecting the said contention. Bhumidhari rights have been created in favour of the appellants only on July 1, 1952, the date of vesting, on the issue of a notification under Section 4 of the Abolition Act, whereas the amended decree in favour of the respondents as been passed under Section 14(7) as early as January 23, 1938. When the Encumbered Estates Act permits the respondents to levy execution against the property of the debtor other than proprietary rights in land and when there is no prohibition in the Abolition Act against execution of follows that the decree-holders - respondents are entitled to proceed against the bhumidhari rights and therefore the appellate order of the Additional Commissioner, dated March 24, 1965 and the revisional order of the Board of Revenue, dated October 15, 1965, upholding the right of the respondents in this regard, are correct.

21. The further question that arises is whether the respondents are entitled to levy execution against the trees in the possession of the appellants in execution of their decree. No doubt, the general objection that was taken by the appellants before the Assistant Collector was that the groves formed part of the Sir property and therefore the question of their being auctioned does not that the groves do not form part of the list mentioned in the decree passed by the Special Judge. On the other hand, according to the respondents, the trees never vested in the State under the Abolition Act and, as the appellants continued to be the owners of the same, execution can be levied against the trees. The contention of the appellants that the trees have not been mentioned in the list need not detain us because the amended decree passed by the Special Judge clearly refers to trees standing on the lands described in the Schedules. Then the question is whether the trees belong to the respondents.

22. Section 3 (26) of the Abolition Act states that the words and expressions, mentioned therein and

which have not been defined in that act but used in the U. P. Tenancy Act, 1939, shall have the meaning assigned to them in the latter Act. Two, among the various expressions referred to in Section 3(26) are 'grove' and 'grove-holder'. Therefore we have to look into the U. P. tenancy Act to find out the meaning of the expression 'grove'. Section 3(6) of the U. P. Tenancy Act, 1939 (U. P. Act XVII of 1939), defines the expression 'grove-land' as follows :

"3(6). 'grove-land' means any specific piece of land in a mahal or mahals having trees planted thereon in such numbers that they portion thereof from being used primarily for any other purpose, and the trees on such land constitute a grove."

23. From the above, it will be seen that 'grove' is something different from 'grove-land' because the definition says that the trees on such land, viz., 'grove-land', constitute a 'grove'. Section 6 of the Abolition Act, dealing with the consequences of the vesting of an estate in the State, among other things, states in clause (a) :

"6(a) all rights, title and interest of all the intermediaries -

'(i) in every estate in such area including land (cultivable or barren), grove-land, forests whether within or outside village boundaries, trees (other than trees in village abadi, holding or grove), fisheries, tanks, ponds, water-channels, ferries, pathways, abadi, sites, hats, bazars and melas [other than hats, bazar and meals held upon land to which clauses (a) to (c) of sub-section (1) of Section 18 apply], and

(ii) in all sub-soil in such estates including rights, if any, in mines and minerals, whether being worked or not,

Shall cease and be vested in the State of Uttar Pradesh free from all encumbrances."

Clause (a), referred to above, deals with grove lands and trees, separately. The grove-land referred to above, will be the grove-land defined in Section 3(6) of the U. P. Tenancy Act. Clause (a) also refers to the rights, title and interest of intermediaries in trees ceasing and vesting in the State. From among the trees, such of the trees as constitute a grove have been excluded from the operation of clause (a) of Section 6. Therefore, the excluded category of trees forming the grove cannot be considered to have vested in the State on the abolition of the estates. Section 18, which creates bhumidhari rights deals, among other items, with "intermediary's grove". The expression "intermediary's grove" is defined in section 3(13) of the Abolition Act as grove-land held or occupied by an intermediary as such. We do not find any material on record to draw an inherent the appellants raised an contention that the trees constituted an 'intermediary's grove'.

24. From what is stated above, it will be seen that the trees constituting the grove, have not vested in the State and therefore they could not have formed the subject of creation of bhumidhari rights under Section 18. Therefore the trees constituting the grove, being the doubter's property, are liable to be proceeded with in execution under section 24 of the Encumbered Estates Act. Even if it is to be held that the appellants have got bhumidhari rights over the trees constituting the grove; as already held by us, these rights can be proceeded with under Section 24 of the Encumbered Estates Act. Therefore, from either point of view, the trees constituting the grove are liable to be proceeded against, for realisation of the decree by the respondents.

25. The result is the appeal fails and is dismissed with costs.

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