

Shankar Prahlad Deshpande and Others

Vs

Seth Gendalal Motilal Patni and Others

Civil Appeal No. 2373 of 1966

(J.C. Shah, K.S. Hegde JJ)

29.10.1969

JUDGMENT

SHAH, J. -

1. Gendalal - hereinafter called 'the mortgagee' - filed suit No. 11 of 1939 for recovery of the amount of 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 mortgagee commenced in 1948 proceedings for executing the decree.
2. On March 31, 1951, the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahala, 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 25, 1951 to the Claims Officer under Section 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 under Section 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, 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, overruled the judgment in Ramkishan's case, 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 Prahlad - 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 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 appellate 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 10, 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. The 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 (supra) it is true, decided that the Claims Officer was competent under Section 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 under of the Board of Revenue, and thereafter that Officer did not pass any order under Section 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 fill 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.

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