

Raja Shatrunji

Vs

Mohammad Azmat Azim Khan and Others

Civil Appeal No. 1007 of 1967

(C. A. Vaidialingam, A. N. Ray JJ)

21.04.1971

JUDGMENT

RAY, J. -

This appeal is by certificate from the judgment of the Allahabad High Court, dated April 30, 1963. Leave was granted by the Allahabad High Court on February 21, 1966.

2. The facts are these. On October 4, 1939, the appellant obtained a decree under the U.P. Encumbered Estates Act, 1934, against Sardar Mujibul Rahman Khan for the sum of Rs. 1,31,040-1-0 with costs and future interest at 3 1/2% p.a. on the basis of a secured debt. Sardar Mujibul Rahman Khan the judgment-debtor died on April 24, 1949. Thereafter the judgment debtor's sons who were brought on record on April 21, 1953 applied for reduction of the decretal amount under Section 4 of the U.P. Zamindars' Debt Reduction Act, 1952 (Act XV of 1953). The application was rejected by the Special Judge, Kheri on February 18, 1957. The Special Judge held that unless and until the decree charged the mortgaged property to reduction of debt could be ordered under the U.P. Zamindars' Debt Reduction Act, 1952 and that the decree was not one such. The judgment-debtor filed an appeal against the said order of the Special Judge. The appeal was heard on November 27, 1962 by the Full Bench of the Allahabad High Court upholding the order of the Special Judge and dismissing the appeal which was treated as revision. Shortly after the dismissal of the revision petition the U.P. Zamindars' Debt Reduction Act, 1952 was amended by U.P. Zamindars' Debt Reduction (Amendment) Act, XX of 1962. The Amendment Act of 1962 received the assent of the President on November 27, 1962 which happened to be the date of the order of the High Court on the revision application. The amendment was published in the Gazette on December 4, 1962 and came into force on that date. The judgment debtor thereafter on February 20, 1963 filed an application for review against the order of the Full Bench, dated November 27, 1962.

3. The High Court in accordance with the order of the majority accepted the review application of the judgment-debtor and set aside the order of the Special Judge rejecting the judgment-debtor's application under Section 4 of the Zamindars' Debt Reduction Act, 1952 and remanded the case to the Special Judge for disposal of the same in accordance with the provisions of the U.P. Zamindars' Debt Reduction Act, 1952 as amended by Act 20 of 1962.

4. Two questions arise in the present appeal. First, whether Section 4 of the U.P. Zamindars' Debt Reduction Act, 1952 could be invoked by the judgment-debtor. Secondly, whether the High Court could accede to the application of the judgment-debtor.

5. Section 4 of the U.P. Zamindars' Debt Reduction Act, 1952 (hereinafter referred to as the 1952

Act) in so far as it is necessary for the purpose of the present appeal is as follows :

"Powers to reduce debts after passing of decree. - (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.

(2) Where the mortgaged property (charged under the decree) consists exclusively of estate and such estate has been acquired under the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950 the court shall -

#X X X X##

(3) Where the mortgaged property (charged under the decree) consists partly of estate and partly of property other than estate, the court shall -

#X X X X##

The words "charged under the decree" are shown in brackets only to indicate that these words were deleted by Amendment Act 20 of 1962. It is because of the amendment that the judgment-debtor made an application to the High Court for review of the order, dated November 27, 1962, rejecting the judgment debtor's application under Section 4 of the 1952 Act. As to what the Court shall do under sub-sections (2) and (3) of Section 4 of the 1952 Act are calculation of the amount and reduction of the same in accordance with the provisions of the Act. The working out of these details for calculation and reduction of debt does not arise in the present case.

6. The Amendment Act 20 of 1962 which deleted the words "charged under the decree" occurring in both sub-sections (2) and (3) of Section 4 of the 1952 Act immediately after the words "mortgaged property" was made effective as from the date of enforcement of the U.P. Zamindars' Debt Reduction Act, 1952, namely May 25, 1953.

7. The reason for this amendment given in the objects and reasons of the U.P. Zamindars' Debt Reduction (Amendment) Act, 1962 was because the High Court of Allahabad in the case of Benu Mal and Others v. Bashir Ahmad Khan and Others, (1962 ALJR 83) held that the court was powerless to reduce debts after the passing of the decree unless the mortgaged property was charged under the decree. The effect of the Amendment was to give relief to mortgaged property within the contemplation of the Act.

8. As a result of the amendment first it is to be a decree to which the 1952 Act applies, secondly, it is to be a decree relating to a secured debt and, thirdly, the mortgaged property is to consist of estate which has been acquired under the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950. If these tests are satisfied the decree-holder or the judgment-debtor has the right to apply to the court and the court shall on the application proceed in accordance with the provisions of the Act. The court under this section is the court of the Special Judge which passed the decree. In the present case, it is indisputable that it is a decree relating to secured debt, and the mortgaged property consists of an estate which has been acquired under the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950.

9. The appellant applied under Section 4 of the 1952 Act as it stood prior to its amendment by Act 20 of 1962 on August 24/25, 1955 in the court of the Special Judge, first-grade, Kheri. The Special

Judge held that the decree against the appellant was not on which could be said to be against the mortgaged property charged under the decree. The appellant also lost before the High Court under the order, dated November 27, 1962. The appellant made an application for review of the judgment of the High Court, dated November 27, 1962.

10. The effect of the amendment of the 1952 Act is embodied in Section 2 of the Amendment Act, 1962 which is as follows :

"The U.P. Zamindars' Debt Reduction Act, 1952, shall as to the date of this enforcement have effect subject to the amendments made by this Act as if this Act had been in force on all material dates :

Provided that nothing in this section shall apply to a debt which has been discharged prior to the date of enactment of this Act."

11. The Amendment Act therefore provided that the amendment took effect as if the Amendment Act had been in force on all material dates. The effect of such a deeming clause was stated by this Court in *State of Bombay v. Pandurang Vinayak Chaphalkar and Others*, (1953 SCR 773 at p.778 : AIR 1953 SC 244 : 1953 SCJ 330) as follows :

"When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the court is entitled to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion."

The statutory fiction was introduced to give full effect to Section 4 of the 1952 Act by conferring on the debtors and creditors the right to apply to the court for calculation and reduction of debt. It was realised that courts always passed simple decrees. It was noticed that mortgaged property was not and could not be charged under the decree. It was therefore appreciated that unless the words "charged under the decree" were deleted the section could never give any landlord whose estate had been acquired.

12. This court in the Bombay case referred to the observations of Lord Asquith in *East End Dwellings Co. Ltd. v. Finsbury Borough Council*, 1952 AC 109 that "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it ..... The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs". These observations indicate that the words "charged under the decree" in Section 4(2) of the 1952 Act were never there with the inevitable consequence that the only statutory requirement is whether the mortgaged property consists of estate which has been acquired under the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950.

13. On November 27, 1962 when the matter was heard by the High Court, this amendment did not come into the statute book. That is why the judgment-debtor made an application to bring it to the notice of the High Court that the law was that the words "charged under the decree" were always deemed to have been deleted and this law was effective from the date of coming into force of the 1952 Act on May 25, 1953. The High Court by a majority opinion was of the view that the

judgment-debtors should be given relief under Order XLVII of the Code of Civil Procedure the principles of review are defined by the Code and the words "any other sufficient reason" in Order XLVII of the Code would mean a reason sufficient on grounds analogous to those specified immediately previously in that order. The grounds for review are the discovery of new matters or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or the review is asked for on account of some mistake or error apparent on the face of the record. In *Rajah Kotagiri Venkata Subbamma Rao v. Rajah Vellanki Venkatrama Rao*, (27 IA 197) Lord Davey at page 205 of the Report said that "the section does not authorise the review of a decree which was right when it was made on the ground of the happening of some subsequent event". Counsel for the appellant submitted that when the High Court decided the matter, the High Court applied the Law as it stood and a subsequent change of law could not be a ground for review. The appellant's contention is not acceptable in the present case for two principal reasons; first, it is not a subsequent law. It is the law which all along was there from 1952. The deeming provision is fully effective and operative as from May 25, 1953 when the 1952 Act came into force. The result is that the Court is to apply the legal provision as it always stood. It would, therefore, be error on the face of the record. The error would be that the law that was applied was not the law which is applicable. Secondly, Section 4 of the 1952 Act confers power on the court to apply the law notwithstanding any provision contained in the Code of Civil Procedure. Therefore the application though intitled an application for review was not so. The substance and not the form of the application will be decisive.

14. The appellant could not have applied to the Special Judge at Kheri after the decision of the High Court on November 27, 1962 to apply the law as it stood to the facts and circumstances of the case. The appeal from the order of the Special Judge, Kheri was heard by the High Court and, therefore, the appellant rightly applied to the High Court. It appears from the record of the case that when the matter was heard before the High Court the appellant's counsel brought to the notice of the High Court that the Act was going to be amended and awaited assent of the President. In the present case, it is a pre-eminent consideration to be kept in the forefront that the 1952 Act was amended to confer benefit on judgment-debtors of the type of the appellant. This is a special legislation conferring rights and reliefs within a specially created jurisdiction. The decree is treated like a decree of the Civil Court. The execution of the decree is not within the province of the provisions of the Code of Civil Procedure. There are special Acts for execution of decrees of the type in the present appeal. The Special Courts have been given power to grant remedies or reliefs to the judgment-debtor as well as the decree-holder. Section 4 of the 1952 Act conferred right to apply to the court notwithstanding any provision contained in the Code of Civil Procedure. The High Court was, therefore, right in making the order as a court could have made at the date on which the appeal was heard.

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