

Budhu Sao and Others

Vs

Baleswar Prosad Sao and Another

Civil Appeal No. 286 of 1985

(O. Chinnappa Reddy, R. B. Misra JJ)

24.01.1985

JUDGMENT

CHINNAPPA REDDY, J. -

1. Special leave granted.

2. A mortgage action instituted by the petitioners against the respondents was decreed by the Additional Subordinate Judge, Biharsharif for a sum of Rs. 19,027 together with interest at the rate of 9 per cent. per annum and costs. One of the issues raised in the suit was whether the suit was hit by Section 8 of the Bihar Money Lenders Act, 1974 which prevented a court from entertaining a suit by a money-lender from recovering a loan advanced by him after the commencement of the Act unless such money-lender was a registered money-lender. The issue directly raised the further question whether plaintiff 1, who advanced the money was a money-lender ? The question was answered by the learned Subordinate Judge in these words :

I therefore hold that the plaintiffs have got no money-lending business and that plaintiff 1 had advanced the money to defendant 1 not as a money-lender, but as a friend. The advance of loan given by plaintiff 1 to defendant 1 was friendly one and so the suit cannot be hit by Section 8 of the Bihar Money Lenders Act, 1974.

It was further argued before the learned Subordinate Judge that the suit was also hit by the Bihar Debt Relief Act, 1976. That point was also decided against the defendant on the ground that the Act applied only to loans advanced by money-lenders. Since the plaintiffs were not money-lenders, the suit was not hit by the Bihar Debt Relief Act, 1976, either. Against the judgment and decree of the learned Subordinate Judge, the respondents have preferred First Appeal No. 558 to the High Court and it is stated to be pending now. Thereafter the petitioners filed Execution Case No. 13 of 1978/14 of 1982 in the Court of the learned Subordinate Judge in which an objection was raised by the judgment-debtors on the ground that the provisions of the Bihar Debt Relief Act relieved them of liability under the decree. This objection was overruled by the learned Subordinate Judge and when the matter was brought before the High Court in revision, it was observed by Lalit Mohan Sharma, J. :

The learned Subordinate Judge has observed that the point relating to the Bihar Debt Relief Act was argued in the suit and rejected in paragraph 10 of the judgment which is the subject matter of the first appeal. The Court is right in saying that the remedy of the petitioners is to urge the point in the first appeal and it is not open to them to challenge the decision in the suit in the execution proceeding.

After the dismissal of the revision petition filed in the High Court, the defendants filed a petition before the Additional Collector, Nalanda under Sections 23, 32 and 24 of the Bihar Money Lenders Act, 1974 to issue a notification for appointing a conciliation board for settlement of a dispute alleged to be pending between the parties. On August 19, 1982, a notification under Section 23 of the Bihar Money Lenders Act was issued by the Additional Collector and thereupon the defendants filed a petition before the learned Subordinate Judge for discontinuance of the execution proceedings invoking Section 25 of the Bihar Money-Lenders Act. The learned Subordinate Judge dismissed the petition. But on a revision petition filed by the defendants, the High Court quashed the execution proceedings on the ground that the notification of the Additional Collector dated August 19, 1982 rendered the decree of the civil court non est. The plaintiffs-decree holders have filed the present appeal.

3. We are unable to agree with the view taken by the High Court that the decree of the learned Subordinate Judge became non est on the issue of a notification under Section 23 of the Bihar Money Lenders Act. It is true that under Section 25 of the Bihar Money Lenders Act when a dispute is referred to a Conciliation Board, the jurisdiction of a court in any suit or proceeding in respect of the subject-matter of the dispute stands barred from the date of the notification under Section 23; and that any suit or proceeding in a court in regard to the whole or any part of such dispute shall be discontinued. Section 23 enables the State Government to refer any dispute, whether any suit or proceeding be or be not pending in a court with regard to the whole or part of the subject of such dispute, to a Conciliation Board for the purpose of bringing about an amicable settlement of such dispute. The explanation to Section 23 defines a 'dispute' as meaning "a dispute or difference regarding loan or loans the amount of which singly or in aggregate exceeds one hundred rupees (excluding interest) between a debtor and his money-lenders". Therefore, the foundation for a notification under Section 23 is the existence of a dispute between a debtor and a money-lender. The question whether the person who has lent the money is a money-lender or not is undoubtedly a question relating to a jurisdictional fact. Whenever a reference is made under Section 23, it is open to the person who has advanced the money to approach the civil court in an appropriate proceeding for a decision of the jurisdictional fact. In the present case, the jurisdictional fact, namely, whether the plaintiffs were money-lenders or not has already been decided by the learned Subordinate Judge and it is presently the subject matter of an appeal before the High Court. So long as the finding of the learned Subordinate Judge stands unreversed, there is no scope for a notification under Section 23 or the application of Section 25. In the circumstances, the only appropriate order that can be made is to set aside the order of the High Court under appeal and direct that Appeal No. 558 may be disposed of expeditiously. The appeal is allowed in the manner indicated. There will be no order as to costs.

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