

ALLAHABAD HIGH COURT

Mirza Inayat Beg

Vs

Mirza Abdul Rahman Beg

(Iqbal Ahmad, J.)

24.10.1940

JUDGMENT

Iqbal Ahmad, J.

1. This is an appeal by Mirza Inayat Beg against an order of a civil Judge refusing to stay further proceedings in execution of a decree for sale. The facts giving rise to the appeal are as follows: One Umrao Beg, the ancestor of the contesting respondent brought a suit for recovery of Rs. 17,000 odd by sale of mortgaged property against Fayazi Begum, Hakim Beg and certain other persons. Hakim Beg was minor on the date of the institution of the suit. Umrao Beg obtained a preliminary decree for sale in 1922 and that decree was made final in 1923. By the beginning of the year 1926 Hakim Beg attained majority, and he sold a portion of his property covered by the decree for sale to Inayat Beg appellant. Thereafter both Hakim Beg and Inayat Beg filed a suit for a declaration that the decree for sale obtained by Umrao Beg was not binding on Hakim Beg and was not enforceable against his properties, as Hakim Beg was not represented by a duly appointed guardian in the suit filed by Umrao Beg. This suit was ultimately decreed and, as a result of the decree passed in the suit, the original suit filed by Umrao Beg was reopened so far as Hakim Beg was concerned. It appears that Inayat Beg was also impleaded as a defendant in Umrao Beg's suit when that suit was reopened against Hakim Beg. The suit was again decreed against Hakim Beg and a preliminary decree under Order 34, Rule 4, Civil P.C. was passed on 5th December 1933. Though in this preliminary decree Inayat Beg's name figured as one of the defendants, the decree was solely against Hakim Beg and there was no liability cast on Inayat Beg by that decree. The decree was made final in due course. "But in the final decree the name of Inayat Beg did not appear as a judgment-debtor and the decree was only against Hakim Beg.

2. After the passing of the final decree, last mentioned Inayat Beg filed an application under Section 4, Encumbered Estates Act (25 of 1934), and his application was forwarded by the Collector to the Special Judge in accordance with the provisions of Section 6 of the Act. In the meantime, the respondents had taken out execution of their decree for sale against Hakim Beg. Inayat Beg then filed an application before the Civil Judge praying that the execution

proceedings initiated by the respondents be stayed in view of the provisions of Section 7, Encumbered Estates Act. The learned Judge rejected the application and, in our judgment, rightly. Clause (a) of Sub-section (1) of Section 7 runs as follows:

When the Collector has passed an order under Section 6 the following consequences shall ensue : all proceedings pending at the date of the said order in any civil or revenue Court..., in respect of any public or private debt to which, the landlord is subject, or with which his immovable property is encumbered,...shall be stayed....

3. It is clear from this provision that Clause (a) is confined in its operation to proceedings in respect of a debt (1) to which the landlord applicant is subject, or (2) with which his immovable property is encumbered. If neither of these conditions is satisfied Clause (a) does not come into play. In the present case Inayat Beg is not subject to the decretal debt which the respondents are seeking to realize by execution of their decree. Even though Inayat Beg was a party to the preliminary decree, no pecuniary liability was cast on him by that decree. To the final decree Inayat Beg is not even a party and is therefore not under an obligation to satisfy that decree. The first condition is therefore not satisfied in the present case.

4. But, as already stated, Inayat Beg has purchased a portion of the mortgaged property covered by the decree for sale "His immovable property," in one sense, is therefore at present "encumbered" with the decretal debt. This fact however in our judgment does not, in the circumstances of the present case, entitle Inayat Beg to the benefit conferred by Clause (a). Inayat Beg is a purchaser pendente lite. The purchase made by him cannot therefore in view of the provisions of Section 52, T.P. Act, adversely affect the rights of the respondents under the decree obtained by them. The respondents are entitled, as against Hakim Beg to sell the property covered by the final decree in order to realize the decretal amount. This right of the respondents cannot be affected by the pendente lite purchase made by Inayat Beg. Hakim Beg not having applied under the Encumbered Estates Act, could not invoke to his aid the provisions of Clause (a) of Sub-section (1) of Section 7. The right of the respondents to put their decree into execution therefore remained untrammelled so far as Hakim Beg was concerned. To allow the stay of execution proceedings would therefore affect the undoubted rights of the respondents under the decree held by them, and this would amount to a violation of the provisions of Section 52, T.P. Act. In our opinion the provisions of Clause (a) are subject to the rule of law enacted by Section 52, T.P. Act, and a purchaser pendente lite is not entitled to invoke that clause to his aid. The respondents in the present case are entitled to say that, as between them and Inayat Beg, the purchase made by Inayat Beg must be ignored in view of the provisions of Section 52. In other words, having regard to the rule of lis pendens, Inayat Beg, cannot, as between him and the respondents, be regarded as the owner of the property covered by the decree for sale. His (Inayat Beg's) "immovable property" is not therefore "encumbered" with the decretal debt within the meaning of Clause (a) of Sub-section (1) of Section 7. It follows that the Court below was right in refusing to stay the execution proceedings at the instance of Inayat Beg. The appeal therefore

fails and is dismissed with costs.

5. We may note that this appeal was originally filed as a first appeal from order. But it was conceded by the learned Counsel for the appellant that, as the order appealed against was passed not by a Special Judge exercising jurisdiction under the Encumbered Estates Act but by a civil Judge in the course of execution proceedings, no appeal lay to this Court in accordance with Section 45, Encumbered Estates Act. The learned Counsel therefore prayed that this appeal be treated as an execution first appeal and this prayer was granted by us. The deficiency in the court-fee was made good by the appellant and then the hearing of the appeal proceeded. As we are dismissing the appeal on the merits it is not necessary to enter into a discussion of the question as to whether the order appealed against was appealable under Section 47, Civil P.C.

