RANA SHEO AMBAR SINGH

v.

ALLAHABAD BANK LTD., ALLAHABAD

1962

April 27.

(P. B. GAJENDRAGADKAR, K. N. WANCHOO, K. C. DAS GUPTA and T. L. VENKATARAMA AIYAR, JJ.)

Mortgage Decree—Proprietory rights in Zamindari—Execution proceedings pending—Zamindari rights abolished—Bhumidari rights confirmed on intermediaries—Mortgagor, if can sell Bhumidari rights in execution—Relief available—U. P. Zamindari Abolition and Land Reforms Act, 1950 (U.P. 1 of 1951), ss. 6(a)(i), 6(h), 18.

The appellant's father, a Talukdar of the Estate of Khajurgaon, executed a simple mortgage of his proprietary interest in the estate consisting of sixty-seven villages to the Allahabad Bank Ltd. While execution proceedings were pending, the U. P. Zamindari Abolition and Land Reforms Act, 1950, came into force from July 1952. As a result, the Zamindari rights of the appellant judgment-debtor were abolished and it was no longer possible to sell these rights in the 67 villages. The respondent Bank made an application before the executing court that as the Zamindari rights could not be sold, only such rights of the judgment-debtor as remained in him after coming into force of the Act might be sold along with certain other rights.

Objections were taken and finally the matter came up by appeal to the High Court and it, *inter alia*, upheld the view of the executing court that the execution could proceed against the Bhumidari rights created in favour of the appellant under s. 18 of the Act.

The question was whether the Bhumidari rights created under s. 18 of the Act could also be sold in execution of the decree in view of the fact that the proprietory rights had vested in the State.

Held, that the intention of the U. P. Zamindari Abolition and Land Reforms Act was to vest the proprietary rights in the *Sir* and *Khudkast* land and grove land in the Estate by virtue of s. 6(a)(i) and resettle it on the intermediary not as compensation but by virtue of his cultivatory possession of lands comprised therein and on a new tenure and confer upon the intermediary a new and special right of Bhumidari, which he never had before, by s. 18 of the Act.

The proprietary rights in *Sir*, *Khudkast* land and grove land which were mortgaged were extinguished, and the Bhumidari right which was altogether a new right could not be considered to be included under the mortgage.

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The mortgagee could only enforce his rights against the mortgagor in the manner as provided by s. 6(h) of the Act read with s. 73 of the Transfer of Property Act and follow the compensation money; and so far as the *Sir, Khudkast* land and grove land were concerned, he could not enforce his rights under the mortgage by the sale of the Bhumidari rights created in favour of the mortgagor against them as a substituted security.

In the instant case the Bhumidari rights created in favour of the appellant could not be sold in execution of the decree held against him by the respondent under the mortgage of 1914.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 301 of 1960.

Appeal from the judgment and decree dated September 24, 1958, of the Allahabad High Court (Lucknow Bench) at Lucknow in First Execution of Decree Appeal No. 8 of 1953.

C. B. Agarwala, Shankar Prasad and *C. P. Lal*, for the appellant.

Iqbal Ahmed, N. C. Chatterjee, D. N. Mukherjee and *B. N. Ghosh*, for the respondent.

1961. April 27. The Judgment of the Court was delivered by

Wanchoo J.

WANCHOO, J.—This is an appeal on a certificate granted by the Allahabad High Court. The brief facts necessary for present purposes are these. The appellant's father Rana Umanath Bakshsingh was the Talukdar of Khajurgaon. On July 13, 1914, Rana Umanath Bakshsingh executed a simple mortgage in favour of the Allahabad Bank Limited (hereinafter called the respondent). The mortgage was for a sum of Rs. 6,00,000 and the property mortgaged consisted of sixty-seven villages. In May 1924, the respondent filed a suit for the recovery of the balance of the unpaid mortgage money by the sale of the mortgaged property. In January 1925 a preliminary decree for the recovery of rupees four lacs and odd was passed, which was made final in July 1926 and directed the sale of the mortgaged property, namely, the proprietary rights of Rana Umanath Bakshsingh in the sixty-seven villages. Then followed execution applications with which we are not concerned. In 1934, the U. P.

Agriculturists' Relief Act was passed and thereupon an application was made by the judgment-debtor for the amendment of the decree under that Act. On October 19, 1936, the decree was amended under the provisions of that Act and thereafter the pending execution proceedings were dropped as instalments had been fixed. Eventually, the respondent applied for execution on May 25, 1940. Objection was taken to this application on the ground that it was barred by time; but this matter was decided against the judgment-debtor and thereafter the execution has been proceeding uptil now on this application.

On July 1, 1952, the U. P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951), hereinafter called the Act, came into force. As a consequence of this enactment, the zamindari rights of the judgment-debtor were abolished and it was no longer possible to sell these rights in the sixty-seven villages. Consequently, on September 29, 1952, the respondent made an application that as the zamindari rights could not be sold, only such rights of the judgment debtor as remained in him after the coming into force of the Act might be sold, namely, the rights in trees and wells in abadi and buildings situate in various villages under sale. It was also prayed that the judgment-debtor's proprietary rights in grove land and *sir* and *khudkashat* land had been continued under s. 18 of the Act and these constituted substituted security in place of the proprietary rights mortgaged with the respondent and they should also be sold. Finally it was prayed that compensation money payable to the judgment-debtor on the acquisition of the proprietary rights by the State might be treated as substituted security.

The appellant objected to these applications on various grounds. The execution court held that the buildings, trees and wells situated in the abadi were liable to be sold in execution of the decree. It further held that the respondent was entitled to compensation amount granted by the State to the appellant in lieu of zamindari rights as substituted security. Finally, it held that the bhumidari rights acquired by the

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appellants under s. 18 of the Act could also be sold in execution of the decree.

The appellant then took the matter in appeal to the High Court, and the two points urged before the High Court were (i) that the bhumidari rights created by s. 18 (i) of the Act could not be sold in execution of the decree, and (ii) that the application dated September 20, 1952, was a fresh application for execution and as it was filed over 12 years after the date of the amended decree it was barred by time. The High Court repelled both these contentions, and held that execution could proceed against the bhumidari rights created in favour of the appellant under s. 18 of the Act and further that the application dated September 20, 1952, was within time as it was not a fresh application and the decree holder was only seeking to execute the decree in respect of the property for the sale of which he had already applied within time allowed by law. The High Court therefore dismissed the appeal. The appellant then obtained a certificate to appeal to this Court; and that is how the matter has come up before us.

The main point urged on behalf of the appellant is that the decision of the High Court that bhumidari rights created under s. 18 of the Act can also be sold in execution of the decree, is not correct. Under the mortgage deed, the property mortgaged consisted of the property forming part of the Talukdari of Khajurgaon detailed at the foot of the mortgage, namely, the sixty-seven villages. Thus the mortgage consisted of the proprietary interests only of the mortgagor in the sixty-seven villages, and as it was a simple mortgage, possession of no part of the property was given to the mortgagee. It is therefore contended by Mr. Aggarwala on behalf of the appellant that as the proprietary right in the sixty-seven villages vested in the State under the Act, the respondent who was only entitled to get the proprietary rights sold under the mortgage can now fall back only on compensation payable to the appellant under the Act, and reliance in particular is placed on s. 6 (h) of the Act in this connection. On the other hand, the contention on

behalf of the respondent is that bhumidari rights arising under s. 18 of the Act are liable to be sold as they represented the proprietary rights which were mortgaged and in any case they can be sold as substituted security in place of the property mortgaged.

We have therefore to look into the scheme of the Act in order to decide between the rival contentions. It is not in dispute that the Taluka of Khajurgaon was an estate within the meaning of the Act. It may be mentioned that the judgment-debtor had certain *sir* and *khudkashat* lands and zamindar's grove in the sixty-seven villages comprised within the Talukdari estate. Section 4 of the Act provides for vesting of an estate in the State on the making of a notification thereunder and the Taluka of Khajurgaon has vested in the State by virtue of such a notification made under s. 4. Section 6 prescribes the consequences of the vesting arising under s. 4 and we may refer to s. 6(a) (i) as that will show in what the interests of the judgment-debtor ceased and became vested in the State:—

"(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* or *melas* (other than *hats, bazars, melas* held upon land to which clauses (a) to (c) of sub-section (1) of section 18 apply), and

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

Clause (h) of s. 6 is also material and is in these terms:—

"(h) 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 his interest in the estate."

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All lands therefore whether cultivable or barren or grove lands vested in the State on the notification under s. 4 having been made save as otherwise provided in this Act. Therefore, proprietary rights in *sir* and *khudkashat* land and grove land would vest in the State on the coming into force of the notification under s. 4 unless there was some provision otherwise in the Act. The contention of the respondent therefore that *sir* and *khudkashat* land and grove land continued to be the property of the appellant and would therefore remain liable to be sold in execution proceedings would fail in view of the notification under s. 4, unless of course there is a provision otherwise in the Act. The only provisions otherwise on which the respondent relies are ss. 9 and 18 of the Act. So far as s. 9 is concerned, it is certainly a provision otherwise and it provides as follows:—

> "All wells or trees in abadi, and all buildings situate within the limits of an estate, belonging to or held by an intermediary or tenant or other person, whether residing in the village or not, shall continue to belong to or be held by such intermediary, tenant or person, as the case may be, and the site of the wells or the buildings with the area appurtenant thereto shall be deemed to be settled with him by the State Government on such terms and conditions as may be prescribed."

This provision clearly creates an exception to the property which vests in the State on the making of a notification under s. 4. The exception is in favour of all wells and trees in abadi and all buildings and it is significant to note that these things will continue to belong to the intermediary, though the further provision shows that the site of the wells, and buildings with the area appurtenant thereto would vest in the Government and would be deemed to be settled with the intermediary on such conditions and terms as may be prescribed. The effect therefore of s. 9 is that wells, trees in abadi and buildings apart from the land under them continue to belong to the intermediary (and the appellant is undoubtedly an intermediary within the meaning of the Act); but even here the

land on which the buildings and the wells stand vest in the State and it is deemed settled with the intermediary on terms and conditions to be prescribed. So far therefore as wells and trees in abadi and all buildings are concerned, these continue to belong to the appellant and if they are covered by the mortgage they would be liable to sale. As we have already pointed out, there was no dispute before the High Court with respect to wells, and trees in abadi and buildings and it was conceded there that these were liable to be sold, the only dispute being with respect to bhumidari rights created under s. 18.

Let us now turn to s. 18 and see whether it is also a provision otherwise like s. 9. The relevant part of s. 18 for our purposes is in these terms:—

> "(1) Subject to the provisions of sections 10, 15, 16 and 17, all lands—
>
> (a) in possession of or held or deemed to be held by an intermediary as *sir*, khudkashat or an intermediary's grove,
>
> .....
>
> on the date immediately preceding the date of vesting shall be deemed to be settled by the State Government with such intermediary, lessee, or tenant, grantee or grove-holder, as the case may be, who shall subject to the provisions of this Act be entitled to take or retain possession as a bhumidar thereof."

It is well to contrast the language of this section with the language of s. 9. Section 9 lays down that trees and wells in abadi and buildings shall continue to belong to the intermediary and that shows that it was a provision otherwise excepting these three items from vesting in the State by virtue of the notification under s. 4 and its consequence under s. 6; but there is no provision in s. 18 of the Act to the effect that *sir* and khudkashat land and intermediary's grove shall continue to belong to the intermediary. Therefore, *sir* and khudkashat land and grove land would vest in the State by virtue of s. 6 (a) (i) for there is no provision otherwise in s. 18 in that behalf. In this connection we may refer for comparison to s. 23 of the

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Rajasthan Land Reforms and Resumption of Jagirs Act, No. VI of 1952 (hereinafter called the Rajasthan Act) which provides that "notwithstanding anything contained in the last preceding section (i.e. s. 22, which refers to *consequences of resumption*), all khudkashat lands of a Jagirdar etc. shall continue to belong to or be held by such jagirdar or other person". If the intention of the Act was not to vest *sir* and khudkashat land and grove land in the State we would have found an exception similar to that found in the Rajasthan Act. Section 9 itself shows in what manner the legislature was making an exception when it did not intend that a particular property should vest in the State. If the intention were that *sir* and khudkashat land and grove land should not vest in the State, s. 18 would have been worded in the same way as s. 9. Further the way in which s. 18 is worded, (namely that khudkashat and *sir* land and an intermediary's grove shall be deemed to be settled with the intermediary and he would have bhumidari rights therein) shows that these three kinds of property vested in the State under s. 6(a)(1) and were then re-settled with the intermediary on a new tenure and not in the same right, which he had in them before the vesting. The legislature was therefore creating a new right under s. 18 and the old proprietary right in *sir* and khudkashat land and any intermediary's grove land had already vested under s. 6 in the State. Therefore, it cannot be said that s. 18 is an exception to the consequences provided in s. 6 and therefore *sir* and khudkashat land and grove land continue to be the property of the judgment-debtor in this case in the same manner as they were his property at the time of the mortgage and would therefore be available in execution of the decree as the proprietary rights mortgaged. We are of opinion that the proprietary rights in *sir* and khudkashat land and in grove land have vested in the State and what is conferred on the intermediary by s. 18 is a new right altogether which he never had and which could not therefore have been mortgaged in 1914.

Our attention in this connection was drawn to the

compensation sections in the Act, and it was urged that what was given to the intermediary under s. 18 was really his old right because no compensation was to be paid to him with respect to what was left to him under s. 18. The first section to be considered in this connection is s. 39 which deals with gross assets of a *mahal*. In these gross assets the amount computed at the rates applicable to the ex-proprietary tenants of similar land for land in the personal cultivation of or held as intermediary's grove, *Khudkashat* or *sir* by all the intermediaries in the estate was to be included subject to certain exceptions which are immaterial for our purposes. The very fact that in the gross assets the rents of these lands in which the bhumidari rights were created under s. 18 were taken into consideration shows that these lands also vested in the State; if that were not so there was no necessity for including these assets in the gross assets for the purposes of compensation. Here again we may refer to a similar provision in the Rajasthan Act for purposes of comparison. The second Schedule to that Act provides how gross income is to be calculated and in calculating the gross income the income from khudkashat land has not been taken into account because it was excepted from the consequence of resumption under s. 23 of that Act. It is true that under s. 44 of the Act when calculating net assets, the income from *sir* and *khudkashat* land and grove land has been excluded on the ground that bhumidari rights have been conferred therein under s. 18 of the Act. That is however for the purposes of calculating what should be paid to the intermediary as compensation and in that connection it was necessary to take into account the fact that the legislature was creating a new right in the intermediary with respect to certain lands and therefore it was not necessary to give money as compensation. That would not however make any difference in our view as to the legal effect of the notification under s. 4 and under the notification *sir* and *khudkashat* land and grove land would vest in the State and would not be an exception to the consequences of vesting in s. 6 and therefore the proprietary right in *sir*

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and *khudkashat* land and grove land which were mortgaged would be extinguished and the bhumidari right which is created by s. 18 would be a new right altogether and would not therefore be considered to be included under the mortgage in this case.

This brings us to a consideration of s. 6(h) of the Act. That lays down 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 s. 73 of the Transfer of Property Act, 1882, be enforceable against his interest in the estate". This provision has in our opinion a two-fold effect. In the first place, it makes it impossible for the mortgagee to follow the proprietary right after it vests in the State. Secondly, it provides that the only way in which the mortgagee can recover his money advanced on the security of the property which vested in the State by virtue of the notification under s. 4 and the consequences thereof under s. 6 is to follow the procedure under s. 73 of the Transfer of Property Act. Section 73(2) provides that "where the mortgaged property or any part thereof or any interest therein is acquired under the Land Acquisition Act, 1894 (1 of 1894), or any other enactment for the time being in force providing for the compulsory acquisition of immovable property, the mortgagee shall be entitled to claim payment of the mortgage money, in whole or in part, out of the amount due to the mortgagor as compensation". There is no doubt that the property mortgaged has been compulsorily acquired in this case by the State under the Act. Therefore, s. 6(h) read with s. 73 directs that the mortgagee shall proceed in the manner provided in s. 73, namely, follow the compensation money, and there is no other way possible for him in view of s. 6(h) with respect to the property which has been acquired under the Act. We have held that *sir* and khudkashat land and grove land have been acquired under the Act and have vested in the State; therefore the mortgagee is relegated to enforce his rights against the mortgagor in the manner provided in s. 73 of the

Transfer of Property Act and in no other way. What we say here does not affect that property which is not acquired by the State, for example, property excepted under s. 9 of the Act; but where the property has vested in the State by virtue of a notification under s. 4 and its consequences under s. 6, the only course open to the mortgagee is to follow the compensation money under s. 6(h). The bhumidari rights created under s. 18 are not compensation; they are special rights conferred on the intermediary by virtue of his cultivatory possession of the lands comprised therein. The respondent therefore cannot enforce his rights under the mortgage by sale of the bhumidari rights created in favour of the appellant under s. 18 so far as his *sir* and khudkashat land and grove land are concerned; it can only follow the compensation money as provided in s. 6(h). The argument that bhumidari rights can be followed as substituted security must therefore equally fail.

Our attention in this connection was drawn to s. 8(2) of the U. P. Zamindars Debt Reduction Act, No. XV of 1953. That Act provides for scaling down of debts of zamindars whose estates have been acquired under the Act. It also provides that the debts due shall be realisable from the compensation and rehabilitation grant, and in particular s. 8(2) provides that "notwithstanding anything in any law the reduced amount found in the case of a mortgagor or judgment-debtor as the case may be, under section 3 or 4 as respects mortgaged estates shall not be legally recoverable otherwise than out of the compensation and rehabilitation grant payable to such mortgagor or judgment-debtor in respect of such estates". We have not been able to understand how the provisions of the U. P. Zamindars Debt Reduction Act can affect the construction of s. 6(h) of the Act read with other provisions of the Act. It is not necessary for us therefore to construe s. 8(2) of the U. P. Zamindars Debt Reduction Act, for we are clear on the provisions of s. 6 (h) and the other provisions of the Act that bhumidari rights created in favour of the appellant cannot be sold in execution of the decree held against him by the respondent under the mortgage of 1914.

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This brings us to the question of limitation. Mr. Aggarwala conceded that if the appellant succeeds on the first point it would not be necessary for us to consider the question of limitation. Therefore, as the appellant succeeds on the first point we need not consider whether the application for execution by sale of bhumidari rights created under s. 18 is barred by limitation.

We therefore allow the appeal and direct that the execution of the decree by the respondent will not be levied against the bhumidari rights created in favour of the appellant under s. 18 of the Act. The appellant will get his costs of this court and of the High Court. Costs of the execution court will be at the discretion of that Court.

Appeal allowed.

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April 27.

TIRUMALACHETTI RAJARAM
v.
TIRUMALACHETTI RADHAKRISHNAYYA CHETTY

(P. B. GAJENDRAGADKAR, A. K. SARKAR, K. N. WANCHOO, K. C. DAS GUPTA and N. RAJAGOPALA AYYANGAR, JJ.)

Supreme Court, Appellate Jurisdiction of—Appeal from decree affirming the decision of the court below—Decree of affirmance, Meaning of—Test—Constitution of India, Art. 133(1).

The appellant brought a suit for the recovery of his moiety share of the joint family properties against his father and alienees from the latter and his case was that the alienations made by the father were not binding on his share of the properties. The trial court dismissed the suit but the High Court on appeal reversed the decision of the trial court in respect of some of the properties, passed a preliminary decree for partition of those properties and confirmed the rest of the decree of the trial court. The appellant applied for a certificate under Art. 133(1) of the Constitution but the High Court rejected the same holding that the decree was one of affirmance and involved no substantial