

## JAMSHED JAHAN BEGAM &amp; ORS.

v.

## LAKHAN LAL &amp; ORS.

September 25, 1969

[J. M. SHELAT, C. A. VAIDIALINGAM AND I. D. DUA, JJ.]

*U.P. Encumbered Estates Act (25 of 1934), ss. 14, 19 and 24, and U.P. Zamindari Abolition and Land Reforms Act (1 of 1951)—Decree under Encumbered Estates Act—If could be executed against bhumidhari rights granted under the Abolition Act—Trees of debtor—When could be proceeded against in execution.*

The predecessors-in-interest of the appellants were landlords, owning an estate including agricultural land, trees, groves etc., in U.P., and were heavily indebted to the respondents. Most of the debts were secured. On the application of the landlords proceedings were taken under the U.P. Encumbered Estates Act, 1934, and a decree was passed under s. 14(7) of the Act in favour of the respondents in 1938. The nature and extent of property liable to attachment and sale, as required by s. 19(2)(b) of the Act, were furnished to the executing authority. By virtue of a notification under the U.P. Zamindari Abolition and Land Reforms Act, 1950, the estate vested in the State, and new rights, namely, *bhumidhari* rights in the lands in the estate, were created in 1952 in favour of the appellants who were the successors-in-interest of the landlords. In 1959, the respondents applied under s. 24 of the Encumbered Estates Act to recover the amount decreed to them, by proceeding against the *bhumidhari* rights and trees belonging to the appellants.

On the question whether : (1) the *bhumidhari* rights, and (2) the trees, could be proceeded against.

**HELD :** (1) Though the respondents were mortgagees their rights as such were extinguished under the Encumbered Estates Act and the decree in their favour under the Act was only a simple money-decree which was not executable except under the provisions of the Act. Under s. 24 execution can be levied from any property or rights, *other than proprietary rights in land*, which are reported under s. 19 as liable to be attached and sold. On the passing of the U.P. Abolition Act the proprietary rights of the landlords in the land vested in the State and thereafter, the appellants had no proprietary rights left in them. The *bhumidhari* rights being new rights created for the first time in favour of the appellants under the Abolition Act, are not proprietary rights. In the present case, the requirements of ss. 19 and 24 have been complied with, even though the *bhumidhari* rights were not mentioned as being liable to attachment and sale, because, (i) under s. 19(2)(b) the requirement is only to report the nature and extent of the property liable to attachment and sale and not the interests or rights of the debtor in the property; and (ii) the decree under the Encumbered Estates Act was passed in 1938 while the *bhumidhari* rights were created only in 1952, and hence, could not be specifically mentioned in the decree. When the Encumbered Estates Act permits the respondents to levy execution against the property of the debtor other than the proprietary rights in land, and when there is no prohibition in the Abolition Act against execution of a decree obtained under the Encumbered Estates Act, against the *bhumidhari* rights, the respondents were entitled to proceed against such rights. [575 A-B; 577 B-E; G; 578 A-F]

**A** *Rana Sheo Ambar Singh v. Allahabad Bank Ltd.* [1962] 2 S.C.R. 441, followed.

**B** (2) Under s. 6(a) of the Abolition Act and s. 3(6) of the U.P. Tenancy Act, 1939, the right title and interest of intermediaries in trees and grove-land, but not in trees constituting a grove, cease, and vest in the State. Since the trees constituting a grove have not vested in the State and could not have formed the subject of creation of *bhumidhari* rights they are the debtor's property and, are liable to be proceeded against in execution under s. 24 of the Encumbered Estates Act. Even if the appellants got *bhumidhari* rights over the trees constituting the grove, they could be proceeded against, because, *bhumidhari* rights could be proceeded against in execution. [580 B, C-E]

**C** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1016 of 1966.

Appeal by special leave from the order dated October 15, 1965 of the Board of Revenue, U.P. in Revision No. 2—E of 1964 Saharanpur.

*J. P. Goyal* and *S. M. Hanif*, for the appellants.

**D** *S. V. Gupte, G. D. Gupta* and *B. P. Maheshwari*, for respondents Nos. 1 to 3.

The Judgment of the Court was delivered by

**E** **Vaidialingam, J.** The question that arises for consideration in this appeal, by special leave, is as to whether the *bhumidhari* rights and trees belonging to the appellants can be proceeded against and sold for realisation of the debts due to the respondents under the U.P. Encumbered Estates Act, 1934 (Act XXV of 1934) as amended (hereinafter referred to as the Encumbered Estates Act). The contention of the appellants is that they cannot be sold, whereas, according to the respondents, they can be sold.

**F** The predecessors-in-interest of the appellants were landlords owning immovable properties, including agricultural land, trees, groves and well, situate in the various villages in the District of Saharanpur. They were very heavily indebted, the debts being both secured and unsecured, payable by them to the creditors. The respondents were among the secured creditors to whom large amounts were due. On or about March 26, 1936 the appellant's predecessors-in-interest filed an application under s. 4 of the Encumbered Estates Act to the Collector for determination of their debts. As required by s. 6 of the said Act, the Collector forwarded this application to the Special Judge, Saharanpur, appointed under s.3 of the said Act and the said application was registered as Suit No.23 of 1936. After complying with the other formalities under the Encumbered Estates Act, the Special Judge, on December 23, 1936 passed a decree under s.14(7) of the Encumbered Estates Act. The said decree was amended on

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January 23, 1938. The Special Judge granted a decree in favour of respondents 1 to 3 for two sums of Rs. 36,000/- and Rs. 25,000/- on loans secured over properties mentioned in Schedules A, B and C of the decree. They were also granted a decree for Rs. 9,000/- which was the decree debt for the payment of which the mother of the daughter had stood surety. Over and above these amounts, the respondents were given a decree for Rs. 3,500/- for an unsecured debt.

The liquidation proceedings which were started under the Encumbered Estates Act and were pending before the Collector were stayed till 1954 in view of the contemplated legislation for abolition of zamindari, the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act 1 of 1951) (hereinafter referred to as the Abolition Act), and the appellant's estate vested on July 1, 1952 in the State by virtue of the notification issued under s. 4(1) of that Act. The liquidation proceedings pending before the Collector under the Encumbered Estates Act were reopened in the year 1955. On May 15, 1959 the respondents made an application to the Assistant Collector of Saharanpur (to whom the powers of the Collector, for the purposes of s. 24 of the Encumbered Estates Act had been delegated) to recover the amounts decreed to them by the Special Judge by proceeding against the bhumidhari rights, and trees belonging to the appellants and to auction the same under s. 24 of the Encumbered Estates Act. The appellants filed objections, briefly, to the following effect. The decree holder is not entitled to proceed against the bhumidhari rights or the trees in their possession. The decree-holder's debts are secured debts and they are entitled only to three-fourths of the Zamindari Abolition and Rehabilitation Grants and that they are not entitled to get anything more under the decree. The list forwarded by the Special Judge does not refer to any of their rights now sought to be attached and therefore no execution can be levied against such properties. Bhumidhari rights accrued only after the abolition of the zamindari and, as such, they cannot be proceeded against for realisation of the decreed amounts. The Assistant Collector, by his order dated February 21, 1961 upheld the objections of the appellants-debtors and dismissed the application of the decree-holders-respondents for sale of bhumidhari and other rights in the properties mentioned by them. The basis on which the Assistant Collector declined to allow execution to proceed was that bhumidhari rights represent the proprietary rights which the zamindars, on the abolition of the estate, were allowed to retain, by the Abolition Act. In substance, those rights were the original proprietary rights, though a new name of bhumidhari rights was given to them.

The respondents challenged this order of the Assistant Collector in appeal, under s. 45(3) of the Encumbered Estates Act,

- A** before the Commissioner, Meerut Division, who by his order dated March 24, 1965 reversed the order of the Assistant Collector and held that the trees and bhumidhari rights of the appellants could be sold in execution of the decree. The view of the Commissioner is that such rights are rights other than proprietary rights. The prohibition contained in the Encumbered Estates
- B** (Act is only regarding the sale of proprietary rights and bhumidhari rights not being proprietary rights could be proceeded with in execution.

- The appellants filed a revision, under s. 46(2) of the Encumbered Estates Act, before the Board of Revenue. The two contentions, that were raised by the appellants, before the Board
- C** of Revenue were : (i) bhumidhari rights are proprietary rights in land and as such, no execution can levy against such rights; (ii) the bhumidhari rights sought to be proceeded against have not been mentioned in the list of properties sent by the Special Judge to the Collector under s. 19 of the Encumbered Estates Act and therefore they cannot be sold in liquidation proceedings
- D** under Chapter V of the Encumbered Estates Act. Both these contentions were rejected by the Board of Revenue who, by their order dated October 15, 1965 confirmed the order of the Commissioner and dismissed the appellant's revision petition. The Board of Revenue has held that bhumidhari rights are not proprietary rights and so long as there is no prohibition under the Abolition Act to proceed against them, the decree-holder was entitled to attach
- E** and sell those rights. The Board further held that the properties have been mentioned in the list sent by the Special Judge and the nature of the rights, viz., bhumidhari rights, could not have been mentioned on the date when the list was sent because such rights were obtained by the appellants long thereafter. It is against this order of the Board that the appellants have come up
- F** to this Court in appeal.

- Mr. Goyal, learned counsel for the appellants, urged that the decree obtained by the respondents under the Encumbered Estates Act, as provided under s. 14(8) thereof, 'shall not be executable within U.P. except under the provisions of this Act'.
- G** Section 19 of the Encumbered Estates Act provides for the Special Judge informing the Collector of the nature and extent of the property mentioned in the notice under s. 11, which he has found to be liable for attachment and sale in satisfaction of the debts of the applicant. Section 24 provides for the Collector realising the value of such of the debtor's property other than the proprietary rights in land as shall have been reported by the
- H** Special Judge under the provisions of sub-s. (2) of s. 19 to be liable to attachment or sale. Having due regard to these provisions, the counsel urged that the bhumidhari rights granted to the

appellants under the Abolition Act, having not been admittedly reported by the Special Judge, cannot be proceeded against in execution under the Encumbered Estates Act. The counsel further urged that bhumidhari rights are special and new rights given under the Abolition Act to the former proprietors of the estate which vested in the State. Those rights cannot be proceeded against for realisation of the debts due to the respondents. Counsel referred us to the material provisions of the Encumbered Estates Act and the Abolition Act in support of the above contentions. Mr. Goyal also urged that the rights of the respondents, if any, are only to proceed against the compensation awarded under the Abolition Act. In support of his contention that the bhumidhari rights are new and special rights, Mr. Goyal referred us to two decisions of this Court in *Rana Sheo Ambar Singh v. Allahabad Bank Ltd.*, *Allahabad*<sup>(1)</sup> and *Krishna Prasad v. Guari Kumari Devi*<sup>(2)</sup>.

On the other hand, Mr. Gupte, learned counsel for the respondents, urged that the respondents are executing the decree strictly in accordance with the provisions of the Encumbered Estates Act. In this connection, counsel pointed out that whatever rights of the respondents, as mortgagees, originally might have been, the decree passed under the Encumbered Estates Act, under s. 14(7)(b)(i), in favour of the respondents is only a simple money decree. Therefore the provisions dealing with the rights of a mortgagee in respect of an estate under the Zamindari Abolition Act do not have any material bearing. He also referred to s. 18 of the Encumbered Estates Act to show that the effect of a decree of a Special Judge under s. 14(7) is to extinguish the previously existing rights of mortgage or security. The properties which are sought to be proceeded against are clearly referred to by the Special Judge in the decree sent to the Collector under s. 19 of the Encumbered Estates Act. Under cl. (b) of s. 19(2) it was only necessary to state the nature and extent of the property and the Special Judge has informed the Collector of those particulars. Section 24 gives power to the Collector to realise the value of such of the debtors' property as has been reported by the Special Judge under sub-s. (2) of s. 19. It is against such property that the respondents are proceeding against for realisation of their dues. Mr. Gupte further urged that the fact that at the time when execution is levied, the right of the appellants is the bhumidhari rights in those identical properties is not of any consequence. The decisions relied on by Mr. Goyal, the counsel points out, had no occasion to deal with the rights of a creditor under the Encumbered Estates Act. He further pointed out that there is no provision in the Abolition Act barring attachment and sale of bhumidhari rights. The counsel

(1) [1962] 2 S.C.R. 441.

(2) [1962] Supp. 3 S.C.R. 564.

- A finally urged that the main purpose of the Encumbered Estates Act was to help to preserve the proprietary rights of land-owners in U.P. and at the same time to evolve a machinery to liquidate their rights. It could not be the intention of the Legislature on the one hand to preserve property rights in land even though it is encumbered with heavy debts and on the other to provide the creditors no machinery for realisation of their dues.

B It will be seen from the rival contentions set out above that the main question that arises for consideration is as to whether the bhumidhari rights of the appellants obtained by them under the Abolition Act can be proceeded with for realisation of the decree obtained by the respondents under the provisions of the Encumbered Estates Act. This takes us to a consideration of the material provisions of the Encumbered Estates Act and the Abolition Act.

C The object of the Encumbered Estates Act is to provide for relief of encumbered estates in U.P. Section 2 defines among other expressions, 'debt', 'land' and 'landlord'. Section 3 deals with the appointment of a Special Judge. Section 4 provides for the landlord who is subject to or whose immovable property or any part thereof is encumbered with private debts, for making an application within the time mentioned therein to the concerned Collector requesting that the provisions of the Encumbered Estates Act be applied to him. The landlord has to state in the application the amount of private debts as also his public debts, both decreed and undecreed. Section 6 deals with the transmission to the Special Judge of the application received by the Collector under s. 4. The Collector has also to inform the Special Judge of any public debts outstanding against the landlord. Section 7 deals with the consequence of acceptance of an application by the Collector. In brief, all pending proceedings excepting proceedings by way of appeal or revision stand stayed and all attachments and other execution processes are declared null and void. No fresh suit or other proceeding excepting an appeal or revision against a decree or order can be instituted in any civil or revenue Court. Section 8 deals with the Special Judge who has received an application under s. 6 calling upon the applicant-landlord to submit a written statement containing full particulars regarding the public or private debts to which the landlord is subject or his immovable property is encumbered, the nature and extent of the landlord's proprietary rights in land, the nature and extent of his property liable to attachment and sale under s. 60, C.P.C., and the names and addresses of his creditors. Under s. 9, the Special Judge has to publish in the Gazette a notice calling upon all persons having claims in respect of private debts, both decreed and undecreed, against the landlord or his property. Section 10 provides that every claim made under

s. 9 should contain full particulars of the claim and also to the extent possible the nature and extent of the landlord's proprietary rights in land as also the nature and extent of the landlord's property other than proprietary rights. Section 11 requires the Special Judge to publish a notice specifying the property mentioned by the landlord under s. 8 and by a claimant under s. 10. It also provides for any person having any claim to the property mentioned in such notice of making an application to the Special Judge specifying his claim and for investigation by the Special Judge whether the property specified in the claim or any part thereof is liable to attachment, sale or mortgage in satisfaction of the applicant. Section 14 empowers the Special Judge, after giving the necessary notices in that behalf, to examine each claim and determine the amount, if any, due from the landlord to the claimant on the date of the application under s. 4. Section 14 (7)(b) provides for the Special Judge, on finding that an amount is due to the claimant, to pass a simple money decree. Sub-s. (8) states that every decree passed under sub-s. (7) shall be deemed to be a decree of a Court of competent jurisdiction but shall not be executable within U.P. except under the provisions of the Encumbered Estates Act. Section 18, dealing with the effect of the finding of the Special Judge states that the existing relationship between the debt and the property which is charged or mortgaged for that debt are extinguished and the decree that is given by the Special Judge is stated to substitute for the previous rights a right to recover the amount of the decree in the manner and to the extent thereafter provided. It has already been noted that under s. 14 it is only a simple money decree that is passed by the Special Judge. Section 19 provides for the transmission of the decrees passed by the Special Judge to the Collector for execution in accordance with the provisions of Chapter V. The Special Judge is also to inform the Collector of the nature and extent of the property mentioned in the notice under s. 11 which he has found to be liable to attachment or sale in execution of the debts of the applicant. In the case before us there is no controversy that the Special Judge has complied with this provision.

Chapter V deals with execution of decrees and liquidation of debts and s. 24 provides for the Collector to whom the decree has been transmitted by the Special Judge under s. 19 to proceed to realise the value of such of the debtor's property other than proprietary rights in land as shall have been reported by the Special Judge under the provisions of s. 19(2) to be liable to attachment and sale. In this connection, it may be stated that the question that will arise for consideration is whether bhumi-dhari rights are 'the debtor's property other than proprietary rights in land'. If they are not proprietary rights in land then

- A under this section they are liable to be sold under auction because the nature and extent of the property has been mentioned by the Special Judge in his report under s. 19(2) to be liable to attachment and sale.

- B From the provisions referred to above, the Scheme of the Encumbered Estates Act appears to be as follows. Any landlord who is encumbered with private debts can make an application to the prescribed authority for applying the provisions of that Act. The Special Judge, after making the necessary publication, calls for claimants against the landlord and also ascertains the property of the debtor. He then examines the claimants and determines the amounts of debt due and passes a decree under
- C s. 7 of the Encumbered Estates Act if amounts are found to be due; but even though the amount may have been charged on the property, the Special Judge passes only a simple money decree. Under s. 14(8) the decree so passed is deemed to be a decree of a Civil Court of competent jurisdiction and it shall not be executable except under the provisions of the Encumbered Estates
- D Act. Once the matter goes within the jurisdiction of the Special Judge the existing relations between the debt and the property which is charged or mortgaged for that debt are extinguished and the decree is only a simple money decree and not a mortgage decree. The mode of execution is then described in s. 19 under which the Special Judge transmits the decrees for execution to
- E the Collector informing the latter among other matters of the nature and extent of the property which he has found to be liable to attachment or sale in satisfaction of the debts. The Collector, under s. 24, has to realise the value of the debtor's property other than proprietary rights in land. In the case before us we have already referred to the various stages leading up to the respondents obtaining a decree and the decree being transmitted for
- F execution, as well as the final order of the Board of Revenue, accepting the right of the respondents to levy execution against the bhumidhari rights in the land.

- G Under the Abolition Act, there is no controversy, that the estate of the appellants vested in the State on July 1, 1952 by virtue of the notification issued under s. 4. Section 3 defines the various expressions. Section 4 deals with vesting of estates in the State on the issue of a notification thereunder. Section 6 deals with the various consequences of the vesting of an estate in the State. Clause (h) of s. 6 provides that no claim or liability enforceable or incurred before the date of vesting by or against
- H 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, 1882, be enforceable against the interests of such third person. Section



18 deals with settlement of certain items with intermediaries or cultivators as bhumidhars. It is the claim of the appellants that under this section they have been given rights of a bhumidhar in respect of the properties which are now sought to be sold by the respondents in execution. Section 199 provides that no bhumidhar shall be liable to ejectment.

We have not referred very elaborately to the provisions of the Abolition Act or its scheme, because these have been considered in the previous judgment of this Court in *Rana Sheo Ambar Singh's Case*<sup>(1)</sup>. It is enough to state that no provision in the Abolition Act prohibiting the attachment and sale of the bhumidhari rights have been brought to our notice by Mr. Goyal.

In *Rana Sheo Ambar Singh's Case*<sup>(1)</sup> the facts were briefly as follows. The proprietor of an estate had executed a simple mortgage of his proprietary interest in the estate consisting of 67 villages to the Allahabad Bank Ltd. The Bank obtained a decree and while execution proceedings were pending, the zamindari Abolition Act was passed by virtue of which the estate vested in the State and, consequently, the decree-holder Bank could no longer sell the rights of the proprietor in the 67 villages, mortgaged to it. The Bank made an application to the executing Court to realise the amounts due to it by proceeding against the rights of the judgment-debtor as remained in him after the coming into force of the Abolition Act. One of the rights of the judgment-debtor which were sought to be proceeded against was the bhumidhari rights created under s. 18 of the Abolition Act. The case of the Bank was that the judgment-debtor's proprietary rights in grove land and sir and khudkast lands had been continued under s. 18 of the Abolition Act and that, in any event, they constituted substituted security in place of the original proprietary rights mortgaged. The judgment-debtor raised objections to execution being taken against his bhumidhari rights. The High Court upheld the view of the executing Court that execution could proceed against the bhumidhari rights. This Court reversed the judgment of the High Court and held that the proprietary rights in sir, khudkast lands and groves vested in the State on the issue of a notification under s. 4. This conclusion was reached after rejecting the contention of the decree-holder that the proprietary rights in sir, khudkast and grove lands did not vest in the State and that those rights were continued in the landlord under s. 18. This Court further held that the Legislature was creating a new right under s. 18 and the old proprietary right in sir, khudkast and intermediaries' grove land had already vested in the State under s. 6, and further observed, at p. 448 :

"We are of opinion that the proprietary rights in sir and khudkast land and in grove land have vested

(1) [1962] 2 S.C.R. 441

A 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."

B In the later part of the judgment it was further held that the bhumidhari rights created under s. 18 are not compensation and that they are special rights conferred on the intermediary by virtue of his cultivatory possession of lands comprised therein and that the decree-holder cannot enforce his rights under the mortgage by sale of the bhumidhari rights created in favour of the landlords under s. 18, so far as sir, grove land and khudkast lands are concerned and that he can only follow the compensation money under s. 6(h); The court finally rejected the contention that bhumidhari rights can be followed as substituted security.

D It will be seen that in the decision cited above this Court was considering the rights of a mortgagee as such to proceed against the bhumidhari rights and it was in that connection, in view of the specific provision under s. 6(h) of the Act and the nature of the new rights created under s. 18, that this Court held that the mortgagee was not entitled to levy execution against the bhumidhari rights. The said decision also lays down that the bhumidhari rights granted under s.18 were new rights created by the legislature and the old proprietary right in the land had already vested under s. 6 in the State. It is also clear from the said decision that bhumidhari rights created under s.18 are not compensation and that they are special rights conferred on the intermediary by virtue of his cultivatory possession of the lands comprised therein and bhumidhari rights cannot also be considered as substituted security. The point to be noted, and which has been emphasised in that decision, is that all proprietary rights in the land had vested in the State and that no part of the proprietary rights remained in the landlord after the vesting of the estate in the State. It is further to be seen from that decision that the bhumidhari rights are no part of proprietary rights which the landlord had, prior to vesting.

G In *Krishna Prasad's Case*<sup>(1)</sup> the question that arose for consideration was whether under the Bihar Land Reforms Act, 1950 (hereinafter called the Bihar Act) it was open to a mortgagee-decree holder of an estate which had vested in the State to levy execution personally against the mortgagor by attachment and sale of other properties of the mortgagor. It was held by this Court, after a review of the provisions of the Bihar Act which were more or less substantially the same as those of the Abolition Act, that the compensation payable on acquisition of

(1) [1962] Supp. 3 S.C.R. 562.

a mortgaged estate had been made a kind of substituted security against which the mortgage claim could be enforced under the Bihar Act. It was further held that execution, by way of a personal decree, could only be done eventually if the realisation from the compensation amount was found insufficient to satisfy the decree.

We may also refer to the decision of this Court in *Shiva-shankar Prasad Sah v. Baikunth Nath Singh*<sup>(1)</sup>. That decision had, again, to deal with the rights of a mortgagee-decree holder to proceed against the Bakasht land of the judgment debtors and that right had to be decided under the Bihar Act. Section 6 of this Act, corresponds more or less to s. 18 of the Abolition Act. In dealing with the scheme of the Bihar Act and in particular, the effect of s. 6 this Court observed:

"Reading ss. 3, 4 and 6 together, it follows that all Estates notified under s.3 vest in the State free of all encumbrances. The quondum proprietors and tenure-holders of those Estates lose all interests in those Estates. As proprietors they retain no interest in respect of them whatsoever. But in respect of the lands enumerated in s. 6 the State settled on them the rights of raiyats. Though in fact the vesting of the Estates and the deemed settlement of raiyats in respect of certain classes of lands included in the Estates took place simultaneously, in law the two must be treated as different transactions; first there was a vesting of the Estates in the State absolutely, and free of all encumbrances. Then followed the deemed settlement by the State of raiyat's rights on the quondum proprietors. Therefore in law it would not be correct to say that what vested in the State are only those interests not coming within s. 6."

Finally this Court held that the mortgagee-decree holder's only remedy was to establish their claim under the Bihar Act and get compensation and that they cannot levy execution against the Bakasht land.

In our opinion, none of the decisions referred to above, assists the appellants. Those decisions were directly concerned with the rights of the mortgagees as such to levy execution either as against the bhumidhari rights or personally against the mortgagor or against his other properties. The right to levy execution was claimed by the decree-holders as mortgagees after the estate mortgaged to them had vested in the State, under the relevant Acts. Under those circumstances, this Court held that the

(1) Civil Appeal No. 368 of 1966 decided on 7. 3. 1969.

- A** mortgagees' remedy was only to proceed against the compensation money as provided under the material provisions of the statute governing the same. None of those decisions had occasion to consider the question that now arises for consideration before us, viz., the rights of a decree-holder under the Encumbered Estates Act.
- B** We have already referred to the nature of the decree that has been obtained by the respondents. Though at an earlier stage they were mortgagees, it was a simple money decree that was granted to them under s. 14(7) of the Encumbered Estates Act and their rights as against the mortgage securities had been extinguished under s.18 of the Encumbered Estates Act. In this view,
- C** s.6(h) of the Abolition Act, relied on by Mr. Goyal, does not assist him. It is no doubt true that the decree obtained by the respondents shall not be executable except under the provisions of the Encumbered Estates Act. The nature and the extent of the property liable to attachment and sale in satisfaction of the debts due to the respondent, as required under s.19(2)(b) of the Encumbered Estates Act have all been furnished in the decree
- D** granted under s.14(7) by the Special Judge and transmitted to the Collector under s.19. Therefore, when the respondents approached the Assistant Collector on May 15, 1959 with an application to recover their debts from the bhumidhari rights of the appellants, they were only in the position of holders of simple money decrees. If so, execution can be levied normally from
- E** any property or rights which are liable to be attached or sold unless there is any prohibition imposed by the statute. Section 18, after extinguishing the rights in the property that may have been held under a mortgage or security, specifically provides that where any decree is given by the Special Judge they are in substitution of the original rights of a mortgagee or security holder and
- F** the decree-holder has got the right to recover the amount of the decree in the manner and to the extent prescribed. Section 24 gives a right to the decree-holders to recover their dues from the property of a debtor other than proprietary rights in land. Therefore the question is whether the bhumidhari rights conferred on the appellants under s. 18 of the Abolition Act are property other
- G** than proprietary rights in land. If they are rights other than proprietary rights, they can be proceeded against under s. 24 read with s. 18 of the Encumbered Estates Act.

- H** The decisions of this Court, referred to above, clearly lay down that the proprietary rights of the landlord in the land vest in the State on the passing of the relevant Abolition Acts. It has also been emphasised in *Rana Sheo Ambar Singh's Case*<sup>(1)</sup> and as is also clear from s. 6 of the Abolition Act—that all rights,

(1) [1962] 2 S.C.R. 441.

title and interest of all the intermediaries in every estate shall cease and be vested in the State, on the issue of a notification under s. 4 of the Abolition Act. If so, it follows that after the estate vested in the State, the appellants had no proprietary rights left in them; and the bhumidhari rights, as held by this Court, being new rights created for the first time in favour of the appellants under s. 18 of the Abolition Act and not proprietary rights, the respondents are entitled to proceed against those rights under s. 24 of the Encumbered Estates Act.

Mr. Goyal next urged that the bhumidhari rights have not been mentioned in the decree granted under s. 14(7) nor have they been reported by the Special Judge under s. 19(2) as being liable to attachment and sale as is necessary under s. 24. True it is that these rights, as such, have not been mentioned. But a persual of s. 19(2)(b) clearly shows that it was not necessary that the interest or rights of the debtor should be mentioned in the decree, because the requirement is only regarding the nature and extent of the property and that has been mentioned in the decree granted in favour of the respondents by the Special Judge under s. 14(7), and it has been reported to the Collector under s. 19(2). If so, the requirements of ss. 19 and 24 have been complied with. Hence it follows that this contention of Mr. Goyal cannot be accepted. There is also another reason for rejecting the said contention. Bhumidhari rights have been created in favour of the appellants only on July 1, 1952, the date of vesting, on the issue of a notification under s. 4 of the Abolition Act, whereas the amended decree in favour of the respondents has been passed under s. 14(7) as early as January 23, 1938. When the Encumbered Estates Act permits the respondents to levy execution against the property of the debtor other than proprietary rights in land and when there is no prohibition in the Abolition Act against execution of decrees obtained under the Encumbered Estates Act against such rights, it follows that the decree-holders-respondents are entitled to proceed against the bhumidhari rights and therefore the appellate order of the Additional Commissioner, dated March 24, 1965 and the revisional order of the Board of Revenue, dated October 15, 1965 upholding the right of the respondents in this regard, are correct.

The further question that arises is whether the respondents are entitled to levy execution against the trees in the possession of the appellants in execution of their decree. No doubt, the general objection that was taken by the appellants before the Assistant Collector was that the groves formed part of the sir property and therefore the question of their being auctioned does not arise and that the groves do not form part of the list mentioned in the decree passed by the Special Judge. On the other hand, according to

- A the respondents, the trees never vested in the State under the Abolition Act and, as the appellants continued to be the owners of the same, execution can be levied against the trees. The contention of the appellants that the trees have not been mentioned in the list need not detain us because the amended decree passed by the Special Judge clearly refers to trees standing on the lands described in the Schedules. Then the question is whether the trees belong to the respondents.

B

C Section 3(26) of the Abolition Act states that the words and expressions, mentioned therein and which have not been defined in the Act but used in the U.P. Tenancy Act, 1939 shall have the meaning assigned to them in the latter Act. Two, among the various expressions referred to in s. 3(26) are 'grove' and 'grove-holder'. Therefore we have to look into the U.P. Tenancy Act to find out the meaning of the expression 'grove'. Section 3(6) of the U.P. Tenancy Act, 1939 (U.P. Act XVII of 1939) defines the expression 'grove-land' as follows :

D "3(6). 'grove-land' means any specific piece of land in a mahal or mahals having trees planted thereon in such numbers that they preclude or when full grown will preclude, the land or any considerable portion thereof from being used primarily for any other purpose and the trees on such land constitute a grove."

E From the above, it will be seen that 'grove' is something different from 'grove-land' because the definition says that the trees on such land, viz., 'grove-land', constitute a 'grove'. Section 6 of the Abolition Act, dealing with the consequences of the vesting of all estate in the State, among other things, states in cl. (a) :

F "6(a) all rights, title and interest of all the intermediaries —

- G (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 and melas (other than hats, bazars and melas held upon land to which clauses (a) to (c) of sub-section (1) of Section 18 apply), and
- H (ii) in all sub-soil in such estates including rights, if any, in mines and minerals, whether being worked or not,

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

Clause (a), referred to above, deals with grove lands and trees, separately. The grove-land referred to above, will be the grove-land defined in s. 3(6) of the U.P. Tenancy Act. Clause (a) also refers to the right, title and interest of intermediaries in trees ceasing and vesting in the State. From among the trees, such of the trees as constitute a grove have been excluded from the operation of cl. (a) of s. 6. Therefore, the excluded category of trees forming the grove cannot be considered to have vested in the State on the abolition of the estates. Section 18, which creates bhumidhari rights deals, among other items, with "intermediary's grove". The expression "intermediary's grove" is defined in s. 3(13) of the Abolition Act as grove-land held or occupied by an intermediary as such. We do not find any material on record to draw an inference that the appellant raised any contention that the trees constituted an 'intermediary's grove'.

From what is stated above, it will be seen that the trees constituting the grove, have not vested in the State and therefore they could not have formed the subject of creation of bhumidhari rights under s. 18. Therefore the trees constituting the grove, being the debtor's property, are liable to be proceeded with in execution under s. 24 of the Encumbered Estates Act. Even if it is to be held that the appellants have got bhumidhari rights over the trees constituting the grove, as already held by us, these rights can be proceeded with under s. 24 of the Encumbered Estates Act. Therefore, from either point of view, the trees constituting the grove are liable to be proceeded against, for realisation of the decree by the respondents.

The result is the appeal fails, and is dismissed with costs.

V.P.S.

*Appeal dismissed.*