

Hardat Ram and others - - - - - *Appellants*

v.

Thakur Paras Nath and others - - - - - *Respondents*

FROM

**THE BOARD OF REVENUE UNITED PROVINCES
OF AGRA AND OUDH**

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 13TH JANUARY, 1948

Present at the Hearing :

LORD MACMILLAN
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by SIR MADHAVAN NAIR*]

This is an appeal by special leave from an order of the Board of Revenue, United Provinces of Agra and Oudh, dated 19th January, 1943, which affirmed an order dated 30th September, 1942, passed by an assistant Collector, Gorakhpur District, under the United Provinces Encumbered Estates Act, 1934, in the course of execution proceedings for the liquidation of debts under the Act.

The question which the Board has to decide in this appeal may be stated as follows:—

When members of a joint Hindu family who are agriculturists against whom decrees have been passed, apply under section 4 of the United Provinces Encumbered Estates Act, 1934 (hereinafter called the Act of 1934), for relief under the Act, is the family to be treated as a single unit, i.e. as one " agriculturist " only, for the purposes of sections 17 (1) (a) and 19 of the United Provinces Debt Redemption Act (hereinafter called the Act of 1940), or is each member to be treated individually as an " agriculturist " with respect to his share of the family lands, for the purposes of those sections?

It will be convenient before considering the facts to notice the various relevant sections of the two Acts, in so far as they are material to this appeal.

The Act of 1934 was passed in order to protect the estates of indebted " landlords " from sale, a " landlord " being defined (section 2 (g) of the Act) as a proprietor of a mahal or of a share or interest in a mahal . . . provided that no person shall be deemed to be a landlord if his land is assessed to less than a local rate of one rupee under section 109 of the District Boards Act, 1922. The Act contains the following, amongst other provisions:—

" Section 2 (ā) ' Land ' means a share of or interest in a mahal in the United Provinces, but does not include the interest of a mortgagee or thekadar or an assignment of land revenue unless it is transferable and perpetual;

(e) ' Protected Land ' means land to which the provisions of (*inter alia*) Part II of the United Provinces Estates Act, 1920, apply and ' Unprotected Land ' means land to which these provisions do not apply; "

Section 4. " Any landlord who is subject to or whose immovable property or any part thereof is encumbered with private debts, may make an application in writing to the Collector of the district in which his land or any portion of his land is situated stating the amount of such private debts and also of his public debts both decreed and undecreed and requesting that the provisions of the Act be applied to him;

Provided also that no application by a member of a joint Hindu family shall be entertained unless—

(a) all the members of such family join and the fact is stated in the application; or

(b) the applicant makes in the application an express declaration of his intention of separating from the joint family and states the names and addresses of the remaining members of the family and the share which the applicant would be entitled to get on partition of the family property—

Section 49 (1) " If the debts of a landlord are the debts due from his deceased ancestor which are legally recoverable only from certain property in the possession of the landlord, only such property and no other property belonging to the landlord shall be dealt with under the provisions of this Act; and all references to the property of the landlord in the various sections of this Act shall be deemed to be references only to such property and to no other."

The Act of 1940 was enacted to provide for further relief from indebtedness to agriculturists, an " agriculturist " being defined (section 2 (3) of the Act) as a proprietor of a mahal or of a share in or portion of a mahal or a tenant" It contains the following amongst other provisions:—

Section 2 (8): " Land " means " land in a mahal in the United Provinces"

(10) " Local rate " means the rate payable by, or recoverable from, a proprietor under the provisions of the United Provinces Local Rates Act, 1914.

Section 3 (d): A joint proprietor or a joint tenant shall be deemed to be the proprietor or tenant of so much of the joint property or joint tenancy, not being the property or tenancy as the case may be, of a joint Hindu family, as appertains to his share;

(e) Where the aggregate of the rent and ten times the local rate, if any, payable by a joint Hindu family—

(i) does not exceed one thousand rupees, such family and every member of it shall be deemed to be an agriculturist;

(ii) exceeds one thousand rupees, a member of such family shall be deemed to be an agriculturist only if the aggregate of the rent and ten times the local rate payable in respect of his share and the shares of his male lineal ascendants and descendants in the joint family property does not exceed one thousand rupees;

Section 16 deals with the execution of decrees against land and Section 17 (1) enacts as follows:—

17 (1) Notwithstanding anything contained in Section 16 or in any other law for the time being in force—

(a) The land of an agriculturist, the local rate payable by whom or recoverable from whom does not exceed twenty five rupees per annum, shall not be sold or otherwise transferred in execution of a decree to which this Act applies, nor shall a final decree for foreclosure be passed in respect of such land, and

(b) In the case of any other agriculturist—

(i) only so much of his land may be sold or otherwise transferred in execution of a decree to which this Act applies; or

(ii) a final decree for foreclosure may be passed in respect of only so much of his land as would after such sale or transfer or foreclosure leave with him land the local rate payable in respect of which would be at least rupees twenty five per annum:

.

Section 19: The land of an agriculturist which by the provisions of clauses (a) and (b) of subsection (1) of section 17, would be protected from sale in execution of a decree to which this Act applies shall in proceedings under the United Provinces Encumbered Estates Act, 1934, be deemed to be "protected land" as defined in that Act.

The facts of the case may be now briefly stated:—Appellant No. 1, along with the predecessor-in-title of the other appellants had obtained two money decrees, one, for Rs.20,759-10-4, in 1933, and another, for Rs.537, in 1934, against the first three respondents, the sons of one Sarju Prasad deceased, hereinafter called the respondents, who are members of a joint Hindu family. The fourth respondent is the minor son of respondent No. 1, and has no separate interest in the lands in the suit.

Before the above decrees had been executed the Act of 1934 came into force. On 10th March, 1936, the respondents applied for reliefs under section 4 of the Act of 1934, stating that they were assessed to a local rate of Rs.74-8-6, that they were "landlords" within the meaning of the Act, that they were members of a joint Hindu family, and that all had joined in the application. In Schedules A and B, attached to the application, details were given of the applicants' debts, and of their property. In Schedule B, the revenue due on the property was shown as Rs.755-8-0. Their Lordships were informed that one-tenth of this amount would be the "local rate" payable by the family in respect of the property. The Collector to whom the application had been made forwarded it to the "Special Judge" as required by section 6 of the Act. After making enquiries, the "Special Judge" passed revised decrees, on 29th January, 1938, cutting down the sums due to the appellants under the original decrees, to Rs.17,314-6-0, and Rs.533-12-4, together with interest and costs, and entered them in the ranking list prepared under section 16 of the Act, for Rs.561 and Rs.17,816-0-0. These decrees were then sent to the Collector for execution as provided for under the Act, and were transferred by him to the assistant collector in charge of the sub-division.

Chapter V of the Act of 1934 deals with the execution of the revised decrees by the Collector and the liquidation of debts. Shortly stated, the liquidation is carried out by discharging the debt out of property other than proprietary rights in land and out of what is defined in the Act as "unprotected land". "Protected land" is not liable to be sold in the execution of a decree. Taking the view that the protection afforded to debtors was too restricted, the Government passed the Act of 1940. As, pending the passage of this Act, all liquidation proceedings had been stayed by the Government, the respondents were able to apply for relief under this Act also.

On 1st June, 1941, the Act of 1940 came into force. On 15th November, 1941, the respondents made an application for the land of which they were proprietors to be declared "protected land" under the Act of 1934, by reason of section 19 of the Act of 1940 and section 17 (1) (a) of that Act. They claimed that, since the total local rate payable in

respect of their proprietary rights in land amounted to Rs.72-4-5, each of them is entitled to separate protection in respect of property assessed to a local rate not exceeding Rs.25, and hence the whole land is "protected".

The creditors objected to the petition mainly on the ground that "the applicants have no right to have the property being declared as protected land separately, because they are the members of a joint Hindu family governed by the Mitakshara Law. The application has been filed on the basis of the E.E. Act and as members of a joint family and proceedings in respect of the property are being taken as the property being ancestral and a joint family property" (paragraph 3 of the creditors' objection).

The application came before the Assistant Collector, who was the sub-divisional officer. On 30th September, 1942, he passed the following order:—

"There are three debtor applicants and the local rate payable in respect of their property is Rs.72-4-5. This divided into three gives a local rate of Rs.24-1-6 per share. Therefore the whole property is protected."

On appeal to the Board of Revenue under section 45 of the Act, Mr. W. C. Dible, junior member of the Board, passed the following order on 19th January, 1943:—

"Counsel argues that the applicant-debtors are members of a joint Hindu family. Thus, the family should be treated as one agriculturist only under section 2 (3) of the U.P. Debt Redemption Act, 1940. But the Board have pointed out in *Bansi Dhar v. Lakshmi Narain*, 1942, R.D. page 253, and a series of subsequent rulings, that the protection afforded by section 17 is personal to the agriculturist. Since each of the applicant-debtors has an interest in the proprietary rights in land reported as theirs, each is an 'agriculturist' as defined in section 2 (3) of the U.P. Debt Redemption Act, 1940, for each is a proprietor. Therefore each is entitled to separate protection as held by the S.D.O."

In his order dismissing the appellants' application for leave to appeal to His Majesty in Council, Mr. Dible elaborated further the reasoning given in his order dismissing the appeal.

By force of sections 17 (1) (a) and 19 of the Act of 1940, protection from sale is given in proceedings under the Act of 1934, to the land of an "agriculturist" the local rate payable by whom or recoverable from whom does not exceed twenty-five rupees per annum; such land being deemed to be "protected land" as defined in the Act of 1934. The question in dispute between the parties to this appeal is, whether for the purposes of the protection thus given, the members of a joint Hindu family should be treated as a single unit, for if so treated they will not be entitled to protection in this case, as will be shown presently, they being entitled to "protection" only if they are treated separately as individual members of the family. The question is of considerable importance and arises for the first time for decision. The rulings of the Revenue Board mentioned in the order passed by Mr. Dible are not available for reference. Their Lordships have to decide the question solely by construing the two Acts.

The application for reliefs was made under section 4 of the Act of 1934. That section states that no application by a member of a joint Hindu family should be entertained unless all the members of the family joined (except in the case of a member intending to separate for which special provision is made) and the fact that they have so joined was stated in the application. The law is well settled that "according to the true notion of an undivided family in Hindu law, no individual member of that family, whilst it remains undivided, can predicate of the joint and undivided property, that he, that particular member has a certain definite share" (see *Appovier's Case* (1866-67), 11 Moore's Indian Appeals, p. 75, at 89). This being the accepted law, Mr. Jopling, the learned counsel for the appellants, argued that there is no "agriculturist" in the present case of whom it can be said that the local rate payable

by him or recoverable from him does not exceed Rs.25, which is the essential condition required for the operation of section 17 (1) (a) of the Act of 1940. The learned counsel contended that since no member of a joint Hindu family can claim that he is the owner of a definite share of the family property so long as it remains undivided, the joint family treated as a single unit is the "agriculturist" contemplated by the Act of 1940; and that even conceding for the sake of argument that an individual member of the joint family can be so treated, it cannot be said of him in this case that the local rate payable by him or recoverable from him does not exceed Rs.25. In support of the latter part of the contention it was pointed out that the local rate payable under the United Provinces Local Rates Act is payable by the joint Hindu family and no "definite calculable share of the said rate is payable by any individual member of the family". Reference was also made to section 49 (1) of the Act of 1934 to show that the landlord and debtor for the purposes of that section can only be the joint Hindu family. From these considerations—so ran the main argument—it would follow that the joint Hindu family which makes the application under section 4 of the Act of 1934 should be treated as a single unit and that the joint family is the "agriculturist" for the purposes of sections 17 (1) (a) and 19 of the Act of 1940. The result, if this argument is accepted, is that the respondents will not be able to save their family property from being proceeded against in liquidation proceedings, as the local rate payable by the joint family exceeds Rs.25 and section 17 (1) (a) of the Act of 1940 becomes at once inapplicable.

The argument outlined above is persuasive, but their Lordships after considering it are unable to accept it, as they will show presently, for the chief reason, that one of the provisions of section 3 of the Act of 1940 which has to be considered along with the Act of 1934 strongly supports the contention urged by the respondents, viz., that the relief given to them, i.e., the debtors, under the Acts is personal, and so they should be treated each separately and not as a joint Hindu family forming a single unit. After stating in clause (d), that "a joint proprietor or a joint tenant shall be deemed to be the proprietor or tenant of so much of the joint property or joint tenancy, not being the property or tenancy, as the case may be, of a joint Hindu family, as appertains to his share", the section states in clause (e) (i) that in the case of a joint Hindu family, if the total amount of rent and ten times the local rate, if any, payable by the family does not exceed one thousand rupees, then such family and every member of it shall be deemed to be an "agriculturist". It was admitted in the course of the argument that the joint Hindu family of which the respondents are members would fall within (e) (i) of section 3 of the Act of 1940. If so, there cannot be any doubt that according to this provision every member of the joint Hindu family of the respondents, i.e., each one of the respondents, should be deemed to be an "agriculturist". Section 17 (1) (a) of the Act of 1940 says that "the land of an 'agriculturist' the local rate payable by whom or recoverable from whom does not exceed twenty-five rupees per annum shall not be sold or otherwise transferred in execution of a decree to which this Act applies", and section 19 of the Act says that such land to which the Act applies shall in proceedings under the Act of 1934 be deemed to be "protected land" as defined in that Act. It follows, therefore, that if each of the respondents can be treated as entitled to pay a local rate of Rs.24-1-6 per annum, in this case, i.e., a sum not exceeding rupees twenty-five per annum, the local rate payable by the family being rupees seventy-two and odd, then each will be entitled to claim protection for his share of the family land in execution proceedings under the Act of 1934 by force of sections 17 (1) (a) and 19 of the Act of 1940.

Two objections, one of which has already been stated, were urged by Mr. Jopling against the above process of reasoning. The learned counsel urged (1) that the provision referred to in section 3, clause (e) (i), relates only to the separate property of each individual member of the family, and not to his share of the joint family property, and (2) that, as it

is the joint Hindu family that pays the local rate, no fractional share of it can be said to be payable by any individual member, he having, as already stated, no definite share in the undivided family property. Their Lordships do not think that there is substance in either of these contentions. The first objection is only a mere suggestion or a surmise, and is not warranted by any of the provisions of the Act of 1940; and no authority has been cited in support of it. The language of the provision is perfectly clear; it means what it says so distinctly, viz., that each member of the family to which that provision applies "shall be deemed to be an 'agriculturist'". The difficulty raised by the second objection is only apparent and not real. In their Lordships' view the expression "the local rate payable" means in the Act the local rate ultimately payable, for the ultimate responsibility for making the payment rests with the entire joint family. Thus understood, it may well be held for the purposes of this Act that each member of the joint family should be treated as entitled to pay his proportionate share of the local rate, which in this case does not exceed rupees twenty-five per annum.

As regards the objection that no individual member of the joint Hindu family can claim a definite share of the property till partition, their Lordships, after carefully considering the question, are definitely of opinion that this case should be judged solely with reference to sections 3 (e) (i) and 17 (1) (a) of the Act of 1940, to which attention has already been drawn, and not by applying to it any basic principle of the Mitakshara Law. Though it cannot be predicated that a member of an undivided Hindu family under the Mitakshara Law has a definite share in the family property till partition, it cannot be disputed that he has a joint co-parcenary interest in the ancestral property along with the other co-parceners. Thus, he is a proprietor when that ancestral property comprises "land" as defined in section 2 (8) of the Act of 1940. In this connection it should be noticed that in the revenue papers relating to the villages in which the respondents Nos. 1 to 3 are proprietors, the three brothers are entered as "Co-sharers in equal shares" or "each of the three in equal shares". It is this interest conceived as an individual interest by notionally dividing the family property amongst its members, that section 17 of the Act of 1940 seeks to protect from the hands of moneylenders who have obtained decrees against the family. The underlying intention of section 17 of the Act of 1940 is to afford personal protection to individual members of the joint family to the extent provided for in that section. Their Lordships think that the clue to the right interpretation of sections 17 and 19 of the Act of 1940 is, as indicated already, to be found in the Act itself and not in any general principles of Hindu Law. The appellants' objections, ably urged by their learned counsel, have therefore to be rejected.

In the result, their Lordships hold that the decision appealed against is right; they will therefore humbly advise His Majesty that this appeal should be dismissed with costs.

10 20 30 40 50 60 70 80 90 100

110 120 130 140 150 160 170 180 190 200

210 220 230 240 250 260 270 280 290 300

310 320 330 340 350 360 370 380 390 400

410 420 430 440 450 460 470 480 490 500

510 520 530 540 550 560 570 580 590 600

610 620 630 640 650 660 670 680 690 700

710 720 730 740 750 760 770 780 790 800

810 820 830 840 850 860 870 880 890 900

910 920 930 940 950 960 970 980 990 1000

1010 1020 1030 1040 1050 1060 1070 1080 1090 1100

1110 1120 1130 1140 1150 1160 1170 1180 1190 1200

1210 1220 1230 1240 1250 1260 1270 1280 1290 1300

1310 1320 1330 1340 1350 1360 1370 1380 1390 1400

1410 1420 1430 1440 1450 1460 1470 1480 1490 1500

1510 1520 1530 1540 1550 1560 1570 1580 1590 1600

1610 1620 1630 1640 1650 1660 1670 1680 1690 1700

1710 1720 1730 1740 1750 1760 1770 1780 1790 1800

1810 1820 1830 1840 1850 1860 1870 1880 1890 1900

1910 1920 1930 1940 1950 1960 1970 1980 1990 2000

2010 2020 2030 2040 2050 2060 2070 2080 2090 2100

2110 2120 2130 2140 2150 2160 2170 2180 2190 2200

2210 2220 2230 2240 2250 2260 2270 2280 2290 2300

2310 2320 2330 2340 2350 2360 2370 2380 2390 2400

2410 2420 2430 2440 2450 2460 2470 2480 2490 2500

2510 2520 2530 2540 2550 2560 2570 2580 2590 2600

2610 2620 2630 2640 2650 2660 2670 2680 2690 2700

2710 2720 2730 2740 2750 2760 2770 2780 2790 2800

2810 2820 2830 2840 2850 2860 2870 2880 2890 2900

2910 2920 2930 2940 2950 2960 2970 2980 2990 3000

3010 3020 3030 3040 3050 3060 3070 3080 3090 3100

3110 3120 3130 3140 3150 3160 3170 3180 3190 3200

3210 3220 3230 3240 3250 3260 3270 3280 3290 3300

3310 3320 3330 3340 3350 3360 3370 3380 3390 3400

3410 3420 3430 3440 3450 3460 3470 3480 3490 3500

3510 3520 3530 3540 3550 3560 3570 3580 3590 3600

3610 3620 3630 3640 3650 3660 3670 3680 3690 3700

3710 3720 3730 3740 3750 3760 3770 3780 3790 3800

3810 3820 3830 3840 3850 3860 3870 3880 3890 3900

3910 3920 3930 3940 3950 3960 3970 3980 3990 4000

4010 4020 4030 4040 4050 4060 4070 4080 4090 4100

4110 4120 4130 4140 4150 4160 4170 4180 4190 4200

4210 4220 4230 4240 4250 4260 4270 4280 4290 4300

4310 4320 4330 4340 4350 4360 4370 4380 4390 4400

4410 4420 4430 4440 4450 4460 4470 4480 4490 4500

4510 4520 4530 4540 4550 4560 4570 4580 4590 4600

4610 4620 4630 4640 4650 4660 4670 4680 4690 4700

4710 4720 4730 4740 4750 4760 4770 4780 4790 4800

4810 4820 4830 4840 4850 4860 4870 4880 4890 4900

4910 4920 4930 4940 4950 4960 4970 4980 4990 5000

5010 5020 5030 5040 5050 5060 5070 5080 5090 5100

5110 5120 5130 5140 5150 5160 5170 5180 5190 5200

5210 5220 5230 5240 5250 5260 5270 5280 5290 5300

5310 5320 5330 5340 5350 5360 5370 5380 5390 5400

5410 5420 5430 5440 5450 5460 5470 5480 5490 5500

5510 5520 5530 5540 5550 5560 5570 5580 5590 5600

5610 5620 5630 5640 5650 5660 5670 5680 5690 5700

5710 5720 5730 5740 5750 5760 5770 5780 5790 5800

5810 5820 5830 5840 5850 5860 5870 5880 5890 5900

5910 5920 5930 5940 5950 5960 5970 5980 5990 6000

6010 6020 6030 6040 6050 6060 6070 6080 6090 6100

6110 6120 6130 6140 6150 6160 6170 6180 6190 6200

6210 6220 6230 6240 6250 6260 6270 6280 6290 6300

6310 6320 6330 6340 6350 6360 6370 6380 6390 6400

6410 6420 6430 6440 6450 6460 6470 6480 6490 6500

6510 6520 6530 6540 6550 6560 6570 6580 6590 6600

6610 6620 6630 6640 6650 6660 6670 6680 6690 6700

6710 6720 6730 6740 6750 6760 6770 6780 6790 6800

6810 6820 6830 6840 6850 6860 6870 6880 6890 6900

6910 6920 6930 6940 6950 6960 6970 6980 6990 7000

In the Privy Council

HARDAT RAM AND OTHERS

v.

THAKUR PARAS NATH AND OTHERS

DELIVERED BY SIR MADHAVAN NAIR

Printed by His Majesty's Stationery Office Press,
DRURY LANE, W.C.2.
1948