

PETITIONER:
RANA SHEO AMBAR SINGH

Vs.

RESPONDENT:
ALLAHABAD BANK LTD.

DATE OF JUDGMENT 18/02/1977

BENCH:
BEG, M. HAMEEDULLAH (CJ)
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GUPTA, A.C.
KAILASAM, P.S.

CITATION:
1977 AIR 1552 1977 SCR (3) 33
1977 SCC (2) 604

ACT:

Execution of a mortgage decree--Proprietary rights in Sir, Khudkhast land and grove land which were mortgaged were extinguished and the Bhumidari right an altogether new right created by U.P. Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act 1 of 1951)--Whether trees being a part of a grove are included in the "grove-land" which vests in the U.P. State Government free from all encumbrances--Scope of section 6(a)(i). 6(h) and 18 of the U.P. Zamindari Abolition & Land Reforms Act, 1950.

HEADNOTE:

In Rana Sheo Ambar Singh v. Allahabad Bank Ltd., Allahabad (1962) 2 SCR p.441, this Court held that the respondent could not enforce his rights under the mortgage by the sale of the new Bhumidari rights created in favour of the mortgagor by s. 18 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 and that the respondent could only enforce his rights against the appellant in the manner provided under s. 6(h) of the Act read with s. 73 of the Transfer of Property Act, and follow the compensation awarded to the intermediary. Despite this decision having been brought to the notice in the execution proceedings initiated by the respondent attachment of the trees in groves belonging to the appellant was ordered by the executing Court taking the view that there is a distinction between the trees and a grove and grove land. The Division Bench of the Allahabad High Court (Lucknow Bench) upheld the views of the Executing Court and dismissed the appeal.

Allowing the appeal by certificate, the Court,

HELD: (1) The view that there is a distinction between trees and a grove and grove land and, therefore execution against trees in groves could be proceeded against cannot be accepted in the light of the definition of the intermediary grove under s. 3(13) of the U.P. Zamindari Abolition and Land Reforms Act, 1950, viz., "intermediary's grove" means groveland held or occupied by intermediary as such. [34 D-E, H]

(2) Groves are only collection of trees in plots of land so as to preclude cultivation in them. The uncut trees are deemed to be parts of the land. The proposition is well

settled under the general law, that trees, before they are cut, form parts of 'land'. And are inseparable part is always included in the whole. [34E-F]

(3) Section 18(1)(a) of the Act provide that an "intermediary grove" bhumidary property. Rights in it are parts of bhumidari rights. [34F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2041 of 1968.

(From the Judgment and Decree dated 2.2.1966 of the Allahabad High Court (Lucknow Bench) Lucknow in First Execution Appeal No 5/62).

S.N. Prasad, for the appellant.

G.C. Mathur and O.P. Rana for the respondent.

The Judgment of the Court was delivered by

BEG, C.J.--This appeal by certificate raises the simple question whether certain trees, said to be part of a grove, are included in

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grove-land, which, under section 6(a) (i) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the Act) vests in the State of Uttar Pradesh free from all encumbrances. This very question was raised by the respondent-decree holder in the execution proceedings in this very case, between the same parties which came to this Court on an earlier occasion. We have perused the judgment of this Court reported in 1962 (2) S.C.R. 441, in the case. We find that the position taken by the respondent-decree-holder then also was that, after the coming into force of the Act, what could still be sold in execution of the decree was the right in trees of groves as these continued to vest in the intermediary. This Court rejected' that submission and held that after vesting of all the rights mentioned in section 6 of the Act in the State of Uttar Pradesh, new bhumidhari rights came into existence under section 18 of the Act. It also held' that the only way in which a mortgagee could enforce his right against the mortgage or after the Act came into force is provided in section 6(h) of the Act, read with section 73 of the Transfer of Property Act, 1882, so that nothing more than the compensation awarded to the, intermediary could be proceeded against by the mortgagee. Proceed against by the mortgagee.

We are surprised that, even after that decision which, according to the appellant-judgment-debtor, constitutes a complete answer to any further execution proceedings in respect of any part of bhumidhari rights, execution should have proceeded against trees in groves and the view taken by the execution court, that there is a distinction between, trees and a grove and grove land, should have been upheld by a Division Bench of the Allahabad 'High Court (Lucknow Bench). We find that it is impossible for us to accept this opinion in view of the definition of the intermediary's grove-under section 3(13) of the Act which says "intermediary grove means grove-land held or occupied by an intermediary as such". This means that "grove-land" and an "intermediary's groves are equated and groves are

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collections of trees in plots of land so as to preclude cultivation in them. The uncut trees are deemed to be parts of the "land".

Section 18(1)(a) of the Act provides that an

"intermediary's grove" is bhumidhari property. Rights in it are part of bhumidhari rights. After these clear words of the enactment, we think it is not necessary even to consider previous definitions or to make out specious or unrealistic distinctions between standing uncut trees, which are parts of groves, and groves and grove-land. The proposition is well settled, under the general law, that trees, before they are cut, form parts of 'land'. And, an inseparable part is always included in the whole. In view of this very clear legal position, we allow this appeal and set aside the judgments and decrees of the High Court and the Execution Court with costs.

S.R.

Appeal al-

lowed.

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