

Mst. Orku
and others

v.

Mst. Bhodi

Kapur, J.

In these circumstances I am of the opinion that the Courts below have rightly held that the parties are governed by Hindu Law and not by custom.

It was admitted before the Senior Subordinate Judge that if the parties are governed by Hindu Law the mother, even though she has remarried, would be entitled to succeed to the estate of her son, and in paragraph 43 of Mulla's Hindu Law also it is stated that a remarried mother is entitled to succeed to the estate of her son. I would, therefore, dismiss this appeal with costs.

REVISIONAL CIVIL

Before Harnam Singh and Dulat, JJ.

RAM LABHAYA,—Petitioner.

versus

KIRPA RAM AND OTHERS,—Respondents.

Civil Revision No. 185-D of 1953

1954

July, 7th

Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Sections 2(12) and 4—Tribunal constituted under the Act—Whether such Tribunal is a court subordinate to the High Court—Code of Civil Procedure (V of 1908), Section 115.

Held, that the Tribunal constituted under the Displaced Persons (Debts Adjustment) Act is subject to the appellate jurisdiction of the High Court where the subject matter of the appeal relates to the amount of debt and such amount on appeal is not less than Rs. 5,000. Therefore it is a Civil Court subordinate to the High Court within section 115 of the Code of Civil Procedure.

Petition under Section 115 of Act 5 of 1908 read with Section 25 of Act LXX of 1951, for revision of the order of Shri Hans Raj, Sub-Judge, 1st Class (Tribunal), Delhi, dated the 20th May, 1953, ordering petitioner to pay the decretal amount by monthly instalments of Rs. 20.

K. L. ARORA and MANGAL DAS DHAWAN, for Petitioner.

HANS RAJ DHAWAN, for Respondent.

JUDGMENT

HARNAM SINGH, J. In Civil Revision No. 185-D Harnam Singh,
of 1953 the question of law that arises for deci- J.
sion is—

“Whether the Tribunal constituted under the “Displaced Persons (Debts Adjustment) Act, 1951,” hereinafter referred to as the Act, is a Court subordinate to the High Court within section 115 of the Code of Civil Procedure.”

Briefly summarised the facts of the case are these : Ram Lubhaya applied under section 5 of the Act for the adjustment of debts payable by him to Kirpa Ram, Karam Chand and Bhagwan Das. In deciding the application the Tribunal said :—

“Respondent Kirpa Ram holds decree for Rs. 500 and Rs. 77-12-0 costs against the applicant. There is no proof that the applicant really owes any debt to Bhagwan Das and Karam Chand. There can be no question of scaling down of the debt because the decretal money represents certain amounts misappropriated by the applicant as an employee of Kirpa Ram. As, however, he is a displaced person, I direct that having regard to his paying capacity which is represented by a salary of Rs 80 per mensem he should pay whole of the decretal amount by monthly instalments of Rs 20 commencing with the 15th of July, 1953. If he fails to pay any two instalments, the whole amount shall become payable at once. In case

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any compensation is paid to the applicant before the instalments period runs out the whole of the outstanding amount will also be payable at once."

Ram Labhaya applies under section 115 of the Code of Civil Procedure for the revision of the order passed by the Tribunal.

In Civil Revision No. 185-D of 1953 a preliminary objection was taken by Kirpa Ram, respondent, that no revision was competent because the order in question had not been made by a civil Court subordinate to the High Court. In considering the matter Bhandari, C. J., has ordered that the case should be placed before a Division Bench for an authoritative decision on the point.

In order to appreciate the point that arises for decision it is necessary to examine the provisions of the Act in some detail.

Section 2 (12) of the Act defines a 'Tribunal' to mean any civil Court specified under section 4 of the Act as having authority to exercise jurisdiction under the Act.

Section 4 of the Act provides that the State Government may, by notification in the Official Gazette, specify any civil Court or class of civil Courts as the Tribunal or Tribunals having authority to exercise jurisdiction under the Act and may define the areas in which and the extent to which such jurisdiction may be exercised.

Sections 9, 11 and 14 of the Act provide that the Tribunal shall, after considering such evidence as may be produced before it, pass such decree in relation to the claim as it thinks fit.

Section 25 of the Act provides that save as otherwise expressly provided in the Act or in any rules made thereunder, all proceedings under the Act shall be regulated by the provisions contained in the Code of Civil Procedure, 1908.

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Section 28 of the Act provides that it shall be competent for the civil Court which has been specified as the Tribunal for the purposes of the Act to execute any decree or order passed by it as the Tribunal in the same manner as it could have done if it were a decree or order passed by it as a civil Court.

Section 40 of the Act provides for appeals from final decree or order of the Tribunal or from any order made in the course of execution of any decree or order of the Tribunal which if passed in the course of execution of a decree or order of a civil Court would be appealable under the Code of Civil Procedure, 1908. In every such case an appeal shall lie to the High Court within the local limits of whose jurisdiction the Tribunal is situate provided the subject-matter of the appeal does not relate merely to the amount of debt less than Rs. 5,000. In case the subject-matter of the appeal relates to the amount of debt and such amount is less than Rs. 5,000, no appeal shall lie.

In *Messrs. Pitman's Shorthand Academy v. Messrs. B. Lilaram & Sons and others*, (1) Khosla, J. (S. R. Das, C. J. and Kapur, J., concurring) said :—

“A court of law may, therefore, be defined as a tribunal dealing with and adjudicating upon civil disputes by operation of law in a judicial manner untroubled

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by ulterior considerations or matters of executive policy and observing certain definite rules of procedure which are either defined by statute or recognised by practice."

Plainly, the duties performed by the Tribunal are entrusted to the Tribunal by operation of law and not by voluntary submission of parties to a dispute. In deciding the matters that come before it the Tribunal follows the procedure prescribed by the Code of Civil Procedure for the trial of suits except in the determination of any individual debt which does not exceed Rs 5,000. Indisputably, the Tribunal in exercising its functions proceeds in a judicial manner and passes decrees which are passed by civil Courts in deciding civil suits.

Section 40 of the Act provides that an appeal shall lie from any final decree or order of the Tribunal and from any order made in the course of execution of any decree or order of the Tribunal to the High Court provided the subject-matter of the appeal relates to the amount of debt not less than Rs 5,000. Section 41 of the Act provides that where the subject-matter of the appeal relates to the amount of debt and such amount is less than Rs 5,000, no appeal shall lie.

From what I have said above it is plain that the Tribunal is subject to the appellate jurisdiction of the High Court where the subject-matter of the appeal relates to the amount of debt and such amount on appeal is not less than Rs 5,000. If so, it would be an anomaly to hold that the Tribunal is not a Court subordinate to the High Court where the subject-matter of the appeal relates to the amount of debt and such amount on appeal is less than Rs 5,000.

For the foregoing reasons, I hold that the Tri-
bunal under the Act is a civil Court subordinate to
the High Court within section 115 of the Code of
Civil Procedure.

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Turning to the merits of the case, I think that
Civil Revision No. 185-D of 1953 must succeed.

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Explanation appended to section 32 of the Act
reads—

“In this section the expression ‘paying capa-
city’ means the aggregate of the market
value of all the *attachable* assets in
India of the displaced debtor *plus* the
income which is likely to accrue to him
for the next three years succeeding, ex-
cluding from the computation of such
income a sum calculated at the rate of
two hundred and fifty rupees a month.”

In the present case the applicant has no attach-
able assets in India, the salary of the applicant
being Rs 80 per mensem. That being the position
of matters, the direction given by the Tribunal
that the applicant should pay the whole of the de-
cretal amount by monthly instalments of Rs 20
commencing from the 15th of July, 1953, cannot
be sustained. In these circumstances, subject to
the provisions contained in section 32 (6) of the
Act, the decretal amount would be paid by Ram
Labhaya, debtor, to Kirpa Ram, decree-holder,
from compensation payable to Ram Labhaya
under the Displaced Persons (Claims) Act, 1950.

In the result I allow Civil Revision No. 185-D
of 1953 to the extent indicated above.

No orders as to costs in these proceedings.

DULAT, J. I agree.

Dulat, J.