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AIR 1935 All 910 : 157 Ind. Cas. 343

Allahabad High Court

Case No: None

Ram Gopal and Another		APPELLANT
	Vs	
Ram Kunwar and Others		RESPONDENT

Date of Decision: Jan. 2, 1935

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Section 47

Citation: AIR 1935 All 910 : 157 Ind. Cas. 343

Judgement

1. This is a second appeal by decree-holders whose application in execution u/s 47, against the judgment-debtors has been dismissed by the two

lower Courts. The application sets out the following facts:

The decree-holders had a Small Cause Court decree against the judgment-debtors and in execution the decree-holders purchased a certain house

for Rs. 350, and that amount was set off from the decretal amount. The sale certificate was obtained and proceedings for possession were taken

and a person called Mohan resisted the decree-holders when they attempted to obtain possession. The date of this resistance is not stated.

Subsequently the decree-holders filed a suit No. 677 of 1929, against Mohan for possession, but the decree-holders did not make the judgment-

debtors parties to that suit. The decree-holders lost their suit against Mohan and it was held that Mohan was the owner of the house and that the

judgment-debtors were not the owners of the house. The present application asks that the auction-purchase money Rs. 350, and interest on it and

costs of the suit against Mohan and other costs should be entered, in the application for execution of the Original Small Cause Court decree against

the judgment-debtors and that the decree-holders may realise this amount by other means; in other words, the applicants desire that the certificate

of satisfaction which they granted for the amount which they had paid at auction-sale should be set aside.

2. There is no provision in Order 21, Rule 91, for such an application, but the application must be made before the sale is confirmed and the

application must be made within thirty days from the auction-sale as laid down by Article 166 of the schedule of the Limitation Act. The present

application does not purport to be one under Order 21, Rule 91, because such an application would long be barred by time. The auction-sale took

place on 28th April 1923, and was confirmed on 26th May 1927, and the present application was brought on 9th December 1930. The

application is headed u/s 47, Civil P.C., and the learned Counsel argues that this section is authority for the present application. He is not able to

quote any ruling as a precedent, but he refers to Dubey Amba Lal v. Ram Gopal Madho Prasad 1933 All 218, and the observations at p. 66. It is

true that on that page certain remarks are made and that the principle of equity was applied in regard to a case where it was found, as in the

present case, that certain property which had been the subject of an auction-sale and purchase by a decree-holder did not belong to the judgment-

debtor, but the parties to that ruling were two rival decree-holders-and the question between them was a rateable distribution of assets. Such, a

rateable distribution is made u/s 73, Civil P.C., and the Court held that it should in the interest of equity apply its inherent powers u/s 151, Civil

P.C., as between two rival decree-holders. That was a different question from the present case where we have on the one side a decree-holder

and on the other side a judgment-debtor, and we do not consider that the principle of that ruling can be applied to the present case. We consider

that a decree-holder who purchases at an auction-sale ought not to be placed in a better position as regards a judgment-debtor than a stranger

who makes a purchase, and no principle of equity has been shown to us under which we could hold a different view. This point has been already

laid down in an un-reported ruling of this Court, Second Appeal No. 1198 of 1933, Mangal Sen v. Mathura Prasad 1935 All. 470, in which, the

ruling of Dubey Amba Lal v. Ram Gopal Madho Prasad 1933 All 218, was considered. There are a number of rulings of this Court for the

proposition that there is no guarantee at an auction-sale that the judgment-debtor has no saleable interest in the property. This is laid down in Ram

Saroop v. Dalpat Rai 1921 All 377, Anand Krishna v. Kishen Devi 1931 All 377 and Sahu Deputy Shankar v. Mangal Sen 1933 All 63.

3. It is well established therefore that there is no warranty of title at an auction-sale and that what is sold is merely the right, title and interest of the

judgment-debtor and it is for the purchaser, whether he is a decree-holder or a stranger, to ascertain the title for himself. If there is any

disadvantage in the matter it ought to be the disadvantage of the decree-holder because it is his business to ascertain previously whether the

judgment-debtor has any title or not in the property which is put up to sale. We do not think that in the present case we can hold that Section 47,

can be invoked to provide a rule where the decree-holder has failed to apply within the period of limitation allowed by a rule of Order 21. Order

21 does supply a remedy for a decree-holder who finds that the property which he had purchased at auction-sale is not property in which the

judgment-debtor has a saleable interest. It is for the decree-holder to bring his application in proper time under the rule. In other words, a decree-

holder ought to ascertain immediately after the auction-sale whether there is any on in hostile possession of the property, and if he neglects to do so

he had only himself to blame. We do not see any principle to law under which the present application can lie.

4. Accordingly we agree with the Courts below and we dismiss this second appeal with costs.