

(1925) 07 AHC CK 0023

Allahabad High Court

Case No: None

Narain Das

APPELLANT

Vs

Ram Chander and Another

RESPONDENT

Date of Decision: July 15, 1925

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 66

Citation: AIR 1926 All 124 : (1926) ILR (All) 209 : 90 Ind. Cas. 116

Judgement

1. After hearing the arguments in this case we are of opinion that the decree of the Court below must be reversed and the suit must be sent back for disposal on the merits. The case is a somewhat peculiar one. The plaintiff Lala Narain Das alias Ram Dayal brought this suit originally against Ram Chander, son of Kanhaiya Lal praying for his ejectment from a certain shop situated in Mandavi Ghalla in the city of Meerut.

2. The title which the plaintiff asserted to this shop was that it had been bought by his own brother from a Receiver who had been appointed by the Court in a partnership. The plaintiff asserted that his brother, who is also called Ram Chander, had purchased this property really on his behalf, being at that time the guardian of the plaintiff who was then a minor. Ram Chander, son of Kanhaiya Lal joined issue regarding this question of title and stated that the title to the shop was not in the plaintiff but was in him. He stated that the purchase which had been made by Ram Chander, son of Khem Chand (that is to say the brother of the plaintiff) was a purchase made on his, defendant 1's behalf, and he, therefore, insisted that Ram Chander, son of Khem Chand should be made a party to the suit. This was done and the case then proceeded.

3. It appears that Ram Chander, defendant 2, the brother of the plaintiff, purchased this shop on 13th September 1914 in the course of a sale made by a Receiver under the directions of the Court. The suit in which this Receiver was appointed was Suit

No. 485 of 1911. We have at p. 11 of our record the report of the Receiver which was dated 15th September 1914, and which shows that he held an auction of certain shops on 13th September 1914 and that shop No. 1 was sold to Ram Chander, son of Khem Chand. The Receiver asked the Court to confirm the sale. Then we find that by a proceeding, dated 17th December 1914, the Court confirmed the sale in favour of the purchaser Ram Chander, son of Khem Chand. A copy of this order is at p. 12 of our record and it purports to be an order-under Order 21, Rule 92(1), Civil P.C. Later on the certificate as provided by O, 21, Rule 94 was granted to Ram Chander, son of Khem Chand.

4. These facts being established the defence which was put forward in the present suit was that a sale certificate having issued to Ram Chander, son of Khem Chand the suit was barred by the provisions of Section 66, Civil P. C, Section 66(1) provides that no suit shall be maintained against any person claiming title under a purchase certified by the Court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.

5. Clearly if this provision is applicable to the facts of the case now before us the plaintiff is out of Court. It has however been argued that in the circumstances of this case this section has no application at all and having sent for the record of Suit No. 485 of 1911 we are satisfied that Section 66 has nothing to do with this case and that although a sale certificate under the provisions of Order 21, Rule 94 was issued that is no bar to the plaintiff's claim here. The facts may be briefly stated as follows: Suit No. 485 of 1911 in the Court of the Subordinate Judge of Meerut was a suit brought for dissolution of partnership and for the taking of accounts. In that suit the plaintiffs were Ram Chander, son of Kanhaiya Lal (defendant 1 in the present suit) and his minor son Ragho Mal. The defendants were Chhajju Mal, Piare Lal and others.

6. It appears from a reference to the record that after the institution of the suit a Receiver was appointed to take charge of the partnership property.

7. Eventually a preliminary decree was drawn up in the manner indicated in Order 20, Rule 15 declaring the rights of the parties giving directions as to how the property was to be realized and administered.

8. After this preliminary decree had been passed we find from the record that the Receiver reported to the Subordinate Judge that there were a number of decrees outstanding against the firm consisting of the parties to the case. The Receiver informed the Subordinate Judge that the creditors were pressing their claims and were obtaining orders of attachment from the Court of the Additional Subordinate Judge of Meerut. He represented to the Court that the money owing to these judgment-creditors was a very substantial sum of about Rs. 40,000(forty thousand rupees) and he pointed out that interest was accumulating on these decretal

amounts very rapidly. He therefore suggested to the Court that a certain portion of the partnership property might be sold in order; to satisfy these decretal debts which were binding upon the partners, and we find from the order-sheet that the Subordinate Judge gave the Receiver authority to do his best for the parties and to sell whatever property he thought fit in order to satisfy as far as possible the demands of the decree-holders and in order to prevent further accumulation of interest.

9. It was in pursuance of this order that the Receiver sold the shop with which we are now concerned on 13th September 1914. It is to be noticed that this sale was made long before the final decree in the partnership suit was passed. We may further mention that it appears from the record that the parties agreed to have this sale made by the Receiver in order to prevent the accumulation of these judgment debts; and lastly we have to mention that this matter came up before this Court in the course of appeal and the order of the Subordinate Judge empowering the Receiver to sell the property was affirmed.

10. We have it therefore that the sale to Ram Chander, son of Khem Chand, defendant 2 in this suit, was a sale by a Receiver which took place in the circumstances to which we have referred and we do not see how it is possible to apply the provisions of Order 21 to a sale of this kind. There certainly was no sale in execution of a decree and it seems to us that Section 66 of the Code refers to a case where there has been a sale in execution of a decree. Part 2, Civil P.C. in which Section 66 is to be found relates to execution and Order 21, also relates to the execution of decrees and orders.

11. It has been argued before us that we ought to treat this sale as having been made in the execution of a decree because it was made under directions which were contained in the preliminary decree. We do not however think that argument is sustainable. A preliminary decree is not capable of execution. Further we do not see how it is possible to describe this sale as being a sale in execution either of a decree or order. It is not, as we have said, a sale in execution of a decree nor is it a sale in pursuance of an "order" as defined in Section 2(14) Civil P.C. "Order" means the formal expression of any decision of a civil Court which is not a decree, but when the Subordinate Judge in the course of the proceedings in Suit No. 485 of 1911, gave authority to the Receiver to sell the property he was not issuing any order in this sense. He was not deciding anything between the parties to the case. He was simply giving a direction to the Receiver to dispose of the property for the benefit of all the parties to the suit. "We are satisfied therefore that this sale was not carried out in pursuance of any decree or order as defined above. The learned Counsel for the appellant has referred us to a case which seems to be in point, reported in *Golam Hossein v. Fatima Begum* 16 CWN 334. The learned Judge in that case pointed out that a sale by a Receiver was not a sale by the Court; but a sale under the Court and that in such cases the Court does not grant a sale certificate nor does it confirm the

sale. The learned Judge differed from the previous decision of a single Judge of the same Court to be found in *Minatoonnessa Bibee v. Khatoonnessa Bibee* 1894 21 Cal 479. We may also refer to another case to be found in *Parvathammal v. Chokalinga Chetty* (1917) 41 Mad 241 which supports the argument of the learned Counsel for the appellant. There it was held that an order u/s 34, Guardians and Wards Act directing a guardian to pay a sum of money out of his ward's estate for the marriage expenses of a person dependent on his ward is neither a decree nor an order executable as a decree under the Civil P.C. The learned Judge referred to the definition of the term "order" in Section 2(14), Civil P.C.

12. We hold therefore that in the present suit the defence cannot be put forward that the sale certificate issued to Ram Chander defendant 2 is a bar to the maintenance of the present suit. The fact is that, had the proper procedure been observed, there would neither have been an order confirming the sale nor any certificate issued under the provision of Order 21, Rule 94. The procedure which was adopted was out of order. We therefore allow the appeal, set aside the decree of the Court below and send the case back to the Subordinate Judge of Muzaffarnagar for disposal on the merits. Costs here and hitherto will abide the result and in this Court will include fees on the higher scale.