

(1946) 10 AHC CK 0008

Allahabad High Court

Case No: None

Satdeo Koeri

APPELLANT

Vs

Suraj Bali Singh and Another

RESPONDENT

Date of Decision: Oct. 22, 1946

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 68

Citation: AIR 1948 All 16 : (1947) 17 AWR 30

Hon'ble Judges: Allsop, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Allsop, J.

Suraj Bali Singh, respondent, had a simple money decree against Satdeo Koeri, appellant, and Jadupat, respondent. He made an application for the execution of the decree by sale of a grove. The civil Court sold the grove, confirmed the sale and issued a certificate. Thereafter Satdeo Koeri made an application that the sale should be set aside upon the ground that the civil Court had no jurisdiction to execute the decree by sale of this grove which was agricultural land. His contention was that the decree should have been transferred to the Collector for execution by the sale of this grove under the provisions of Section 68, Civil P.C. and of the relevant notification made by the Government. The learned Munsif upheld his contention and set aside the sale. The learned Judge of the lower appellate Court on appeal by Suraj Bali Singh held that the grove was not property to which the provisions of Section 68, Civil P.C. applied. His attention does not seem to have been drawn to the terms of the notification issued by the Provincial Government on 8-10-1936. He said that the decree-holder had not asked for sale of the grove, which might be agricultural land but only of the grove-holder's interest in the grove which was not land within the meaning of the United Provinces Tenancy Act. The notification reads as follows:

The execution of decrees, in cases in which a civil Court has ordered any agricultural land situated in the United Provinces of Agra and Oudh or any interest in such land to be sold, shall be transferred to the Collector.

There can be no doubt that the land itself could not be sold because it was not the property of the judgment-debtors but the judgment-debtors clearly had an interest in the land that is, the interest of grove-holders and it was this interest which the decree-holder sought to sell. The notification, therefore, covers the grove in dispute.

2. It has been suggested here that a distinction should be made between the trees and the land upon which they stand. Such a distinction could doubtless be made if individual trees or group of trees were sold in order that they might immediately be cut down and used as timber, but it is not suggested that that was the intention in this case. The intention was that the interest of the judgment-debtors, that is, the interest of grove-holders, should be sold. That intention implies the transfer of the right to use the land for the purposes of the trees till such time as the trees continue in existence and possibly to use the land for replanting trees which are destroyed. It is quite clear that the civil Court had no jurisdiction to execute the decree in the manner in which it executed it. It is true that the appellant did not raise an objection till after the sale had been confirmed, but the initial fault was that of the decree-holder respondent who should have asked the Court to transfer the decree for execution to the Collector. Both parties are, in some measure, to blame. I had some hesitation at one time upon the question whether the Court which had confirmed the sale could itself say that that confirmation was void, but it is clear that the matter now in dispute could not be agitated in a fresh suit and further proceedings would have to be taken by the executing Court to put the purchaser into possession. In these circumstances I think that the first Court was right in setting aside the sale when it was brought to its notice that the sale was conducted without jurisdiction.. A similar view was taken by my brother, Malik, in [Indrasan and Another Vs. Dalsingar Chaudhary and Others](#), . The appeal must succeed.

3. I set aside the decree of the learned Judge of the Court below and restore the order of the learned Munsif with this modification that the sale will not only be set aside but that the proceedings for execution of the decree by sale of this grove shall be transferred to the Collector. I pass no orders for costs because both parties were guilty of laches in allowing the matter to proceed in the wrong Court.