

(1950) 01 AHC CK 0010

Allahabad High Court

Case No: F.A.F.O. No"s. 16 and 17 of 1950

Fateh Singh

APPELLANT

Vs

Rameshwar Prasad Bagla and
Others

RESPONDENT

Date of Decision: Jan. 4, 1950

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 32 Rule 6, Order 32 Rule 7

Citation: AIR 1957 All 250

Hon'ble Judges: Beg, J; Agarwala, J

Bench: Division Bench

Advocate: G.S. Pathak, R.S. Pathak and D.D. Seth, for the Appellant; S.N. Varma, Shambu Prasad and J.N. Waghrey, for the Respondent

Final Decision: Dismissed

Judgement

Agarwala, J.

This is an appeal by a judgment-debtor against an order in execution proceedings refusing to set aside a sale under Order 21, Rule 89 of the Code of Civil Procedure, The facts briefly stated are as follows.

2. There was a decree against the appellant as also respondents Nos. 17, 18 and 19--respondents Nos. 18 and 19 being minors--in favour of several decree-holders, some of whom were minors for a sum of Rs. 1,61,000. In execution of the decree certain immovable property belonging to the judgment-debtors was put up for sale on the 19th October, 1949, and was sold to Rameshwar Prasad Bagla, respondent No. 1, for a sum of Rs. 2,81,000.

The execution application had been made by some of the decree-holders, viz., by plaintiffs Nos. 2 to 7--plaintiffs Nos. 6 and 7 being minors. There were several other decree-holders including some minors who had not joined in the execution application, and therefore the application had been made for the benefit of all the

decree-holders. After the sale, but before its confirmation, i.e., on the 17th November, 1949, the judgment-debtors sold the mortgaged property in favour of four of the decree-holders Nos. 2 to 5 only for a sum of Rs. 3,20,000.

Out of the sale-consideration Rs. 1,61,081-14-0 were set off towards the decretal amount and a sum of Rs. 38,918-2-0 was paid to the judgment-debtor in cash. The balance of Rs. 1,20,000 was agreed to be paid in three equal yearly instalments. A receipt was executed by decree-holder No. 3 and by one Har Prasad, special attorney on behalf of all the decree-holders, whereby the entire amount of the decree was admitted to have been received by the decree-holders. On the 18th November, 1949, the judgment-debtors applied to the Court under Order 21, Rule 89 of the CPC for setting aside the sale.

They filed the receipt though not the sale-deed and also deposited in Court a sum of Rs. 14,050, the 5 per cent of the purchase money and also a sum of Rs. 17,562-8-0 as poundage fee. This application was objected to on behalf of the auction-purchaser on the ground that the judgment-debtors had not complied with the terms of Order 21, Rule 89, which required them to deposit the whole of the decretal amount in Court. His ease was that there was no real payment to the decree-holders and that in any case the adjustment of the decree which was evidenced by the receipt had not been sanctioned by the Court, as some of the judgment-debtors as well as the decree-holders were minors and that such an adjustment was consequently bad in law being contrary to the provisions of Rules 6 and 7 of Order 32 of the Code of Civil Procedure.

The Court below gave effect to this contention and dismissed the judgment-debtors' application for setting aside the sale. It held that the guardians of the minor judgment-debtors and the guardians of the minor decree-holders could not effect an adjustment of the decree or receive any payment towards it without the sanction of the Court and further that the adjustment was not for the benefit of either of the minor judgment-debtors or of the minor-decree-holders. Against this order the judgment-debtors have filed the above appeal and there is a connected appeal No. 17 of 1950, filed by the decree-holders Nos. 2 to 7.

3. The question in both the appeals is whether the Court below is right in refusing to give effect to the adjustment as alleged by the judgment-debtors.

4. Order 32, Rule 6 of the CPC provides:

"The next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other immovable property on behalf of a minor either-

(a) by way of compromise before decree or order, or

(b) under a decree or order in favour of the minor," and Rule 7 provides:

"No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian, (2) and in such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor."

5. The object of the two rules is to safeguard the interests of the minors towards whom Courts owe a special duty. The Court is bound to exercise its jurisdiction whenever it finds it necessary to do so. No doubt once an adjustment or compromise has been given effect to by the Court, parties other than the minor have no locus standi to question such adjustment or compromise which has already passed into the domain of an order or a decree of the Court, vide Bishundeo Narain and Another Vs. Seogeni Rai and Jagernath, and Birbhan Vs. Harmukh Rai,

6. The case of adjustment or compromise which has not been given effect to by the Court and comes before it for being given effect to, stands on a different footing altogether. At that stage the Court has to see, before it puts it into effect whether it is in the interest of the minors who are affected by it or not. The rulings cited above have no application to such a case.

7. It is contended that the Court has no jurisdiction to do so once the guardian has already effected a compromise or adjusted the dispute. We are unable to accept this proposition, because its acceptance will amount to nullifying the provisions of the rules quoted above and of debarring the Court from exercising its inherent jurisdiction which it possesses to protect the interests of minors.

8. Before the Court was asked to give effect to the adjustment, no application was made for leave of the Court to sanction the compromise or adjustment of the decree. One such application was made at a belated stage and no attempt was made to show how the adjustment was for the benefit of the minor decree-holders. The Court below went into the question and came to the conclusion that the adjustment of the decree could not possibly be considered to be for the benefit of the minor decree-holders or of the minor judgment-debtors.

9. It may be pointed out that the decretal amount of Rs. 1,61,000 payable to all the decree holders, both majors and minors, has been adjusted by a sale which is in-favour of some only of the decree-holders, namely, Mithumal, Jawahar Lal, Nairn Chand, and Nihal Chand. The other decree-holders do not get anything out of the sale-deed and lose every share in the decretal amount. It passes one's comprehension how such an adjustment could be for the benefit of those in whose favour the sale-deed was not executed.

10. Again, the sale transaction could not be for the benefit of the minor-judgment-debtors. The sale was for a consideration of Rs. 3,20,000, out of which about Rs. 1,61,000 was adjusted towards the decree and out of the balance of Rs. 1,59,000 about Rs. 39,000 was made payable in three years by yearly instalments

without interest. Interest on this sum of Rs. 1,20,000 at the rate of six per cent. per annum would amount to about Rs. 14,880. The judgment-debtors paid Rs. 17,562-8-0 as poundage fee and Rs. 14,050 as five per cent. of the auction money. The cost of the stamp and registration fee which is payable by the vendors amounts to Rs. 12,400.

The total of all these amounts which has to come out of the sale consideration is Rs. 58,892-8-0; and deducting this amount out of the sale price of Rs. 3,20,000, the amount which the judgment-debtors were to get under the private Sale would in fact be Rs. 2,61,107-8-0. This would be roughly Rs. 20,000 less than the auction sale price. Obviously therefore the judgment-debtors also were to lose under this transaction.

11. It was suggested that along with the sale-deed there was an agreement of re-purchase and that the judgment-debtors could re-purchase the house from the decree-holders in case they paid the sum of Rs. 3,20,000 within two years. It is not shown from where the judgment-debtors were to get a sum of Rs. 3,20,000 for the re-purchase. Two years have already expired and they have not been able to get back their property.

In our opinion the view of the lower Court that the adjustment was neither for the benefit of the judgment-debtors nor for the benefit of the decree-holders was sound. The Court cannot be forced to accept such an adjustment on behalf of the minors, and we think the lower Court rightly refused to give effect to it. If the adjustment is not accepted by the Court, the terms of Order 21, Rule 89, C.P.C. have not been complied with. The application of the judgment-debtors was, therefore, rightly rejected.

12. There is no force in this appeal. It is dismissed with costs.

13. On account of a stay order passed by this Court the auction purchaser was allowed to withdraw the amount which he had deposited in the Court below. On his behalf a prayer is made that he may be allowed to re-deposit the money. He is allowed to do so within a month of to-day's date. In case he makes the deposit in the Court below, he will be entitled to have the sale confirmed in his favour and to get possession over the property. The stay order is discharged.