

(1879) 01 AHC CK 0004

Allahabad High Court

Case No: None

The Court of Wards on
behalf of the Raja of
Kantit

APPELLANT

Vs

Gaya Prasad and
Others

RESPONDENT

Date of Decision: Jan. 28, 1879

Citation: (1880) ILR (All) 107

Hon'ble Judges: Turner, J; Spankie, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Turner, J.

The first question arising in this appeal is whether or not the appeal so far as it affects Ram Manorath is barred by limitation. By some carelessness he was not at first made a respondent, and the period prescribed for appeal had expired before he was brought on the record as a respondent. By the 22nd section of the Limitation Act it is provided that when after the institution of a suit a new plaintiff or defendant is substituted or added, the suit shall as regards him be deemed to have been instituted when he was so made a party. There is no analogous provision with respect to appeals, and therefore it is competent to the Court to exercise its discretion in allowing a party to be added to the record after the period prescribed for the admission of an appeal has elapsed. The lower Appellate Court throughout its judgment alludes to the decree held by Gay a Prasad and Ram Manorath as "the decree of Gaya Prasad," and omits any mention of Ram Manorath, and this circumstance may have led the appellant's pleader to suppose that Ram Manorath was not a material party to the appeal, as the appeal was in other respects filed within time and prosecuted with due diligence. We are not prepared to set aside the ex parte order for making Ram Manorath a respondent to the appeal.

2. The circumstances which have led to the present proceedings are as follows: The rights and interests of Girdhari Prasad Singh in mauza Tilai were attached and advertised for sale, under separate orders, in execution of a decree held by Thakur Dayal and in execution of a decree held by Gaya Prasad and Ram Manorath. The same date, the 20th September, was fixed for the sale in execution of both decrees. On the 20th September the officer conducting the sale at first put up the property in execution of the decree of Thakur Dayal, which it would appear was entitled to priority of satisfaction, and the property was purchased by the decree-holder. He then again put up the property for sale in execution of the decree of Gaya Prasad and Ram Manorath, and it was purchased by the agent of the appellant. The Court executing the decrees confirmed the sale in execution of Thakur Dayal's decree, and delivered a sale-certificate to the auction-purchaser. It also confirmed the second sale, and ordered the purchase-money to be paid to the decree-holder, but it held that, inasmuch as the sale to the purchaser in execution of Thakur Dayal's decree had already been confirmed and a certificate issued, it could not give possession to the appellant as the purchaser in execution of the decree of Gaya Prasad and Ram Manorath, and therefore refused to grant a certificate in respect of that sale.

3. The appellant instituted the present proceedings to obtain a refund of the purchase-money paid under the second sale. The Court of First Instance decreed the claim on the ground that although the property ought to have been put up for sale once for all in execution of both decrees, yet having in fact been sold in execution of Thakur Dayal's decree and the sale confirmed, it was not competent to the Court executing the decree to confirm the second sale, as was shown by its inability to issue a certificate and deliver possession. The lower Appellate Court reversed the decree on the ground that, when the appellant's objection to the confirmation of the second sale had been disallowed, he ought to have appealed, and that, having failed to appeal, the order confirming the sale became final u/s 257 of the Civil Procedure Code. The lower Appellate Court also adverts to cases ^{*} in which it has been held that, when the right, title and interest of a judgment-debtor in a particular property is sold, there is no warranty that he has any right, title or interest, and therefore that he cannot recover his purchase-money if it turn out that the judgment-debtor had no interest in the property.

4. It appears to us that there is a circumstance in the present case which distinguishes it from the cases in which the rule referred to by the Judge was laid down. In these cases the Court advertised for sale whatever interest the judgment-debtor had in the property, and although it did not guarantee that he had any interest in the property, it sold and confirmed to the purchaser whatever interest there was to sell. In the case before the Court the interest advertised for sale had immediately before the sale to the appellant been already sold by the order of the Court executing the decrees in execution of the decree of Thakur Dayal, and when that sale was confirmed the subsequent sale was practically disallowed and

nullified. The Court had advertised for sale the interest of the judgment-debtor as it existed before the sale made in execution of Thakur Dayal's decree. When the sale had been declared absolute, the Court could not confirm to the purchaser at the second sale the interest it had advertised for sale, and although in terms it passed an order confirming the second sale, it in fact did not confirm the second sale, as the Court of First Instance observes, for it found it impossible to carry out its order by the issue of a certificate and delivery of possession to the purchaser at the second sale, seeing it had already confirmed the sale of the same interest, and transferred the property to the purchaser at the first sale. The rule of caveat emptor does not apply, for the interest offered for sale was the interest advertised, and if the first sale had been disallowed, that interest would have passed to the purchaser at the second sale, but when the first sale was confirmed the second sale could not be carried out, for the interest advertised had been already sold.

5. The question remains whether the appellant is precluded from maintaining this suit because he failed to appeal from the orders confirming the sales. The lower Appellate Court finds there was no irregularity in the conduct of the sales, inasmuch as the officer conducting the sale simply carried out the orders he had received, and it appears to us the lower Court has properly arrived at this conclusion. It is no doubt true that the officer conducting the sale might have put up the property to sale once for all in execution of both decrees, and have left the Court executing the decrees to determine the rights of the respective decree-holders to the purchase-money realised by the sale, but we cannot go so far as to say he was bound to put up the property once for all for sale in execution of the decrees. There being separate orders for sale, the decree-holders might have called upon him to execute them separately, each desiring to dispute the right of the other. There was certainly no irregularity in the conduct of the sale in execution of the decree of Thakur Dayal; and if that sale had been set aside for any irregularity or otherwise, it does not appear that any irregularity would have been proved to vitiate the sale in execution of the decree of Gaya Prasad and Ram Manorath, and this being so the purchaser at the second sale could not have maintained an objection to either sale on any of the grounds mentioned in Section 256 of Act VIII of 1859. His objection was in fact of a different nature. His objection to the sale in execution of Thakur Dayal's decree having been overruled, he resisted the order confirming the second sale on the ground that the Court was incompetent to confirm a sale which had on its previous order been nullified. The provisions of Section 257 apply to applications made u/s 256 and to those only, and consequently the appellant is not in our judgment precluded by the terms of that section from maintaining this suit. We, therefore, reverse the decree of the lower Appellate Court, and restore that of the Court of First Instance with costs.

* These cases were *Rajib Lochan v. Bimalamini Dasi* 2 BLR AC 82; and *Sowdamini Chowdrain v. Krishna Kishor Poddar* 4 BLR FB 11 : 12 WRB 8