

(1926) 02 CAL CK 0020

Calcutta High Court

Case No: None

Munni Lal Kshetry

APPELLANT

Vs

Sasi Bhusan Adhikari
and Another

RESPONDENT

Date of Decision: Feb. 5, 1926

Citation: AIR 1927 Cal 339

Hon'ble Judges: Mukerji, J

Bench: Division Bench

Judgement

Mukerji, J.

The petitioner had a decree for money against one Rajendra Nath Adhikari and in execution thereof attached certain properties. Upon that one Nani Bala Debya, widow of a deceased brother of the judgment-debtor, filed an application under Order 21, Rule 58, claiming a 1/5th share in the attached properties, and it is said that the application was dismissed for default on the 25th April 1922. The properties were put up to sale and were purchased by the petitioner. The sale was confirmed on the 25th April 1922, and possession was delivered to the petitioner on the 28th April 1925. On the 21st May 1925, the opposite party Sashi Bhusan Adhikari alleged to be the son-in-law of Nani Bala applied under Order 21, Rule 100, Civil P.C., alleging that he had purchased Nani Bala's 1/5th share in execution of a decree against Nani Bala and was in possession of that share.

2. The claim preferred by Sashi Bhusan Adhikari has been allowed by the learned Munsif. Against this order the present Rule has been issued at the instance of the decree-holder auction-purchaser. The petitioner contends that Nani Bala not having instituted a suit under Order 21, Rule 63, after the dismissal of her claim, the order passed against her is conclusive, that it is equally conclusive against Sashi Bhusan who has purchased her interest and that Sashi Bhusan therefore acquired nothing by his purchase and if he is in possession, he is in possession as a trespasser and is not entitled to succeed in an application under Order 21, Rule 100, Civil P.C.,

3. The learned Munsif has found that the purchase by Sashi Bhusan was bona fide. that being so, Sashi Bhusan was in possession on his own account, and if he had been dispossessed, as it has been found by the learned Munsif that he has been, he clearly comes under Order 21, Rule 101, Civil P.C., The order of dismissal is, no doubt, conclusive against Nani Bala but whether for that reason Sashi Bhusan has acquired a good title or not is not a question which need be gone into in these proceedings. If the claimant was in possession though without a good title or even as a trespasser but on his own account or on account of some person other than the judgment-debtor he is entitled to succeed under Order 21, Rule 101, Civil P.C.:- Skaroda Moyee Chowdhrani v. Nabin Chunder Choudhry 11 W.R. 255 and Kedar Nath Bag v. Saday Chandra Nandi [1914] 19 C.L.J. 13.

4. In my opinion the order passed by the learned Munsif is right and the Rule should accordingly be discharged with costs. Hearing-fee two gold mohurs.