Balodev Sarma Khanud Vs Sonti Bordoloi and Another

None

Court: Calcutta High Court

Date of Decision: July 17, 1923

Citation: 84 Ind. Cas. 983

Hon'ble Judges: Rankin, J; B.B. Ghose, J

Bench: Division Bench

Judgement

1. In this case, the appellant is a plaintiff decree-holder who obtained a decree on the 20th June, 1914, against two persons. On the 15th May

1916 an execution sale of the properties of one of the debtors was held at which the decree-holder himself was the purchaser and this sale was

confirmed on the 15th June 1916. On that day, final satisfaction of the decree was entered up and the execution case was struck off. The position

is that the execution case was struck off because the decree was taken to be satisfied. The decree-holder chose to pay a certain sum of money for

his judgment-debtor''s right, title and interest. He did not make any application under the Code within the lime limited by law nor did he bring a suit

within a year for the purpose of having it ascertained that nothing had passed to him by the sale or for a declaration that the sale aves void or

voidable and should be set aside. The case is not one of execution proceedings being obstructed or delayed by suits being brought to elucidate the

rights of the objector or for other matters. The case was not struck off merely because the decree-holder was not by reason of litigation in a

position to proceed at once but on the footing that his claim had been satisfied. The present application was for execution against other properties

and the decree-holder maintains that he is entitled to proceed now on the footing that the decree is wholly unsatisfied. The case he makes as

regards that is that he went into possession of the property which he had bought and that, after some considerable time, he was fined for criminal

trespass on the 21st November, 1917, Now, a fine for criminal trespass is very good evidence that the person had wrongly entered upon property

in the possession of another with a view to cause him annoyance or with some similar view. But such a decision is not in the contemplation of the

law in any sense of the word equivalent to a declaration by the Civil Court that nothing has been obtained at the execution sale. In the present case,

there is no case of fraud because, although such a case was attempted, the judgments of the lower Courts show that there is nothing in this at all.

Moreover, there is no satisfactory ^evidence establishing the date on which the present appellant came to know of his position. We have been

asked to apply to this case the principle of many cases in which it has been held that Article 182 of the Limitation Act does not apply where the

application may be regarded as one for the revival of previous execution proceedings and, therefore, within the wider limits of Article 181. In our

opinion, we should be extending those decisions very widely if we were to hold that in this appeal and we shall be going contrary to a considerable

body of authorities; for example, the case of Khairunnissa v. Gauri Shankar 3 A. 484 : A.W.N. (1881) 1 2 Ind. Dec. (N.S.), and the cases,

Krishanji Raghunath v. Anandrav 7 B. 293 : 4 Ind. Dec. (N.S.) 198 and Virasami v. Athi 7 M. 595 : 8 Ind. Jur. 613 : 2 Ind. Dec. (N.S.) 998. In

these circumstances, it is not necessary to consider the preliminary objection. In our opinion, on the merits the appeal should be dismissed with

costs, hearing fee one gold mohur.