

(1912) 05 CAL CK 0052

Calcutta High Court

Case No: None

Konnormal Oswal and Another

APPELLANT

Vs

Nabin Chandra Das and Another

RESPONDENT

Date of Decision: May 3, 1912

Acts Referred:

- Transfer of Property Act, 1882 - Section 54

Citation: 15 Ind. Cas. 228

Hon'ble Judges: Stephen, J; Richardson, J

Bench: Division Bench

Judgement

1. In this case the plaintiff sued to recover possession of certain lands. The lands were sold to the predecessor of the defendants at an execution sale following a money-decree on the 5th of January 1893. The sale was confirmed in March of the same year. An application was made by the judgment-debtor to set aside the sale. It failed in the first Court; but on appeal the sale was set aside by an order of the 14th June 1893. The auction-purchaser was no party to the appeal in which the sale was set aside. The first question, therefore, which arises is whether the title which vested in the auction-purchaser in consequence of the execution sale was ever taken away from him. The case of Surendra Mohini Debi v. Loharam Chattopadhaya, 16 C.W.N. 570 : 14 Ind. Cas. 67 is an authority for holding that the auction-purchaser was not a necessary party to those proceedings. The present case, however, is distinguished from that one by the fact that before the sale was set aside, it had been confirmed in favour of the auction-purchaser, a feature which is absent in the reported case. The effect of this confirmation seems to have been to complete a title in the auction-purchaser which was before inchoate and make absolute that right which was only provisional. This view is consistent with the decision in the case we have just mentioned. It is also borne out by the judgment of Mookerjee, J., in the case of Bibi Sharofan v. Mahomed Habibuddin 10 Ind. Cas. 148 13 C.L.J. 435 : 15 C.W.N. 685 . The title, then, having become absolute in the auction-purchaser on the

confirmation of the sale, can it be said that he was deprived of it by proceedings to which he was no party? We know of no authority for saying that this can be so. There is a question in this case as to the respective dates of the institution of the proceedings to set aside the execution sale, and the confirmation of the sale, and we do not know which of these occurrences was the first, but we see no reason for treating the rights, which the auction-purchaser got by the execution-sale, as anything less than absolute. We, therefore, hold that the title vested in the auction-purchaser on the confirmation of the sale, and the subsequent proceedings in relation to the sale have not in any way diminished his rights.

2. We then come to the second point in the case, which is a document, dated the 15th of April 1898. In that document, the defendant admits that the premises are the properties of the plaintiff. "He agrees to hold possession of them practically as a tenant for five years, and afterwards to make them over to the plaintiff. The rent, which will accrue in respect of these premises, is to go to satisfy a debt due from the plaintiff to him and defendant agreed that after the lapse of five years, "the entire rights to the said house and land should vest in the plaintiff." What effect are we to give to this document? It is clear that under the provisions of the Transfer of Property Act, it cannot be treated as a conveyance, because for one reason, it is not registered. Does it amount to a delivery of possession u/s 54, the property being of less value than Rs. 100? We are of opinion that it does not.

3. It is argued that the defendant being in possession of the lands says, substantially, to the plaintiffs: "Henceforth I am your tenant," that thereupon he becomes his tenant and his possession becomes the possession of the plaintiff. We cannot hold that this is a delivery under the section in question. The delivery there is an alternative to the execution and registration of a document which is an act formal in a high degree. We consider that the delivery must at all events be something more formal than what is put forward in this case. We accordingly hold that the plaintiff has not made out his title either by reason of the setting aside of the execution sale or the execution of the document.

4. The result, therefore, is that this appeal is allowed, the judgment and decree of the lower Appellate Court are set aside and the suit is dismissed. The appellant is entitled to his costs in this Court and in the Courts below.