
(1870) 03 CAL CK 0016

Calcutta High Court

Case No: Reference No. 3 of 1870

Golam Asgar

APPELLANT

Vs

Lakhimani Debi and
Others

RESPONDENT

Date of Decision: March 9, 1870

Judgement

L.S. Jackson, J.

In this case the first of the two questions raised by the Officiating Judge of the Small Cause Court at Ranaghat is the only one which it seems necessary to answer. That question is, whether the invalidation of the defendants decree voids the sale made in execution of it of the plaintiff's decree against Maddak. The circumstances were that the plaintiff, Golam Asgar, had got a decree against Maddak, and afterwards the defendants, Lakhi Narayan and others, who held another decree against the plaintiff, Golam Asgar, sold, and became themselves the purchasers of the first mentioned decree against Maddak. It afterwards turned out that the decree which Lakhi Narayan and others held against Golam Asgar was barred by limitation. The question, therefore, is, whether the circumstance that the execution of the decree, under which that sale took place, was barred by lapse of time, invalidated all that took place in that execution. It seems to me quite clear that it did. In the cases referred to by the Judge of the Small Cause Court, the facts were otherwise. In those cases, the sale took place under a decree which at the time of the sale was in force and valid; and, consequently, the Court in selling the property acted with jurisdiction, and the circumstance that the decree was afterwards reversed on appeal, or upon a review of judgment, would not vitiate what was done under the decree before reversal, or divest the Court of its jurisdiction to do that which it did. In the present case, it appears that, at the time of the sale, the execution of the decree under which the sale took place had been barred by limitation. The Court was, therefore, incompetent to execute that decree, or to do anything under it. The sale, therefore, naturally, like every thing else done in that stage of the proceedings, and after the bar of limitation had occurred, fell to the ground. Under these circumstances the plaintiff, it is clear, is not in any way injured by what took place, and has no cause of action against the

defendant.

Phear, J.

2. It has before occurred to me to draw a distinction between the case of a sale effected in execution of a decree which was valid at the time of the sale, and a sale in execution of a decree which is afterwards pronounced by a competent Court to have been an invalid decree at the time of that sale. I concur in the judgment pronounced by Mr. Justice Jackson.