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**Abdul Aziz and Others Vs. District Judge, Rampur and Anothers**

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**SooperKanoon Citation** : sooperkanoon.com/450417

**Court** : Allahabad

**Decided On :** Jan-15-1993

**Reported in** : AIR1994All167; MANU/UP/0029/1994

**Judge** : D.S. Sinha, J.

**Acts** : Code of Civil Procedure (CPC), 1908 - Sections 47 and 115; Transfer of property Act, 1882 - Sections 52; Specific Relief Act, 1963 - Sections 20; Constitution of India - Article 226

**Appeal No.** : Civil Misc. Writ Petn. No. 10865 of 1985

**Appellant** : Abdul Aziz and Others

**Respondent** : District Judge, Rampur and Anothers

**Advocate for Def.** : P.K. Singhal, Adv. and Standing Counsel

**Advocate for Pet/Ap.** : R.S. Verma, Adv.

**Judgement** :
ORDER

1. Heard Sri R.S. Verma, appearing for the petitioner and Sri P.K. Singhal, learned counsel representing Harish Chandra, the contesting respondent No. 3.

2. The order dated 18th January, 1985 passed by the Munsif, Court No. 1, Rampur in Execution No. 31 of 1978 rejecting the objection of the petitioners filed under

Section 47 of the Civil P.C. 1908, hereinafter called the Code, and the order and judgment dated 27th April, 1985 passed by the District Judge, Rampur in Civil Revision No. 28 of 1985 under Section 115 of the Code, affirming the aforesaid order of the Munsif, are underchallenge in this petition under Art. 226 of the Constitution of India.

3. The contesting respondent No. 3 obtained a decree for specific performance against Abdul Habib alias Abdul Ahmad, the pro forma respondent No. 4, on 16th August, 1973. Before the decree could be executed the pro forma respondent No. 4 transferred the property, which was the subject matter of the decree, in favour of Mohd. Sharif and Abdul Aziz on 7th February, 1974. The decree-holder Harish Chandra, the contesting respondent No. 3, initiated proceedings for execution of the decree dated 6th August, 1973. The petitioners before this court, who were the transferees of the property in dispute, filed objection under Section 47 of the Code asserting that the decree was not binding on them inasmuch as they were not parties to the suit and that the decree was not executable against them as they were the bona fide transferees for value. The objection of the petitioners was turned down by the executing court by means of its order and judgment dated 18th January, 1985. The petitioners took up the matter before the District Judge, Rampur in revision. The revision was dismissed by means of the order and judgment dated 27th April, 1985 and the order of the executing court rejecting the objection of the petitioners was upheld.

4. Relying upon the doctrine of lis pen-dens the courts below have held that the petitioners were as much bound by the decree and judgment dated 16th August, 1973 as their transferor Abdul Habib, the judgment-debtor. The view taken by the courts below is sound. Lis comes into existence from the point of the institution of the suit and continues to survive till the satisfaction of the decree. In view of this legal position, the impugned orders and judgments do not warrant any interference by this court in exercise of its special and extraordinary jurisdiction under Art. 226 of the Constitution of India.

5. In the result, the petition fails and is dismissed. There will be no order as to costs.

6. Petition dismissed.

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