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Court : Allahabad

Decided On : Mar-12-1954

Reported in : AIR1955All96

Judge : Malik, C.J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 39 and 39(1) - Order 41, Rule 5

Appeal No. : Second Appeal No. 828 of 1947

Appellant : Kunj Behari and anr.

Respondent : Shia College, Lucknow and anr.

Advocate for Def. : Ghulam Imam, Adv. (for No. 1), ;Mohd. Nazimuddin and ;Rameshwar Dayal Khare, Adv. (for No. 2)

Advocate for Pet/Ap. : D.P. Khare, Adv.

Disposition : Appeal dismissed

Judgement :

Malik, C.J.

1. This case raises a very short point. There was a compromise decree obtained by the Shia College against one Maiku Lal with respect to arrears of rent. This decree

was obtained from the Court of the Revenue Officer, Lucknow. The decree was put in execution. On 29-9-1944, the Revenue Officer evidently acting under Section 39, C. P. C., transferred the execution case to the sale officer, Lucknow, for sale of the property which was agricultural land.

On 22-10-1945, the Sale Officer sold this land to the respondent No. 2. On 15-3-1946, the sale was confirmed. On 28-9-1945, the judgment-debtor had made an application to the Revenue Officer that the decree had been obtained by fraud. Out of the sum claimed he said he had paid Rs. 130 to the plaintiff before the date of the decree.

The judgment-debtor, therefore, prayed that inquiry -should be held and in the meantime the proceedings before the Sale Officer should remain stayed. The Revenue Officer issued notice of this application and directed stay of the sale proceedings. This order, however, was not communicated to the Sale Officer till 22-10-1945, that is, two days after the sale, with an addition that if the sale had already taken place, proceeds may not be paid over to the decree-holder till further orders. After the death of Maiku Lal, Maiku Lal's sons filed the suit out of which this appeal has arisen and they challenge the entire sale proceedings on the ground that the sale officer had no jurisdiction to sell the property and the sale was, therefore, void. The auction purchaser who was a third party was also impleaded as defendant No. 2 and he is respondent No. 2 in this appeal.

2. Two grounds have been taken by learned counsel in support of his plea that the sale officer had no jurisdiction. Firstly, that the Revenue Officer, should have in the order of transfer given reasons as required by Section 39 (1) (d), C. P. C., and secondly that the sale having taken place on 20-10-1945, after the stay order had been passed on 28-9-1945, the Sale Officer had no jurisdiction to sell the property. The second point has absolutely no force as it is covered by Full Bench decisions of various High Courts. I need, however, mention only one case -- 'Parsotam Saran v. Barhma Nand : AIR1927 All401 .

3. As regards the first point, it is true that the Revenue Officer when transferring the execution file to the Sale Officer for sale of the property (probably because it was agricultural land which could only be sold by the Collector) should have given

reasons in writing. Section 39 (1) provides for cases where a decree may, on the application of the decree-holder, be sent to another Court for execution. If conditions (a), (b) and (c) of Sub-section (1) exist the decree can be transferred and no reason need be assigned. If, however, the transfer is made for any other reason, then Clause (d) requires that the reason should be recorded in writing. The question arises whether failure to record reasons in writing would vitiate the order and the sale officer could be said to have had no jurisdiction to sell the property. The order of transfer was made on 29-9-1944 after notice to the parties and Maiku Lal was a party to this order. If he had any objection to the transfer, he should have made it to the Revenue Officer.

Moreover Clause (d) lays down that the Court which had passed the decree if it considers for any other reason that the decree should be executed by another Court, it can send the decree to that Court but it has to give reasons in writing. The discretion is left to the Court which passed the decree. If the reasons are not given in writing, it may not be possible for the Court of appeal to know the reasons and to correct the order in case it is of the opinion that the order under transfer should not have been passed but it does not mean that mere failure to give reasons in writing when there is no objection by either party would take away the jurisdiction of the Court to which the decree has been transferred. No authority has been cited in support of the view and on a reading of the section it does not appear to me that there is any reason to hold that the absence of giving reasons for the transfer takes away the jurisdiction of the transferee Court.

4. The result, therefore, is that this appeal fails and is dismissed with costs.

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