

Ram Dulari Vs. Balak Ram and anr.

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Court : Allahabad

Decided On : Dec-03-1914

Reported in : AIR1915All111; (1915)ILR37All120

Judge : Chamier and ;Piggott, JJ.

Appellant : Ram Dulari

Respondent : Balak Ram and anr.

Judgement :

Chamier and Piggott, JJ.

1. The first respondent obtained in a Munsif's court a decree against the second respondent, in execution of which, some time before the end of March, 1908, he attached the second respondent's one-sixth share in a house. In September, 1908 while the share was under attachment, she brought a suit in a Subordinate Judge's court against the appellant and others for partition and separate possession of her share, and in March, 1909, she obtained a decree, which was subject to a condition that she should pay Rs. 237 into court. She has never paid in the money, and consequently the decree has not been executed. In July, 1911, the first respondent brought to sale in execution of his decree and purchased himself the specific share allotted to the second respondent by the decree in the partition suit. In February, 1912, he paid Rs. 237 into the court of the Subordinate Judge and immediately afterwards he applied to the Munsif for delivery of possession of the

specific share purchased by him. The appellant objected, but her objection was disallowed, and she then brought the present suit claiming a declaration that she is owner and in possession of the house and that the first respondent is not entitled to obtain possession of the house by virtue of his purchase at the execution sale. The first court dismissed the suit on a ground that is clearly untenable. On appeal the District Judge confirmed the dismissal of the suit upon the ground that, although the second respondent was not entitled to a specific share in the house till she paid the sum of Rs. 237 into court, and therefore no specific share passed to the first respondent at the execution sale, yet the latter must have acquired the right, title and interest of Musammat Sundar, and was entitled to stand in her shoes, and having paid the required sum into court before execution of the decree became time-barred, was entitled to execute the decree obtained by her. The appellant is obviously not entitled to the relief claimed in the plaint, for at the date of the suit she certainly was not the sole owner of the house and the first respondent had never attempted to get possession of the whole house, but the facts are all before us and we may properly give her such relief as she may be entitled to. It appears to us that what passed to the first respondent at the execution sale was the right, title and interest of Musammat Sundar to and in an undivided one-sixth share, even though it may have been wrongly described as a specific or separate share in the house, and the first respondent was entitled to go to the Munsif and get himself placed in possession of the undivided share. It is not for us to decide whether before or after obtaining possession of the share in this way the first respondent was or is entitled to go to the court of the Subordinate Judge and execute the decree obtained by Musammat Sundar. That is a matter for the Subordinate Judge to decide. It is quite clear that the first respondent was not, by virtue only of his purchase, entitled to be placed by the Munsif in separate possession of that portion of the house which would have passed into the possession of Musammat Sundar if she had executed her decree, and we think that the appellant was and is entitled to a declaration that the first respondent is not entitled to separate possession of any specific portion of the house by virtue only of his purchase at the execution sale. We allow the appeal and make a declaration to this effect. The parties will pay their own costs throughout.

