

Durag Das Vs. Gori Mal

Durag Das Vs. Gori Mal

SooperKanoon Citation : sooperkanoon.com/451540

Court : Allahabad

Decided On : Apr-13-1928

Reported in : AIR1928All327

Appellant : Durag Das

Respondent : Gori Mal

Judgement :

1. This is a second appeal in which the following two points have been raised:

(1) Is an order dismissing an objection under the proviso to Rule 58, Order 21 on the ground that it is filed intentionally or unnecessarily late, an order which comes under Order 21, Rule 63 and subject to the result of any suit instituted under that rule, a conclusive order?

(2) Does such an order prevent the objector from raising a claim again in the capacity of a defendant?

2. The facts in the present case are as follows:

3. One Sarnam made a usufructuary mortgage of property in list (B) of the plaint with the appellant, defendant 1. Durag Das. The plaintiff-respondent obtained a simple money decree against Sarnam and in execution of that decree brought the property in list (A) to auction sale and purchased it himself. During the pendency of the execution proceedings Durag Das, the appellant purchased the property on

27th April 1919, from Sarnam. The appellant filed an objection to the attachment and sale on the ground that he had purchased the entire mortgaged property. That objection was summarily rejected on 14th September 1920 on the ground that there had been unnecessary delay on the part of the objector in filing the objection. It is admitted that the objector did not bring any suit to contest the dismissal of his objection and the period of limitation of one year has long ago elapsed. It is claimed by the learned Counsel for the appellant that the dismissal of an objection under the proviso to Rule 58, Order 21, does not come under Rule 63 of that order. For this purpose he relies on the wording of Rule 63. We are unable to see that there is anything in the wording of Rule 63 which supports this contention. He relied on the following authorities:

4. Balmakund v. Maqsd Ali [1917] 19 O.C. 357, Nanhu v. Malloo [1918] 16 P.R. 1918, Raghunath Jha v. Birjnandan Singh [1915] 31 I.C. 444, Chandra Bhusan Gangopadhya v. Ramakanth Banerji [1886] 12 Cal. 108 and Angan Lal v. Gudar Mal [1888] 10 All. 479.

5. In none of these cases is there any decision on a point similar to the present. Some of the cases were decided under the previous Code in which the language was different as in the previous. Code a summary rejection came under Section 278 and such an order was not conclusive under Section 283, because Section 283 specifically referred to orders under Sections 280, 281 or 282. The rulings which have been quoted deal for the most part with cases where the Courts have held that the investigation was not properly conducted and, therefore, the order on the investigation would not be a proper order under Order 21, Rule 63, Nona of these cases, therefore, is any authority for the proposition which the learned Counsel for the appellant has placed before us.

6. For the respondent reference was made to the ruling in Gobardhan Das v. Makundi Lal A.I.R. 1923 All. 435. In that it was held that an order refusing to entertain an objection on the ground of it being too late does come under Order 21, Rule 63 and a suit to contest that order must be filed within one year. This decision followed a Full Bench ruling of the Madras High Court in Vankataratnam v. Ranganaya Kamma [1918] 41 Mad. 985. That Madras Full Bench ruling has

also been followed in *Nagandra Lal v. Fani Bhushan Das* [1918] 45 Cal. 785. The Lahore High Court has also followed this ruling in *Dial Chand v. Lachchman Singh* A.I.R. 1927 Lah. p. 680. We may also compare the ruling in *Jugul Kishore v. Ambika Dube* [1912] 16 C.W.N. 882, where a claim was dismissed for default and it was held that Rule 63 applied and that the only remedy was to bring a suit and not by a further objection in execution. We agree with the reasoning in the ruling of the Madras High Court and in *Gobardhan Das v. Makundi Lal* A.I.R. 1923 All. 435. It appears to us that the alteration in the Civil P.C. has been intentional and it is not by accident that Order 21, Rule 63 does not specify merely the rules which correspond to Sections 280, 281 and 282 of the former Code. We consider that the intention of Rule 63 is to include orders of summary rejection under the proviso to Rule 58. It appears to us further that a person against whom an order of a summary rejection under the proviso to Rule 58 has been passed would have his natural remedy by filing a suit for declaration in the civil Court. Such a suit undoubtedly comes under Rule 63 and the period of limitation which would apply to such a suit is one year under Article 11, Lim. Act. The argument was addressed to us that such a suit would be filed under the provisions of Section 42, Specific Relief Act, but we do not consider that this argument is correct.

7. On the second point, namely, whether an order summarily rejecting an objection under the proviso to Order 21, Rule 58 prevents the objector from raising the claim again in the capacity of a defendant: it was argued that the effect of Order 21, Rule 63 and of Article 11, Lim. Act, would merely be to bar the remedy and that the objector would be debarred from taking any further part in execution proceedings, and if he did not bring his suit within one year he would be debarred from bringing a declaratory Suit. And it was argued that, where in a case such as the present the objector has come to occupy the position of a defendant, the objector would not be debarred from pleading his claims to the property. No doubt on general principles under Section 11, Civil P.C., for a matter to be *res judicata*, it must have been heard and finally decided by a Court, But the language in Order 21, Rule 63 is different. That rule states that the result of the order is that subject to the result of any such suit the order shall be conclusive in regard to the right which the objector claims to the property in dispute. We consider that the language in Order 21, Rule 63 does bar the objector from raising again his claims to the property even though

he may have come to occupy the position of a defendant, otherwise we do not see what meaning is to be attached to the word 'conclusive' in regard to the right which he claims to the property.

8. For these reasons we dismiss the appeal with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com