

Hari Kishan Vs. Radha Kishan and ors.

Hari Kishan Vs. Radha Kishan and ors.

SooperKanoon Citation : sooperkanoon.com/454648

Court : Allahabad

Decided On : Nov-27-1956

Reported in : AIR1957All251

Judge : Desai and ;Beg, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 47 - Order 21, Rule 95

Appeal No. : First Appeal No. 91 of 1956

Appellant : Hari Kishan

Respondent : Radha Kishan and ors.

Advocate for Def. : H.N. Seth, Adv.

Advocate for Pet/Ap. : P.C. Gupta, Adv.

Disposition : Appeal dismissed

Judgement :

Desai, J.

1. This is an appeal by a judgment-debtor against an order passed by the executing Court delivering possession over the property purchased by the respondents in auction sale in 1941. The sale was confirmed on 21-8-1941 after they had deposited the auction price amounting to more than Rs. 10,000/-. The

assistance that the appellant has received from one Court after another in keeping the respondents out of possession of the property, to which they became entitled on payment of the price in 1941, is simply scandalous.

The appellant had not suffered any harm by the auction-purchase and was entitled to no redress. Court after court on a vain attempt to do justice to him has in fact heaped injustice upon injustice upon the respondents. The question before the executing Court was whether the respondents were entitled to be put in possession of the property under Order 21, Rule 95, after more than 12 years of the auction-purchase. It was decided in favour of the auction-purchasers and the judgment-debtor has come up in appeal.

2. There is a preliminary objection on behalf of the auction-purchasers-respondents, who contend that the appeal is not maintainable, because the order appealed from is not one passed under Section 47. C. P. C.

3. The dispute was whether possession over the property should be delivered to the respondents or not. The sale had been confirmed in their favour long ago and whatever right the appellant had in the property was lost. He had no right to remain in possession of the property after his title had been extinguished.

The question was essentially a question between the respondents and the Court, after confirmation of the sale the respondents were entitled to be put in possession of the property by the Court and nobody could object. Therefore, the question could not be said to be a question bet-one party and another. It may be that under the amendment made to Section 47 by the State of Uttar Pradesh an auction-purchaser is a party, but that does not settle the question. It is not enough that he is a party; the question raised by him should be a question between him (one party) and another and we are of the opinion that Whether he should be put in possession of the property is not a question between him and any other party but a question between him and the Court.

Then Section 47 applies only if a question between one party and another relates to execution, discharge or satisfaction of the decree, but the present question cannot be said to be of that nature, because the respondents have already paid

the price of the property purchased by them and thereby satisfied the decree obtained by the decree-holder. The question of delivery of possession to an auction-purchaser has now nothing whatsoever to do with the execution, discharge or satisfaction of the decree. A decree is executed, and discharged or satisfied when the judgment-debtor's property is put to auction, somebody purchases it and deposits the sale price and it is paid to the decree-holder.

The decree-holder in the present case was a person different from the respondents and as soon as he realised the money deposited by them, his decree was fully satisfied. Any question that arose subsequently, such as that of delivery of possession to the respondents, could not be said to be a question still relating to execution, discharge etc. of the decree. Therefore, the order disposing of the question about delivery of possession to them was not appealable under Section 47, C. P. C.

4. We, therefore, dismiss the appeal with costs.

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