

Sukh Lal Vs. Ghasi Ram

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Court : Allahabad

Decided On : Mar-30-1979

Reported in : AIR1979All411

Judge : A.N. Varma, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 47 - Order 21, Rule 95;
[Limitation Act, 1963](#) - Schedule - Article 134

Appeal No. : Civil Revn. No. 92 of 1977

Appellant : Sukh Lal

Respondent : Ghasi Ram

Advocate for Def. : M.C. Agarwal, Adv.

Advocate for Pet/Ap. : Saeeduddin, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

A.N. Varma, J.

1. This is a judgment-debtor's application in revision directed against an order passed by the learned District Judge, Rampur allowing a Revision filed by the

opposite party against an order passed by the learned Munsiff Rampur dismissing the application of the opposite party for delivery of possession under Order 21, Rule 95 of the Code of Civil Procedure.

2. The relevant facts are these. In execution of a decree obtained against the judgment-debtor-applicant, certain properties belonging to the judgment-debtor were auctioned on 14-11-73. The property was purchased by the opposite-party. A formal order confirming the sale was passed on 30-5-1974, The judgment-debtor-applicant filed an objection under Section 47 of the Code of Civil Procedure on 26-7-1974 questioning the liability of the properties in question to be sold and challenging the validity of the execution proceedings which had led to the sale of the properties in question. This objection was contested by the opposite-party and it was eventually dismissed on 7-2-76. On the termination of the proceedings commenced upon the objection of the judgment-debtor-applicant, a sale certificate was issued in favour of the opposite-party on 7-4-1976. On 12-4-1976, the applicant (opposite party) moved the application giving rise to this Revision for delivery of possession under Order 21, Rule 95, Civil P. C.

3. The judgment-debtor applicant contested the aforesaid application and raised a plea that the application was barred by limitation having been filed more than one year after the determination of the sale. The objection was upheld by the trial court which dismissed the application of the auction-purchaser opposite-party on the ground that it was barred by time.

4. Aggrieved, the auction-purchaser opposite-party filed a Revision before the learned District Judge, Rampur. The learned District Judge took the view that for the purposes of computing the period of limitation prescribed under Article 134 of the I Schedule of the Limitation Act, the period of limitation for an application by auction-purchaser for delivery of possession would be one year from the date of the termination of the proceedings commenced upon the objection of the judgment-debtor-applicant under Section 47, Civil P. C. in which the validity of the sale had been directly called in question. The learned District Judge relied on a decision of the Assam High Court in Krishnadatta Bujarbarua v. Simdhuram Chaudhry reported in AIR 1950 Assam 89 which has placed reliance on a decision

of the Privy Council in *Chandra Mani Saha v. Anarjan Bibi* reported in . The learned District Judge held that the application of the auction-purchaser was, therefore, not barred by limitation. The revision of the auction-purchaser was allowed and the order passed by the trial court was set aside, The trial court was directed to deliver possession of the property to the auction-purchaser,

5. Aggrieved, the judgment-debtor has filed the present revision. Learned counsel for the applicant has contended that the limitation for an application by an auction-purchaser has to be computed from the date of the confirmation of the sale in view of provision of Order 21, Rule 92, C. P. C. Learned counsel for the opposite-party on the other hand urged that the view taken by the Assam High Court in the aforesaid case is correct and sound and the order passed by the learned District Judge calls for no interference by this Court.

6. Having heard learned counsel for the parties, I am clearly of the view that the decision of the learned District Judge is perfectly correct, and that this revision has no force. The question which falls for determination is when does a sale become absolute within the meaning of Article 134 of the Limitation Act. The Privy Council in the above mentioned decision in the case of *Chandra Mani Saha v. Anarjan Bibi* (supra) has observed as follows:--

'Upon a consideration of the sections and orders of the Code, their Lordships are of the opinion that in construing the meaning of the words 'when the sale becomes absolute' in Article 180, Limitation Act regard must be had not only to the provisions of Order 21, Rule 92 (1) of the Schedule of the Civil Procedure Code, but also to other material sections and orders of the Code, including those which relate to appeals from orders made under Order 21, Rule 92 (1).'

The Assam High Court followed the above dictum of the Privy Council and held that even where a judgment-debtor questions an execution sale under Section 47 of the Code of Civil Procedure, the sale cannot be said to have become absolute until the objection is finally determined. The Assam High Court upon a consideration of the various cases including the case in *Chhogan Lal Bagri v. Behari Lal Sahai Ray* reported in : AIR1933 Cal311 , which case was approved by the Privy Council in *Chandra Mani Saha v. Anarjan Bibi* (supra) holding that it

would not be correct to say that sale becomes absolute only on a formal order confirming the sale under Order 21, Rule 92, Civil P. C. The ratio of the case decided by the Assam High Court in Krishnadatta Bujarbarua v. Sindhuram Choudhry (supra) is that till there is no final, conclusive and definitive order confirming a sale, it cannot be said that the sale has become absolute, within the meaning of Article 180 of the Limitation Act (corresponding to present Article 134 of the new Limitation Act), The same view has been taken by Patna High Court in the case reported in Mani Devi v. Ram Prasad reported in : AIR1968 Pat70 . I am in full agreement with the view taken by the (Assam High Court and the Patna High Court, The question is whether the words used in Article 134 of the Limitation Act 'when the sale becomes absolute' should be given the restricted meaning limiting them only to the manner in which a sale becomes absolute under Order 21, Rule 92, Civil P. C. or a wider meaning implying that even when an objection is filed otherwise than under Order 21, Rule 89 and Rule 90, Civil P. C. calling in question the validity of the sale under other provisions of law, the process of rendering the sale absolute is suspended. I would prefer the wider meaning to the narrower meaning holding that even when a sale is called in question by means of objection under Section 47, Civil P. C. filed within the period of limitation prescribed therefor, the sale does not become absolute till the final termination of the proceedings commenced upon such an objection for the purpose of Article 134 of the Limitation Act. Learned counsel for the applicant was unable to cite any decision to the contrary. The authorities cited by the learned counsel for the applicant were on provisions other than Article 180 of the old Limitation Act, corresponding to Article 134 of the new Limitation Act, and were not on the point directly involved in the case and hence I do not consider it necessary to refer to them. However, I may refer to the decision reported in : AIR1932 Cal75 cited by the learned counsel for the applicant in which case it has been held that the limitation for an application under Article 180 of the Limitation Act runs from the date on which the sale becomes absolute. The contention in that case was that the limitation should be computed from the date on which the sale certificate is issued and not the date on which the sale becomes absolute. The Calcutta High Court in that decision held that the limitation cannot be computed from the date of the sale certificate. There can be no doubt about the proposition that limitation is to be

computed from the date on which the sale has become absolute and not from the date of the sale certificate. However, this case is of no help for deciding the question as to when the sale becomes absolute.

7. I, therefore, hold that the application of the auction-purchaser was filed within the period of limitation prescribed by law, and the trial court failed to exercise a jurisdiction vested in it by law in refusing to deliver possession. The decision of the learned District Judge is perfectly correct in law,

8. In the result, the Revision fails and is dismissed with costs.

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