

Ram Sukh Vs. Ram Sahai

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Court : Allahabad

Decided On : May-14-1907

Reported in : (1907)ILR29All591

Judge : Aikman, J.

Appellant : Ram Sukh

Respondent : Ram Sahai

Judgement :

Aikman, J.

1. One Chunni Lal had a simple money decree against the appellant Ram Sukh. In execution of that decree a house belonging to the appellant Ram Sukh was sold, and was purchased by the respondent Ram Sahai, who paid the money into Court. Section 316 of the Code of Civil Procedure provides that the title to the property sold, in a case like this, shall vest in the purchaser from the date of the certificate which is granted to the purchaser under that section, and it contains this important proviso, namely, 'that the decree under which the sale took place was still subsisting at that time.' I infer from this proviso that even though a sale has become absolute on being confirmed under Section 314, the Court may hold its hand and refuse to grant a certificate if before the certificate is granted the decree under which the property was sold is no longer subsisting. In the present case the decree under which the property was sold was reversed on the 19th of March

1904. That was before the sale was confirmed. It appears that no certificate has yet been issued to the auction purchaser, Ram Sahai, and consequently the title to the property sold has not yet vested in him. It also appears that when the decree against him was set aside Ram Sukh applied to be allowed to take out the price of the property, which had been deposited in Court. The purchaser objected to this and said that he should take back the property. The parties were referred to the Civil Court. Thereupon the plaintiff brought the suit out of which this appeal arises, in which he asked that he should be declared entitled to receive from the Court the sale price deposited in Court, or in the alternative that he might be put in possession of the house. The respondent, Ram Sahai, had no objection to the grant of the latter relief, but he objected to the money being taken out of Court. The Court of first instance decreed the first relief asked for by the plaintiff. On appeal the learned Officiating Subordinate Judge, for the reasons set forth in his judgment, held that under the circumstances no title to the house had passed to the purchaser, and that the plaintiff was entitled to get back the house and not the purchase money. The plaintiff comes here in second appeal, In my opinion the view taken by the Court below is right. It is quite true that a bona fide purchaser, who is not himself the decree-holder, does not lose his title to the property by the subsequent reversal of the decree in execution of which he bought. But in the present case the language of Section 316 of the Code of Civil Procedure shows that no title had passed to the purchaser. This being so, the decree of the Court below was, in my opinion, the right decree to pass. I therefore dismiss this appeal with costs.