

Ranjit Singh Vs. Baldeo Singh and anr.

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SooperKanoon Citation : sooperkanoon.com/457828

Court : Allahabad

Decided On : May-25-1908

Reported in : (1908)ILR30All390

Judge : Aikman and ;Griffin, JJ.

Appellant : Ranjit Singh

Respondent : Baldeo Singh and anr.

Judgement :

Aikman and Griffin, JJ.

1. The appellant, on the 20th of November 1897, purchased certain immovable property in execution of his own decree, and the sale was confirmed on the 5th of January 1898. The appellant took no steps to obtain a sale, certificate until the 15th of September 1905, and a certificate was granted to him on the 21st of March 1906. On the 3rd of January 1907, he applied under Section 318 of the Code of Civil Procedure to be put in possession of the property which he had bought in 1897. The judgment-debtor objected that the application was barred by limitation. This objection was overruled by the Court of first instance, but on appeal was sustained by the learned District Judge. The auction purchaser comes here in second appeal. The only plea argued before us was that the application was not barred. In support of this contention reliance is placed on the decisions of the Bombay High Court in Basapa v. Marya (1879) I.L.R. 3 Bom. 433 and in Kashinath

Trimbak Joshi v. Duming Zuran (1892) I.L.R. 17 Bom. 228. These decisions undoubtedly support the contention of the appellants; but, with all deference to the learned Judges who decided them, we do not find ourselves in agreement with them. We concur with what was said by the dissenting Judge, Kemball, J., in the earlier of the two cases. It is no doubt true that, according to the language of Section 318 of the Code, an application under that section cannot be made until a certificate has been granted under Section 316. But Section 316 provides that the certificate is to bear, not the date on which it is actually issued, but the date of the confirmation of sale, and in our judgment the certificate must be deemed to have been granted on the date which it bears, just as a decree is deemed to have been passed, not on the date on which it is signed, but on the date on which the judgment was pronounced. We are of opinion that, although the grant of a certificate is a necessary preliminary to an application under Section 318, such application will be barred under Article 178 of the second schedule to the Limitation Act, if not made within three years of the date on which the certificate is granted, which we take to mean the date it bears, that is, the date of the confirmation of sale. If the auction purchaser delays for upwards of three years in asking for the certificate to which he is entitled he does so at his own risk. It has been held by this Court-- see *Petition of Kishen Singh Weekly Notes.*, 1883, p. 262--that there is no limitation for an application for a sale certificate. If we take it that his right to apply under Section 318 arises, not from the date which the certificate bears, but from the date on which it happens to be issued, an auction purchaser might come in with an application under Section 318 twenty years after the date when title to the property vested in him. The view which we take now is supported by an unreported decision of our brother Richards in *Execution Second Appeal No. 1401 of 1907*, decided on the 12th of this month. For the reasons given above we are of opinion that, whatever other right the appellant may have to enforce his title to the property which he bought, the Court below was correct in holding that his application under Section 318 is barred. The result is that we dismiss the appeal with costs.