

Janki Das Vs. Sandal and ors.

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Court : Allahabad

Decided On : Mar-02-1911

Reported in : 9Ind.Cas.825

Judge : George Knox and ;Karamat Husain, JJ.

Appellant : Janki Das

Respondent : Sandal and ors.

Judgement :

1. This appeal arises out of proceedings taken in execution. The decree under execution is a decree passed on the 13th of December 1909. It was a decree giving the decree-holder right to bring to sale three houses. In the suit which led up to the decree the defendants, who are respondents judgment-debtors took no exception to the effect that the houses were houses which were not capable of transfer. When the decree-holder on the 2nd of February 1910, asked for an order absolute, the respondents again took no exception. It is only when the decree is put into execution that they now, for the first time, urge that they are agriculturists and the houses being the houses of agriculturists are not liable for sale. We have been referred to no authority which lays down that houses of agriculturists are property which cannot by law be transferred. Section 60 of the Code of Civil Procedure, upon which reliance is placed, refers to houses of agriculturists and enacts that in execution of a money-decree such houses are as a rule not capable of attachment or sale. Even Section 60 provides that under certain circumstances

such houses may be liable to attachment and sale. We are not prepared to hold that simply because under the provisions of Section 60, Civil Procedure Code, the houses of agriculturists are property the transfer of which is prohibited by law, therefore, the sale is illegal. The first plea taken prevails, that the Court executing the decree was not competent to go behind its terms and should have proceeded to carry out the order for sale embodied in it. We decree the appeal, set aside the decrees of both the Courts below and direct the Subordinate Judge to restore the proceedings to their proper place in the file and to proceed according to law. The appellant will get his costs in all Courts including in this Court fees on the higher scale.

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