

Basore Singh Vs. Sant Kumar

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Court : Allahabad

Decided On : Apr-09-1937

Reported in : AIR1937All699

Appellant : Basore Singh

Respondent : Sant Kumar

Judgement :

1. This is a second appeal by the judgment-debtor under the following circumstances : The opposite party then represented by Seth Chandra Bhan had a simple money decree against the appellant Basore Singh and an application was made in 1933 to the Court of the Munsif of Lalitpur in Jhansi District in Bundelkhand setting out that the judgment-debtor was an agriculturist and a Thakur by caste and therefore the shares indicated above could not be sold in execution of the decree and the application was for the shares to be leased to the decree-holder for a reasonable time. No objection was taken that the Court could not lease the shares or anything of that nature, but the objection taken was that the judgment-debtor had been declared an insolvent on 23rd March 1934 and that the property therefore had passed to the receiver and that execution could not be taken out against it. On 14th April 1934 the Munsif passed an order setting out that in view of the provisions of the Bundelkhand Land Alienation Act, the property did not vest in the Official Receiver and therefore 'I propose to grant a lease for 20 years in full satisfaction of the decrees'. An appeal was taken against this order and the question argued on first appeal in the Court of the District Judge was that

in regard to the insolvency, and the District Judge held that the property did not vest in the receiver and Section 28, Sub-section (2), Provincial Insolvency Act would not apply. This was his opinion as to what was the legal result in the case, but he also pointed out that if the property did vest in the receiver, then the appellant had no locus standi to appeal. In second appeal the plea of insolvency has been entered but was not pressed, as it is clear that the Bundelkhand Land Alienation Act, Section 3, prevents a transfer of the property and therefore the property would not vest in the Official Receiver under Section 28, Provincial Insolvency Act. Argument in the second appeal has been confined to ground 2 which sets out:

Because the Munsif has no jurisdiction in law to give a patta of the land of the appellant for 20' or 16 or any number of years or at all, the whole proceeding is void and of no effect.

2. Now we find from the record that this ground has been taken under a misapprehension. There is no lease granted by the Munsif or order for a lease. All that he stated in the order under second appeal was that he proposed to grant a lease for 20 years. Now the order of the District Judge in appeal was passed on 16th February 1935. After that order the case again came before the Munsif and on 9th April 1935 he passed an order that the case was referred to the Collector for the purpose of the lease. The Munsif therefore [intended to proceed in accordance with Section 72, Civil P.C., which lays down that in an area where no declaration under Section 68 is in force and the property attached consists of land or a share in land, a temporary alienation may be made by the Collector if authorized by the Court.

3. Considerable argument was made as regards the meaning of this section, but we consider that the section is perfectly clear and that the Court can authorize the Collector to grant a lease and that this was the procedure which the Munsif intended to follow Other provisions in regard to leases are contained in the Third Schedule by which a lease may be granted by the Collector in the case of a decree in a Civil Court for the payment of money where the case comes under Section 68 and there is a Notification of the Local Government and the Third

Schedule is applied by Section 69. A more general question has been argued in this case which really does not arise and that question was formulated by learned Counsel for the decree-holder to the effect that a Civil Court had a general right to grant a remedy in execution by itself giving a lease. The Code does not make any provision for such a procedure and in Section 51 the procedure in execution is laid down. One method (b) is by attachment and sale or by sale without attachment of any property. There is no relief of lease prescribed, but in Sub-section (e) it is stated in any other manner as the nature of the relief granted may require' and the section states 'subject to such conditions and limitations as may be prescribed.' Leases are granted under conditions prescribed in Sections 68 and 72 and the Third Schedule. There is nothing in Order 21 which authorizes execution by leases. On the contrary the Order deals with attachment and sale. Rule 30 lays down that every decree for payment of money may be executed by arrest of the judgment-debtor or by attachment and sale of his property or by both. Then follow a number of provisions to the effect that the sale should be conducted in a public manner after a proclamation and the fixation of a date and by a public officer, the amin, and various opportunities for objections provided for both before and after the sale and the sale must be to the highest bidder and the Court subsequently ratifies the proceeding of the sale. Now if it had been intended that there should be the granting of lease by the Civil Court in execution of a simple money decree, it is clear that the Code would have made a provision for the manner in which the Court should select the lessee and carry out the procedure, but the Code is entirely silent on any such procedure.

4. There are numerous practical difficulties which would arise if a Court adopted the unusual course of granting a lease itself. Where the Court sells property, the sale is conducted by an amin and the Court confirms the sale and the matter is final and the Court has no further procedure. On the other hand, if a Court were to grant a lease for a long period of years, as in the present case 20 years, then the question would arise of some control over the lessee during this period to see that the lessee made regular payments of rent into Court and the Court would also have to arrange for the payment of the land revenue. The officer who heard the case would be transferred in a few years and his successors would have no personal knowledge of the matter. On the other hand, if the Court authorizes the

Collector or some other officer, such as a receiver to grant a lease, the Collector in the one case and the receiver in the other is responsible for the collection of rent and for the payment of land revenue and a control can be exercised by the Court where necessary. These are practical difficulties which doubt-less led the Legislature to avoid introducing any such procedure as the granting of leases by a Civil Court into the Code of Civil Procedure.

5. Learned Counsel for the respondent relied on a Full Bench ruling of the Lahore High Court reported in *Datar Kaur v. Ram Rattan* A.I.R. 1920 Lah. 456, and this ruling has been referred to briefly by a Bench of this Court in *Majhli Dullaya v. Munna Lal* : AIR1932 All571 . We are of opinion that this question does not arise in the present case as the Munsif intended apparently to act under the provisions of Section 72, Civil P.C. Accordingly we do not consider it necessary to come to any decision on this argument, but if the case again arises in this Court, it will be necessary to examine the matter further. For these reasons we dismiss this execution second appeal with costs.

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