

Sahebzad Singh Vs. Lalsa Singh and ors.

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Court : Allahabad

Decided On : Feb-14-1916

Reported in : AIR1916All323; 35Ind.Cas.152

Judge : Piggott and ;Walsh, JJ.

Appellant : Sahebzad Singh

Respondent : Lalsa Singh and ors.

Judgement :

Piggott, J.

1. This is an appeal by a decree-holder whose application for execution has been dismissed by both the Courts below, on a finding that the terms of the decree are so vague and uncertain as to make it incapable of execution. The decree directed the sale of the right, title and interest of one defendant, Naik Singh, in certain specified immoveable property. It dismissed the suit as against certain other defendants and contained a further direction that the rights of these other defendants in the property specified were reserved and exempted from the operation of the decree. When execution was sought, certain of these additional defendants took objections to the execution. One objection was that a certain grove specified in the petition of objections was not within the operation of the decree, because it had been sold by Naik Singh prior to the passing of the decree and was not in his possession at the date of the decree. To this the decree-holder

replied that the objection was well founded, and that he did not desire to execute his decree as against this particular plot of land.

2. Another objection taken was that a considerable portion of the property sought to be sold was in the possession of the objectors as mortgagees. To this the decree-holder replied that the rights and interests of the mortgagees were expressly reserved under the decree, and that he only desired to execute his decree subject to those rights. It does not seem that there was any question as to the extent of the rights of these mortgagees; but even if there had been, it was a matter which the Court could ascertain and determine with precision in the course of its enquiry under Order XXI, Rule 66, of the Code of Civil Procedure prior to the drawing up of the proclamation of sale. The Courts below have fortified their decision by a reference to the case of Muhammad Hasan Askari v. Niaz Husain 29 Ind. Cas. 213 : 13 A.L.J. 428. The reference seems only to illustrate the danger of interpreting one document (the decree in the present case) on the strength of an interpretation put by the Court in another case on a document quite differently worded, that is to say, upon the decree in, the case reported. The decree in the present case might have been more happily worded, but it does not seem to be open to the objection taken to it. It is not too vaguely worded to be incapable of execution. On the contrary the decree-holder himself was asking the Court to execute it after making due allowance for the objections taken by the opposite party. We, therefore, accept this appeal and, setting aside the orders of both the Courts below, direct the case to be sent down, through the lower Appellate Court, to the Court of first instance, in order that it may be readmitted to the file of pending execution cases and proceeded with according to law. The decree-holder is entitled to his costs in all the three Courts.