

Khub Chand Vs. Lachman Das-decree Holder

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Court : Allahabad

Decided On : Dec-20-1929

Reported in : AIR1930All415; 122Ind.Cas.758

Appellant : Khub Chand

Respondent : Lachman Das-decree Holder

Judgement :

1. This is a letters patent appeal brought by one Khub Chand whose position is somewhat obscure. There was a suit brought by Mool Chand against Lachhman Das and Achru Lal in which Mool Chand obtained a decree for possession of certain property from the lower Courts and obtained possession in execution of that decree. Ultimately his decree was set aside by the High Court in second appeal on the grounds that a transfer which he had made in 1895 to one Bansidhar was made to defraud his creditors and on account of this transfer Mool Chand was not entitled to bring a suit. During the pendency of this suit, which was instituted on 3rd July 1919, Mool Chand the plaintiff made a deed of sale of the property in dispute to Khub Chand, the appellant before us, on 26th November 1919. On 2nd December 1919 the heirs of Bansidhar, the transferee from Mool Chand by the fraudulent sale deed, executed a deed of relinquishment in favour of Khub Chand. An application was made without any reference to any section or order, by the defendants Lachhman Das and Achru Lal, asking the Court to transfer to them the possession of the property which had been granted to the plaintiff in execution of his decree from the lower Courts. During that proceeding

the present appellant Khub Chand resisted the defendants and put forward a claim that he was entitled to possession. The vakils for the defendants and for Khub Chand asked the Court to treat the proceedings as proceedings under Order 21, Rule 97. That undoubtedly would have been a proper procedure, but apparently the Munsif passed his order under Section 144, and by that order he refused the claim of Khub Chand to possession.

2. An appeal was brought by Khub Chand to the District Judge, who also refused the claim of Khub Chand to possession. Khub Chand came in second appeal to this Court and a learned Judge of this Court held that the proceedings before the Munsif should be taken to be proceedings under Order 21, Rule 97 and accordingly he remitted an issue to the lower appellate Court as follows:

On 12th September 1923 was Khub Chand claiming in good faith to be in possession of the property in dispute on his own account or on account of some person other than the judgment-debtor?

3. A finding was returned as follows:

Khub Chand was claiming to be in possession on his own account, but he was not claiming innocently and in good faith to be in such possession.

4. In accordance with this finding, the learned. Judge of this Court dismissed the appeal of Khub Chand. We are of opinion in the first place that the learned Judge of this Court was correct in pointing out that the proceedings must be treated as proceedings under Order 21, Rule 97 and the order of the Munsif must be treated as passed under Order 21, Rule 99. Order 21, Rule 103 lays down that any party not being a judgment-debtor against whom an order is made under Rule 98, 99 or 101 may institute a suit to establish the right which he claims to the present possession of the property; but subject to the result of such suit, if any, the order shall be conclusive.

5. We consider therefore that no appeal lay to the District Judge and therefore the order dismissing the appeal of Khub Chand is a correct order. Further, even if any appeal did lie, the finding of the District Judge to the effect that the claim of Khub

Chand was not a claim made in good faith would be binding on this Court in second appeal. For these reasons we dismiss this Letters Patent appeal with costs.

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