

Rati Ram Vs. Barhmajit and ors.

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Court : Allahabad

Decided On : Jul-18-1923

Reported in : AIR1924All302; (1924)ILR46All45

Judge : Sulaiman, J.

Appellant : Rati Ram

Respondent : Barhmajit and ors.

Judgement :

Sulaiman, J.

This is revision under Section 25 of the Provisional Small Causes Courts Act from a decree of the Judge of Small Cause Court, Mainpuri, dismissing the plaintiff's suit. The plaintiff's case in the plaint was that the defendants had executed a sale-deed of certain crops on the 9th of February, 1921 in his favour, that one Kirat Singh attached these crops and an objection being preferred to the attachment by the plaintiff, the execution court dismissed his objection in the 13th of May, 1921; that after that the defendants took away the crops and also refused to return the sale-consideration; hence the suit.

3. In their written statement the defendants pleaded that the whole of the sale-consideration had not been paid. They also said that it was the plaintiff himself who had appropriated the crops and that no part of the crops came into the

possession of the defendants; it was further pleaded that the attachment in favour of Kirat Singh had fallen to the ground for want of payment of expenses of the sale. The amount of the sale-consideration was also challenged, and, lastly, it was contended that the sale-deed had been found, by a court to be invalid and no suit on the basis of it was maintainable. Then there were general pleas that the plaintiff was not entitled to any money or relief. The learned Judge of the court below has thrown out the suit on the preliminary ground that the objection having been dismissed on the 14th of May, 1921, and the present suit having been brought more than a year after that order, it was not maintainable. He relies on a ruling of this Court which has a bearing on Order XXI, Rule 63, of the Code of Civil Procedure.

4. There has been a gross irregularity in this case as there has really been no proper trial on the merits. Order XXI, Rule 63, is a bar to a subsequent suit instituted to establish the right which after the lapse of a year the plaintiff claimed to the property which was in dispute in the proceeding in which' the objection was raised. It is manifest that' in the present suit the plaintiff did not put forward any claim to the property which was then in dispute. He was suing for refund of sale-consideration and not possession of the property. Order XXI, Rule 63, therefore, had no application and nor has the ruling cited by the court below. A case of this kind is not governed by one year's rule of limitation.

5. The learned vakil who appears for the respondents sought to support the decree on a slightly different ground. His point was that the order of the 14th of May, 1921, was conclusive between the parties and that it is not now open to the present plaintiff to go behind the finding on which that order was based. That finding, according to his contention, means that the sale transaction was a fictitious one. This matter has not been gone into by the court below and, therefore, I do not propose to go into it now in revision. I may, However, point out in passing that it is not quite clear whether the judgment-debtor was a party to the proceedings relating to the previous objection, that is to say, whether any notice had been issued to him and he had appeared in court. It has been held in the case of Krishnasami Naidu v. Somasundaram Chettiar (1907) I.L.R. 30 Mad. 335 that a judgment-debtor who is not in fact a party to the claim proceedings, does not in the

eye of law become such by reason solely of his being the judgment-debtor. Furthermore, according to the plea raised in the written statement, the attachment itself fell through because of non-payment of the expenses of sale. If the attachment was released, it is difficult to say why the objector should have been compelled to institute a suit to establish his right. As I have pointed out above, the case has not been decided by the court below on the merits. It has simply thrown it out on the preliminary ground that it was brought more than a year after the order passed in the execution department. I accordingly allow the application, set aside the decree of the court below and remand the case to that court for disposal according to law. Costs here and hitherto will abide the event.

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