

Yakub Ali Vs. Durga Prasad and ors.

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SooperKanoon Citation : sooperkanoon.com/466809

Court : Allahabad

Decided On : May-11-1915

Reported in : AIR1915All410; 30Ind.Cas.877

Judge : Chamier and; Piggott, JJ.

Appellant : Yakub Ali

Respondent : Durga Prasad and ors.

Judgement :

1. The respondents on August 27th, 1908, obtained a decree absolute for sale of certain property. On December 1st, 1908, they applied for execution of the decree by sale of the property of the appellant judgment-debtor and also of the share of Musammat Qulsum Bibi and two ladies named Jafri Begum and Askari Begum. The share of Musammat Qulsum Bibi had been definitely excluded from the decree for sale by the decree of an Appellate Court. When the fact was brought to notice that the decree-holders wished to sell the share of Musammat Qulsum Bibi, an order was passed exempting her share from sale. Later on the Collector to whom the proceedings had been transferred discovered that the decree-holders had applied for the sale of the shares of Musammat Jafri Begum and Askari Begum also, and in January 1911 he sent the record back to the Subordinate Judge for orders. On February 2nd, 1911, the Subordinate Judge called upon the Pleader for the decree-holders to make a statement regarding the shares of the two ladies. Further time was allowed to the Pleader more than once and the last

date fixed for the purpose of receiving his statement was March 1st, 1911. On May 11th, 1911, the application for execution was struck off and the file was sent to the record room. The present application for execution was made on December 20th, 1913. It was presented more than three years after the date of the last application to the Court for execution or to take some step-in-aid of execution, and the judgment-debtor has pleaded that the application is barred by limitation. The decree-holders, on the other hand, have contended, and their contention has been accepted by both the Courts below, that the present application should be regarded as one made for the purpose of reviving and carrying on an execution proceeding which had been suspended by no act of default on their part. It is true that the decree-holders' Pleader failed to make a statement to the Court regarding the shares of the two ladies Jafri Begum and Askari Begum, but it does not appear that the case was called on for hearing on March 1st, 1911, the last date fixed for receiving the statement of the Pleader. It does not appear that either the decree-holders or their Pleader were even aware of the penalty which would be imposed if they failed to make the statement, and it seems to us that when the Pleader failed to make the statement, the proper course to adopt was to direct that the shares of the two women should not be sold and not to throw out the application altogether. Both the Courts below have held that it was not owing to the default of the decree-holders that their application was consigned to the record room. On the whole, we are of opinion that the view taken by the Courts below is correct and we are not satisfied that the Court, when sending the case to the record room, intended to dismiss the application for execution altogether. In the circumstances we think that the present application may properly be treated as an application to revive the proceedings which were suspended on May 11th, 1911, by the order of the Subordinate Judge consigning the record to the record room. The appeal is dismissed with costs.