

Ram Lal and ors. Vs. Ram Narain and ors.

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Court : Allahabad

Decided On : Feb-03-1953

Reported in : AIR1953All467

Judge : Sapru, ;Kidwai and ;Chaturvedi, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 151; Tenancy Law; Uttar Pradesh Tenancy Act, 1939; [Evidence Act, 1872](#) - Sections 114

Appeal No. : Second Appeal No. 343 of 1945

Appellant : Ram Lal and ors.

Respondent : Ram Narain and ors.

Advocate for Def. : Mahabir Prasad Srivastava Adv. for (No. 3)

Advocate for Pet/Ap. : R.B. Lal, ;Raj Bahadur and ;Rajeshwari, Prasad, Adv.

Disposition : Appeal dismissed

Judgement :

Chaturvedi, J.

1. This second appeal arises out of a suit for possession brought by the appellants against the respondents for possession of certain share situate in mahal Gaya Din village Bitwa Gadan Khera in the district of Unnao.

2. The facts which gave rise to this suit are briefly narrated below :Ram Narain, respondent 1, obtained a decree for profits against the three appellants and one Din Dayal from the Court of the Sub-Divisional Officer, Hasanganj, on 26-10-1936. An application for execution of the decree was presented to that Court in August 1939. The execution case was ultimately transferred to the Court of the Sale Officer on 27-3-1940, and all the papers relating to the execution were sent to that officer.

3. On 13-10-1941, the application for execution was dismissed for default by the Sale Officer., who then returned the papers to the Sub-Divisional Officer, Hasanganj. An application was made by the decree-holders for restoration of the execution case and the Sale Officer restored the case on 1-11-1941. The proceedings for sale then commenced and the sale was finally confirmed on 6-3-1943. Raja Ram, respondent 2, was the auction purchaser and possession was delivered to him on 18-4-1943.

4. The plaintiffs then brought the present suit on 2-11-1943, challenging the sale on various grounds. The main question raised in the suit with which we are concerned was that the Sale Officer had no jurisdiction to sell the property involved in the suit. It was also alleged that even if the Sale Officer was competent to execute the decree, his jurisdiction was ousted when the execution case was dismissed for default. It was averred that the Sale Officer had no power to restore the execution application, which had been dismissed for default, and the proceedings that commenced after restoration were devoid of jurisdiction.

5. The suit was contested by the respondents, who traversed the allegations made in the plaint. Their main plea was that Section 47 was a bar to the maintenance of the suit.

6. The learned Munsif, who tried this case, held the sale to be void on the ground that the Sale Officer had no jurisdiction to sell the property and to restore the execution application after it had been dismissed by him for default. He further held that the suit was barred by the provisions of Section 47, Civil P. C., and dismissed the suit.

7. The matter was taken in appeal to the Civil Judge, who held that the Sale Officer Sri Nazir Hasan, Assistant Collector, first class, had no jurisdiction to execute the decree and also to restore the application, which had been dismissed by him for default. His finding was that the sale was not void and therefore the plaintiffs could not succeed. He further held that the suit was barred by Section 47 and Order 21, Rule 92, Civil P. C.

8. The plaintiffs then filed this second appeal, which came up for hearing before one of us, who, in view of the importance of the matters involved in the appeal thought it fit to refer the case to a Full Bench for decision.

9. The learned Counsel for the appellants had raised three points before us :

1. The bar under Section 47 and Order 21, Rule 92, Civil P. C. does not apply inasmuch as the sale was without jurisdiction and a nullity.

2. The Sale Officer to whose Court the execution of the decree was transferred had no jurisdiction to entertain the application.

3. The Sale Officer had no power to restore the execution application which had been dismissed by him for default.

10. The learned Counsel for the appellants at first proceeded to argue the case on the points whether Section 47 was a bar to the suit. He, however, conceded that the question about the bar under Section 47 was dependent upon the question whether the sale was without jurisdiction and that the consideration about the applicability of Section 47, Civil P. C. will not arise in case it was found that there was no defect in the jurisdiction of the Sale Officer conducting the sale. We therefore thought it proper to hear the learned counsel for the appellants on the question whether the sale was a nullity for want of inherent jurisdiction and also because the Sale Officer had no power to restore the application, which had been dismissed for default.

11. The question whether the Sale Officer acted illegally in restoring the execution application need not detain us long. The power vested in Courts under Section 151, Civil P. C., is applicable to the proceedings in execution before the revenue

Court as well. Schedule II, U. P. Tenancy Act does not exclude Section 151, Civil P. C. from application to proceedings in the Revenue Courts under that Act. Section 151 gives inherent power to Courts to make 'such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.' If the Sale Officer had power to dismiss the execution application pending on his file, then surely he had power to restore it also if justice so demanded. In -- 'Bholu v. Ram Lal', AIR 1921 Lah 67 (A), a Division Bench of the Lahore High Court made the following observation :

'Now, if the Court has an inherent power to pass an order of dismissal, there is absolutely no reason why it should not possess a similar power to set aside the dismissal if the ends of justice render it necessary to do so.'

The inherent power given to all the Courts to restore cases dismissed for default has been recognised in a number of cases and it is needless for me to refer to them in detail. It was held by a Full Bench of the Allahabad High Court in -- 'Mahomed Hanif v. Ali Raza : AIR1933 All783 , that the Court under its inherent jurisdiction under Section 151 could set aside an 'ex parte' order in execution proceedings. The same view was taken in -- 'Bajrang Bahadur v. Suraj Narain', AIR 1945 Oudh 210 (C). It is, therefore, idle to contend that the Sale Officer had no power to restore the execution case.

12. The second and the main point relating to jurisdiction was argued at length by the learned Counsel for the appellants. For a proper appreciation of the question of jurisdiction, it is necessary to consider the provisions of the U. P. Tenancy Act, relating to the execution of decrees. Before the U. P. Tenancy Act came into force, the provisions laid down in the Civil P. C. relating to execution of decrees were followed by the revenue Courts in Oudh. The U. P. Tenancy Act has, however, modified the provisions of Order 21 to the extent noted down in Schedule II as mentioned below :

'THE SECONDSCHEDULE,

List II.

Serial No.

Sections.

Modifications

11

21

'(2) If. the property against which execution is applied for is a mahal or a share of a mahal or the holding of a permanent tenure- holder, or the fixed rate tenant or an under-proprietor the decree shall be sent to the Collector, who shall execute the same as if it had been a decree of his own Court.'

It is not disputed that the property in suit is of the description mentioned in Schedule II. For its sale the provision is that the decree shall be sent to the Collector for execution.

13. In this case, the Court which passed the decree was the Court of the Sub-Divisional Officer of Hasanganj. And the Court to which the decree was transferred for execution was the Court of the Sale Officer, Sri Nazir Hasan. Under Section 261, Tenancy Act, the State Government is authorised to confer on an Assistant Collector of the first class 'all' or any of the powers of a Collector under the Act, It was in exercise of this authority that on 2-3-1940, the following notification was issued: 'The Governor is pleased to confer on all Assistant Collectors of the first class who had hitherto exercised, or may hereafter exercise, such first class powers for a period exceeding seven years, the 'powers of a Collector exercisable under serial No. 11 of List II of Schedule 2 of the said Act for so long as they hold the office of an Assistant Collector of the first class.' (Vide notification No. 329/1-33 dated 2-3-1940, published in Part I of the U. P. Gazette of 9-3-1940).

14. It is admitted that Sri Nazir Hasan, Sale Officer, fulfilled the necessary qualifications, & that under the above notification the State Government had invested him with 'the powers of a Collector' exercisable under serial No. 11 of list II of Schedule 2. He was, therefore, competent to exercise the powers of a

Collector in matters relating to execution of decrees, and the learned Counsel for the appellant does not question it.

15. The contention of the learned Counsel for the appellants however, is that although Sri Nazir Hasan, Sale Officer, had the power to execute decrees, yet he could not exercise that power independently, that is to say Sri Nazir Hasan could not receive execution applications directly from the Court which passed the decree. In other words, the contention is that the sending Court (i.e. the Court of the Sub-Divisional Officer, Hasanganj) had no option but to comply with the directions given at serial No. 11 that

'the decree shall be sent to the Collector who shall execute the same as if it has been a decree of his own Court.'

Stress has been laid on the word 'Collector' and it is argued that the word 'Collector' means only the Collector of the district. It is pointed out that the sending Court should have first sent the case to the Collector, and it was then open to the Collector to pass it on to the Sale Officer. The question relating to jurisdiction, therefore, narrows down to this : Whether the Court which passed the decree could send the case directly to the Sale Officer or whether it was incumbent on the Court of the Sub-Divisional Officer to send it to the Collector only.

16. The crux of the whole question is whether the word 'Collector' used at serial No. 11 of List II of Schedule 2 can be construed to mean not only the Collector of the district but also the Assistant Collector, who has been invested with the powers of a Collector in the matter of execution of decrees. The question is one of construction. The provision made at Item No. 11 of List II of Schedule II is a rule of procedure and should be construed liberally, that is in such a way as will lead to the smooth working of the scheme of the Statute. In matters relating to execution of decrees it is of primary importance that cases are disposed of expeditiously; and it was perhaps with that object in view that the Government issued a notification already mentioned to confer on all Assistant Collectors of the first class the powers of a Collector exercisable under serial No. 11 of list II of Schedule 2. The vesting of the powers of 'a Collector' in the Assistant Collector could not but mean that the Assistant Collector in whom those powers were vested was to act

as a Collector for cases under serial No. 11 of list II. In my view the word 'Collector' means not only the Collector of the district but also includes within its fold the Assistant Collector who has been specially invested with the powers of a Collector. In construing the word 'Collector' in this manner the intention of the Legislature will be better effectuated than if we were to limit the word 'Collector' to only the Collector of a district. I am, therefore, of opinion that the word 'Collector' should be interpreted to mean and include: all Assistant Collectors, who have been invested with the powers of a Collector for the purposes of entry No. 11, list II of Schedule 2. In view of the interpretation put by me, the Sub-Divisional Officer, Hasanganj, was competent to transfer the case directly to the Court of the Sale Officer.

17. There is one more aspect of the question. Assuming that the word 'Collector' in entry No. 11 refers only to the, Collector of the district, it cannot be disputed that the Collector had authority to pass a special or general order to the effect that all execution applications relating to properties of the nature described in entry No. 11 should be sent direct to the Court of the Sale Officer by the Courts which passed the decrees. It is a matter of common knowledge that thousands of such cases arise, and for better administration it is always necessary to pass general orders to avoid unnecessary delay in the disposal of the cases. If all the cases are first transferred to the Collector and then the Collector retransfers them to the Sale Officer appointed for conducting sales in the district, it will lead to unnecessary waste of public time and money. To avoid it the easiest way was to make a general order that all cases arising in the district will be sent by the respective Courts direct to the Sale Officer, The, very fact that Sri Nazir Hasan was working as a Sale Officer for the whole district leads one to infer that there must have been some such general order authorising Sri Nazir Hasan to receive execution cases from the various Courts in the district. The act of the sending Court (Sub-Divisional Officer, Hasanganj) in sending the case direct to the Sale Officer will be presumed to have been done legally unless it is demonstratively not so. A presumption of this type can be raised under Section 114, Evidence Act, which runs thus :

'The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human

conduct and public and private business, in their relation to the facts of the, particular case.'

The illustration (a) says that 'the Court may presume that judicial and official acts have been regularly performed.'

18. We can, therefore, safely presume that the official act of the Sub-Divisional Officer, Hasanganj, in sending the case direct to the Sale Officer was done in a regular manner and that the Court of the Sale Officer was seised of the jurisdiction to proceed with the execution of that case.

19. As pointed out earlier, the authority of the Sale Officer, Sri Nazir Hasan, to conduct the sales in cases transferred to him cannot be disputed. At worst, we can only say that although he had jurisdiction to proceed with the sale in question, there was irregular exercise of the jurisdiction inasmuch as the case did not reach him through the proper channel of the Collector. Such a defect does not oust the inherent jurisdiction of the Court of the Sale Officer which he undoubtedly had. This mere irregularity on the part of the sending Court in sending the case directly to the Sale Officer, if such an irregularity existed at all, loses its force as we find that the sale was confirmed by the Collector himself.

20. For reasons given above, the Sale Officer (Sri Nazir Hasan) had jurisdiction to entertain the execution of the case transferred to him by the Sub-Divisional Officer, Hasanganj. The sale of the property in suit was effected by a Court of competent jurisdiction. In this view of the matter, the appellants have no case and the Courts below were justified in dismissing the suit.

21. It is unnecessary to go into the question about the bar under Section 47, Civil P. C. and I make no comment upon it.

22. I, therefore, direct that the appeal be dismissed with costs.

23. KIDWAI J.: I agree.

24. SAPRU J.: I agree.

25. BY COURT: The appeal is dismissed with costs.

