

Abdul Shakur Vs. Muhammad Matin

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Court : Allahabad

Decided On : Jan-07-1924

Reported in : AIR1924All307; (1924)ILR46All414

Judge : Stuart and ;Mukerji, JJ.

Appellant : Abdul Shakur

Respondent : Muhammad Matin

Judgement :

Stuart and Mukerji, JJ.

1. The facts which have given rise to this appeal are these. There were two decrees, one No. 15 of 1912, in favour of one Parsidh Narain and against the judgment-debtor Muhammad Matin. There was another decree, No. 95 of 1912, in favour of Abdul Shakur against the same judgment-debtor Muhammad Matin. The decree No. 95. of 1912 ordered the sale of some property which was included in the decree No. 15 of 1912. In fact the decree No. 15 of 1912 was passed on an earlier mortgage. The two decrees were put into execution and the property involved being ancestral, they were sent to the Collector for execution. The subsequent mortgagee Abdul Shakur satisfied the earlier decree No. 15 of 1912 on the 18th of September, 1914. He then asked the Subordinate Judge that the amount of the prior decree should be added to the amount due under his own decree, namely, decree No. 95 of 1912. The learned Subordinate Judge by order

dated the 3rd of July, 1915, found that this could not be done but he suggested that Abdul Shakur might proceed under the provisions of the Code of Civil Procedure, Schedule I, Order XXXIV, Rules 12 and 13. Thereafter the decree No. 95 of 1912 was again sent to the Collector for execution by order dated the 22nd of June, 1916. When execution was proceeding before the Collector, Abdul Shakur made an application to the Subordinate Judge, on the 30th of January, 1917, asking that the Collector might be informed that the sum of Rs. 2,075 which had been paid by him to Parsidh Narain for the satisfaction of decree No. 15 of 1912 should also be realized and the property sold, not subject to the mortgage created in favour of Parsidh Narain, but free from incumbrance. This application he was competent to make under the provisions of law already quoted, namely, Order XXXIV, Rules 12 and 13, of the Code of Civil Procedure. The learned Subordinate Judge acceded to this request and ordered that the application of Abdul Shakur might be sent to the Collector for his information. The property was sold on the 20th of August, 1918, and was purchased by Abdul Shakur. He gave a receipt, a copy of which is on the record. He thought that the point should be made clear that the property had been sold free from incumbrance and that the amount of money for which he had purchased was to be credited first towards the decretal amount due under the decree No. 15 of 1912 and the balance should go to satisfy his own decree. His application to the Collector and his appeal to the Commissioner were unsuccessful. Subsequently he made an application before the Subordinate Judge for recovery of what was due to him under his decree. He gave credit for the money realized by the Collector towards the satisfaction of the prior decree and the balance he applied towards part payment of his own decree. Objections were raised as to his execution, with the result that this second appeal comes before us.

2. The learned District Judge held that the orders of the Collector and the Commissioner stood in the way of the decree-holder getting his money. He found that the Collector and the Commissioner were the executing courts and that, they having decided that the only decree that was executed was the decree No. 95 of 1912, nothing further could be done in the matter.

3. The contention that has been raised by the learned Counsel for the decree-holder before us is this. The Collector was to find out the best method of raising

money in order to satisfy the decree passed by the Civil Court. He had absolute jurisdiction to choose the best method allowed to him by the law; but beyond that it was not within his province to decide how much money was- due to the decree-holder and how much of the decree had been satisfied. In support of this proposition of law the learned Counsel has quoted two cases, namely, *Tapesri Lal v. Deokinandan Rai* (1893) I.L.R. 16 All. 1, and *Bhurchand Hansraj v. Vira Champa* (1912) I.L.R. 37 Bom. 32. Both these cases support his contention. Any consent of the decree-holder could not give the Collector any jurisdiction which he did not possess under the law. One important fact which must not be lost sight of is this. No rights of any third party are involved. It was the decree-holder who was prepared to forego his rights as a prior mortgagee which he had acquired by payment of the decree passed in favour of Parsidh Narain. He unequivocally declared that he was not going to rely on any prior mortgage. The judgment-debtor was there and orders were passed in the case and it must be taken that he was all along aware of the same. No attempt has been made to show that the procedure of the learned Subordinate Judge has in any way prejudiced him. In the circumstances it appears to us to be clear that the three properties which were sold on the 20th of August, 1918, were sold free from the incumbrance created in favour of Parsidh Narain and the money that was realized must be credited first towards the satisfaction of Parsidh Narain's decree and the balance should go towards the part payment of the decree No. 95 of 1912.

4. It remains to notice the receipt which was given by Abdul Shakur on his purchase. As the learned District Judge has remarked, that receipt does not say that Abdul Shakur bought the property in full satisfaction of his decree No. 95 of 1912. The properties were sold, as the receipt indicates, in execution of decree No. 95 of 1912 and in execution of no other decree. The property that was sold could be sold free from incumbrance with the consent of Abdul Shakur. The receipt does not say that Abdul Shakur purchased the property subject to the prior mortgage acquired by him.

5. The result is that we allow the appeal, set aside the decree of the court below and remand the execution case through the lower appellate court to the first court for disposal according to law. Costs of this appeal and the appeal in the court

below must be paid by the judgment-debtor respondent.

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