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Court : Allahabad

Decided On : Nov-14-1912

Reported in : 17Ind.Cas.591

Judge : Henry Griffin, J.

Appellant : Gopal Das

Respondent : Chedi Lal

Judgement :

Henry Griffin, J.

1. This appeal arises out of a suit to have it declared that the sale of a certain house held in execution of a decree was null and void so far as the plaintiff's interest in the house was concerned. Gopal Das the plaintiff, is the grandson of one Parbhu Lal against whom one Budhsen held a decree. In execution of that decree, a house was sold and purchased by Chedi Lal respondent in this Court. The date of the auction-sale was the 22nd of September 1908 But on the 19th of September, the judgment debtor, Parbhu Lal, had sold another house to the decree-holder and in the sale-deed the decretal amount was set off against part of the consideration. Thus on the date of the sale, the decree had already been satisfied, although satisfaction was not certified to the Court executing the decree When Chedi Lal sought possession of the house, he was resisted by the plaintiff. The latter's objection was disallowed by the Court on the 26th of February 1910

The present suit was instituted on the 26th of April of the same year. The plaintiff alleged in paragraph 2 of the plaint that the western portion of the house which had been sold was the joint property of the plaintiff, of his two brothers who are defendants second party and of Parbhu Lal This paragraph of the plaint was admitted' in the written statement. Several, defences were raised including one of limitation. The Court of first instance held that the Article applicable was 11(a) of the Limitation act and, therefore, the suit was within time and that the sale had been held fraudulently, decree- holder and the judgment-debtor being in collusion. The lower Appellate Court, while holding that the decree had already been satisfied before the sale, was unable to hold that there had been fraud or collusion or any thing wrong with the sale held, although the sale-deed had been executed only three days before the auction-sale took place and although the auction-purchaser was the nephew of the decree-holder. The Court below, disagreeing with the Court of first instance, held that Article 12 of the Limitation Act was applicable to the case and that the suit was barred. The learned Subordinate Judge further appears to be of opinion that the plaintiff had failed to prove any title to the house. He apparently overlooked the fact that the plaintiff's title was not questioned. On appeal to this Court, it was contended on behalf of the plaintiff-appellant that the Court below was wrong on the question of limitation. In my opinion, the Court of first instance correctly applied the provisions of Article 11(a) to this case. It is not necessary to construe strictly the terms of the plaint. It is apparent what the plaintiff sought was to establish his right to the house and to have the sale set aside so far as it affected his rights. I agree with the Court of first instance that the suit is not barred. While I find some difficulty in following the reasoning of the Court below which holds that the sale was not fraudulent or collusive, I find quite as much difficulty in following the argument now advanced in support of the decision of the Court below that the appellant was bound to discharge the debt of his grandfather. There was no question in the trial of the case as to the pious obligation on a Hindu son to discharge the debt of his father or grandfather. It is only a matter of common sense that no one should be made to pay a debt which has already been discharged. This is what has happened in this case. Plaintiff's share in the house has been sold to satisfy a decree. It has been shown to the satisfaction of both Courts that the decree, in execution of which the

house in question was sold, had been satisfied before the auction-sale took place. I allow this appeal, set aside the decree of the lower Appellate Court and restore that of the Court of first instance with costs including in this Court fees on the higher scale.

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