

Alimuddin and ors. Vs. Gobind Prasad

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Court : Allahabad

Decided On : Oct-25-1926

Reported in : AIR1927All208

Appellant : Alimuddin and ors.

Respondent : Gobind Prasad

Judgement :

Iqbal Ahmad, J.

1. This is an execution first appeal by the judgment-debtor and is directed against an order made by the Court below by which the value of the property directed to be sold has been assessed at a certain figure for the purpose of being inserted in the sale proclamation that is to be drawn up in pursuance of the provisions of Order 21, Rule 66, of the Civil P.C.

2. A preliminary objection has been taken to the hearing of the appeal on behalf of the respondent that no appeal lies as the order complained of does not amount to a decree within the meaning of Sections 2 and 47 of the Civil P.C., and is not one for which an appeal is provided under Order 43, of the First Schedule to the Code. In support of this objection reliance has been placed on the case of Ajodhia Prasad v. Gopi Nath [1917] 39 All. 415.

3. The learned Counsel for the appellants maintains that the order is one that comes within the purview of Section 47 of the Civil P.C., and as such, an appeal lies against that order and he has placed reliance on the case of *Shiam Lal v. Roshan Lal* [1916] 14 A.L.J. 363. In my opinion the preliminary objection is well founded and must prevail. No doubt the words of Section 47 of the Civil P.C., are very wide and as was pointed out in the case of *Mukhtar Ahmad v. Muqarrab Hussain* [1912] 34 All. 530

if taken in their literal sense will cover every order of an interlocutory nature that may be passed in execution proceedings. But that does not seem to have been the intention of the Legislature.

4. The order to be appealable as a decree must conclusively determine the rights and liabilities of the parties with reference to the reliefs granted by the decree. If any other view were adopted, the result would be that the proceedings in execution could be arrested at every stage by an appeal on behalf of the judgment-debtor against every order in the course of the execution proceedings. Obviously this could not have been the intention of the Legislature in enacting Section 47 of the Code. Every order passed in the course of the execution proceedings may, in one sense, be characterized as an order relating to the 'execution, satisfaction and discharge of the decree,' but in order to be appealable, it must be of such a nature as to come within the word 'decree' as defined by Section 2(2) of the Code. This was the view held by this Court in the case reported as *Husanai Bhai v. Bellu Shah Gilani Shah* A.I.R. 1924 All. 808.

5. As has been pointed out in the case of *Ajodhia Prasad v. Gopi Nath* [1917] 39 All. 415 the proceedings held under Order 21, Rule 66 are of an administrative nature and are not judicial proceedings.

6. In other words the estimate of the value of the property made by the Court for the purpose of being inserted in the sale proclamation is not an adjudication of a nature that is binding on the parties to the execution proceeding. The judgment-debtor, if he makes an application under Order 21, Rule 90 of the Civil P.C., for setting aside the sale is perfectly at liberty to assail the correctness of the estimate, for the simple reason, that the order fixing the value of the property in

proceedings under Order 21, Rule 66 does not involve an adjudication of the properties. Vide Tota, Ram v. Gouri Shankar A.I.R. 1924 All. 480.

7. The contention of the learned Counsel for the respondent that no appeal lies against the order assessing the value of the property in proceedings under Order 21, Rule 66 is borne out by the decision in Sivagami Achi v. Subramania Ayyar [1904] 27 Mad. 259 and in Deokinandan Singh v. Bansi Singh, [1912] 16 C.W.N. 124 and by the case of Ajodhia, Prasad v. Gopi Nath [1917] 39 All. 415. The case last mentioned is a Division Bench case of this Court and is binding on me.

8. The case of Shiam Lal v. Roshan Lal [1916] 14 A.L.J. 363, on which reliance has been placed by the learned Counsel for the respondent, is, no doubt, a case decided by a Bench of two Judges, one of whom was a party, to that decision, did not decide as to whether or not an order of this nature is or is not appealable, but the other learned Judge seems to have been of opinion that the order was appealable, but he guarded his observations by the remark that he did not meant to lay down any general principle of universal application and that his decision was confined to the particular circumstances of the case which he was then deciding. The weight of authority is decided in favour of the view that no appeal lies against an order fixing the estimated value of the property sought to be sold in proceedings under Order 21, Rule 66 of the Civil P.C., and I so decide. Accordingly I allow the preliminary objection and dismiss the appeal with costs.