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Court : Allahabad

Decided On : Dec-18-1930

Reported in : AIR1931All377

Appellant : Anand Krishna

Respondent : Kishan Devi and ors.

Judgement :

Mukerji, J.

1. This appeal raises a point of law for which no authority either way has been produced before us. The point has to be decided on general principles. It appears that the respondent Mt. Kishan Devi held a decree for money for a large amount against four persons, the appellant Anand Krishna and his brother Raj Bahadur Krishna, Shiam Krishna and their mother Mt. Kishan Devi. At one stage of the execution a certain house was attached as the property of the judgment-debtors and was sold on 24th August 1922. It was purchased by the decree-holder Mt. Kishan Devi, and the sale was in due course confirmed, The sale was however contested by a suit by one Jagmohan Swarup, who claimed to have purchased a half-share in the property, being the share belonging to the judgment-debtors' ancestors brother Badri Krishna. The suit succeeded with the result that Mt. Kishan Devi lost a half-share in the property purchased by her.

2. By the application for execution out of which this appeal has arisen Mt. Kishan Devi seeks to recover a sum of Rs. 3,000 being one-half of the auction-sale-price paid by her. The judgment-debtor Anand Krishna objected to the execution but was unsuccessful. Hence this appeal.

3. A preliminary point has been taken on behalf of the respondent, namely the appeal is not maintainable at the instance of Anand Krishna, inasmuch as the property that has been sought to be attached is the property not of Anand Krishna but of his brother Raj Bahadur Krishna. We do not think that this preliminary objection has any force. The execution application itself shows that the decree-holder sought execution against all 'the judgment-debtors and not against Raj Bahadur Krishna alone. If the application be successful and if the property attached do not fetch the full amount for which execution has been taken out, there will be nothing to prevent the decree-holder from seeking execution against the present appellant. The present appellant would then be met with the plea that he ought to have preferred an objection to the execution and the execution order operates as *res judicata*. The decree is a joint one, and we think any one of the judgment-debtors may object to the execution although for the time being his personal property has not been attached.

4. On the merits we think the appeal ought to succeed. When the decree-holder sought the attachment of the house the judgment-debtors never asserted that they had title to the whole of it, Further the judgment-debtors never demanded any particular price for the property. The decree-holder alone chose the property to be sold and she alone chose what price she would pay for it. Such being the case there does not seem to be any equity in favour of the decree-holder by which it may be said that she is entitled to recover one-half of the price paid by her, because she lost one-half of the property attached and sold. Suppose that the property was really worth Rs. 20,000, and the decree-holder obtained it at the auction-sale for Rs. 6,000. The property left with her, after the success of the claim of Jagmohan Swarup would still be worth more than Rs. 6,000 paid by the decree-holder. The illustration given would show that there is no principle of law under which the decree-holder auction-purchaser can turn back and ask for a refund, as it were, of the price paid by her.

5. The learned Subordinate Judge relied on the case of Radha Kishan Lal v. Kashi Lal A.I.R. 1924 Pat. 273. That case is clearly distinguishable on the ground that there the title of the judgment-debtor to the lot No. 1 was found to be entirely absent. There was no consideration whatsoever for the purchase. In the circumstances Rule 91, Order 21, Civil P.C., would have applied and would have permitted the auction-purchaser to ask for a refund of the purchase money after the setting aside of the sale. In the Patna case there was no discussion as to the maintainability or otherwise of the application. It was assumed that the application was maintainable and the only point that was decided was one of limitation. The Patna case is therefore no authority whatsoever for the point we have to decide. Further, as we have shown, the facts of the case show that there is no conflict between the case before us and the Patna decision. We may point out that the Patna case was not accepted as laying down good law by two learned Judges of the Madras High Court in the case of Muthu Kumar Swami Pillai v. Muthu Swami Thevan A.I.R. 1927 Mad. 394. In the Madras case it was held that the decree-holder, if he thought that he should avoid the sale altogether, should have made an application within 30 days of the sale under Article 166, Limitation Act and his failure to do so prevented him from maintaining a subsequent application for execution of the decree. This however was a question of limitation and limitation alone.

6. On general principles, we are of opinion that the decree-holder purchaser is not entitled to ask the judgment-debtors to pay one-half of the price which she herself chose to pay. In the result we allow the appeal, set aside the order of the Court below and dismiss the execution application of the decree-holder, with costs to the appellant throughout.