

Mutsaddi Lal Vs. Sultan

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Court : Allahabad

Decided On : Apr-12-1933

Reported in : AIR1933All743; 147Ind.Cas.813

Appellant : Mutsaddi Lal

Respondent : Sultan

Judgement :

Sulaiman, C.J.

1. This is an appeal by the decree-holder, Mutsaddi Lal, from an order passed by the Court below on an application made under 5. 144, Civil P.C. The facts of the case are somewhat complicated and admittedly' there has been a tangle. Suit No. 30 of 1911 was first instituted on the basis of a mortgage-deed against the respondent, Sultan, who was then a minor, and a number of other defendants. An ex parte decree was obtained by the mortgagee which was put in execution and part of the mortgaged properties was sold at auction and purchased by the decree-holder himself. After this execution sale, Suit No. 211 of 1917 was filed by Sultan and three others for a declaration that the previous decree was not binding upon them inasmuch as they had not been properly represented. This litigation terminated in favour of Sultan, it being held that the previous decree was not binding upon him at all, but the previous decree was maintained as against his co-plaintiffs. The result therefore was that the previous decree and sale stood good as against the shares of all the defendants except Sultan, whereas they were null

and void as against Sultan.

2. The decree-holder then applied that the previous mortgage suit should be revived as against Sultan. The suit was again fought out. Sultan pleaded that some of the items included in the mortgage money were not supported by legal necessity. The finding this time was that the total amount of the mortgage money was only Rs. 1,353 together with some costs and future interest. A preliminary decree was passed on 7th August 1918, against Sultan for the last mentioned amount and for the sale of the entire mortgaged property in case of non-payment. The list attached to this decree apparently gave the entire mortgaged property and not only the half share of Sultan. But later on a final decree was prepared on 19th July 1918 for the consolidated sum of Rs. 2405. This decree directed the sale of the half share in the mortgaged property. But the whole of the amount found due against Sultan was entered as the mortgage money. This decree became final and no appeal was preferred from it.

3. A third suit was then started by the decree-holder-purchaser, Mutsaddi Lal, for the possession of half of the estate belonging to the mortgagor other than Sultan because the decree-holder apparently had failed to obtain possession of the property purchased by him at auction. This suit came up to the High Court which decided on 27th May 1926 that the sale of the half shares of the defendants other than Sultan was perfectly good and that only the half share of Sultan had been released. The learned Judges clearly stated that in their opinion the decree obtained by Mutsaddi Lal was still in force and his purchase of one half of the property had never been set aside and they further held that the Court which decided the mortgage suit in 1918 had no jurisdiction to interfere with the previous sale of 1911 in respect of a portion of the property which was not in suit before it. Apparently the description of the property as given in the preliminary decree only was placed before the learned Judges and their attention was not drawn to the different descriptions in the final decree. Anyhow as between Mutsaddi Lal and Sultan it was definitely held by the final appellate Court that the previous sale of 1911 as regards the half of the property stood good and the Court had no jurisdiction in the subsequent mortgage suit to direct the sale of that property over again.

4. In pursuance of the final decree In his favour Sultan deposited Rupees 2340 on 4th March 1923 in the mortgage suit. In the course of the execution proceedings the parties came to some settlement for the payment of a lump sum and a joint application was presented in which it was stated that if the objector paid Rs. 175 within a certain time, the entire mortgage property might be redeemed and released and that the execution case' might be struck off on the satisfaction of the entire amount. The amount was deposited within the time fixed.

5. Sultan now claims that having fulfilled the terms of this compromise and deposited the amount in time he is entitled to get possession not only of his half share but even the original shares of his co-mortgagors. It is this dispute which had led to the present proceeding. Prior to this Sultan made an attempt to apply under Section 47, in Suit No. 104 of 1921, for recovery of possession but his application was rejected. The learned Subordinate Judge has held that there are some contradictory orders inter parties. But although he is unable to interfere with the order rejecting the application under Section 47 in Suit No. 104 of 1921 he felt himself bound by the compromise in Suit No. 30 of 1911. He has accordingly held that because the entire money under that decree has been deposited, the mortgagor is entitled to get back the entire mortgaged property. He is of opinion that the effect of this compromise in Suit No. 30 of 1911 is practically to nullify the decree of the High Court in Suit No. 104 of 1921.

6. The decree-bolder has come up in appeal and the first point urged on his behalf is that Section 144, Civil P.C., has no application to the facts of this case. We think that this preliminary objection is well-founded. Section 144, Civil P.C., can apply only where and in so far as the decree is varied or reversed and the Court of first instance is asked to order restitution. Obviously the variation or reversal of a decree contemplated by the section is that made either by the Court itself in the exercise of its inherent jurisdiction of reviewing its own order or by a superior Court interfering in appeal or revision or perhaps by another Court passing a declaratory decree. It cannot possibly contemplate the variation or reversal of a decree under a private compromise entered into by the parties whether out of Court or in the course of an execution proceeding. It has been recently held by a Full Bench of this Court in Gobardhan Das v. Dau Dayal : AIR1932 All273 that the; execution

Court has no power to pass an order substituting a compromise entered into by the parties for the decree originally passed by it. The function of the execution Court is to execute the decree as it finds it and not to add to it or vary it or in any way modify it. As a matter of fact the Court did not in so many terms substitute this compromise for the original decree. It merely ordered that the application for execution should be struck off as referred to in the compromise. In any case we are unable to hold that the effect of this private compromise of the execution proceedings was to nullify either the original decree in Suit No. 30 of 1911 or in any way to nullify the decree of the High Court in Suit No. 104 of 1921. The application under Section 144, Civil P.C., was therefore altogether misconceived. The learned advocate for the respondent has urged that the application of Sultan although professedly made under Section 144, Civil P.C., might be treated as an application for execution of the final mortgage decree dated 19th July 1918. As has been pointed out above this final decree directs the sale of only half of the entire mortgaged property. We cannot in an execution proceeding following upon the final decree consider the language of the preliminary decree, if it is at variance with that of the final decree. The applicant Sultan is not entitled to claim the whole of the entire mortgaged property in execution of the final decree dated 19th July 1918 until that decree is amended.

7. There is one unfortunate circumstance which must be mentioned. When the mortgage suit was decreed against Sultan the entire mortgage money was found to amount to about Rs. 2,405 including costs. The judgment-debtor deposited practically the whole of this amount minus what had been given up under the private arrangement by the decree-holder. It was not only half of the mortgage money which was paid. One would have thought that when part of the property had been already purchased by the decree-holder and he was going to retain that property, there might well have been rateable distribution. The effect of this may be to drive the judgment-debtor to an application for a review of the final decree' so as to bring it in conformity with the preliminary decree; such a course might reopen the whole question again. Let the case be put up again for hearing on 21st March 1933.

8. We allow the appeal and setting aside the order of the Court below send the case back to that Court for the disposal of the execution matter. The parties will bear their own costs of the appeal.

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