

Ram Narain Vs. Ali Muhammad and ors.

Ram Narain Vs. Ali Muhammad and ors.

SooperKanoon Citation : sooperkanoon.com/479237

Court : Allahabad

Decided On : Jun-18-1914

Reported in : 24Ind.Cas.807

Judge : Henry Richards, C.J. and ;Tudball, J.

Appellant : Ram Narain

Respondent : Ali Muhammad and ors.

Judgement :

1. This is an application in revision and arises out of the following circumstance. The opposite party obtained a mortgage decree against certain property. The decree was put into execution and the property sold. The present applicant, Ram Narain, filed an application to have the sale set aside. It was disallowed. He appealed to this Court which dismissed the appeal on the 12th of May 1913. The decree-holder purchased the property at the sale. He applied to the Court to be placed in possession of the property. An order was issued to the Amin. Ram Narain tiled an application under Order XXI, Rule 100. On the date, fixed the decree-holder failed to appear. The Court found that the objection filed by Ram Narain was valid and that he was in possession' of the property to which his objection related, and it passed an order dismissing the application for delivery of possession with costs for want of prosecution. The proper order which the Court ought to have passed on this application was an order directing the objector, Ram Narain, to be reinstated in possession of the property. However, a short time after

this the decree-holder again put in a fresh application asking the Court to place him in possession of the property which he had purchased. An order was passed and the Amin went and placed him in formal possession. Thereupon Ram Narain again applied to the Court under Order XXI, Rule 100, and that Court without making any inquiry rejected the application on the ground that by reason of this Court's order dated the 12th of May 1913, Ram Narain had no locus standi for the objections taken by him against delivery of possession to the opposite party. It is quite clear that the Court below had completely misunderstood the judgment of this Court dated the 12th of May 1913. Ram Narain within three weeks of this order applied to the Court below for review. That application remained pending till the 2nd of January 1914, when it was finally rejected. He filed the present application in revision on the 2nd of February 1914. There has been, therefore, no undue delay. Objection is taken that it is contrary to the practice of this Court to entertain an application in revision when a remedy, by way of a regular suit, is open to the applicant. We agree with this Ordinarily this practice should be followed, but each case must be judged upon its own peculiar circumstances. In the present case it is quite clear that Ram Narain had obtained an order entirely in his favour on the 11th of August 1918. It was an order passed after consideration of the merits, though no doubt it was ex parte in so far as the other side had not appeared. In the circumstances of the present case we think that we ought to entertain the application in revision. It is quite clear that the lower Court's order, which the applicant seeks to revise, is quite wrong. The Court ought to have gone into the question raised by the application and ought to have passed a proper decision thereon instead of summarily rejecting it. We, therefore, allow this application, set aside the Court's order and remand the case to that Court with orders to re-admit the application on its original Dumber and proceed to hear and determine the same according to law. Costs of this application will be costs in the cause and will abide the result.