

Saroop Singh Vs. Narsingh and ors.

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Court : Allahabad

Decided On : Jul-17-1929

Reported in : AIR1929All846; 122Ind.Cas.679

Appellant : Saroop Singh

Respondent : Narsingh and ors.

Judgement :

Dalal, J.

1. On 24th March 1927 during execution of a money decree obtained by the defendant an order was passed for the attachment of the property in suit. Two days after this order was passed the property was sold by a private sale by the judgment-debtor, the owner of the property, to the plaintiffs. The plaintiffs failed to have the attachment removed in the execution Court, so they instituted the present suit under C. 21, Rule 63, Civil P.C., for a declaration that the property is not liable to be sold in execution of the defendant Sarup Singh's decree. The lower appellate Court decreed the suit on two grounds: (1) that the doctrine of lis pendens as enunciated in Section 52, T.P. Act, did not apply and (2) that the order of attachment did not give the judgment-debtor the benefit of the provisions of Section 64, Civil P.C.

2. In execution proceedings of a money decree, no right to immovable property is directly and specifically in question, and the provisions of Section 52, T.P. Act, will,

therefore, not apply. Counsel for the respondents referred the Court to a bench ruling of the Calcutta High Court in Mahadeo Saran v. Thakur Prasad Singh [1910] 14 C.W.N. 677. It was held there that where a property not mortgaged is attached in execution of a money decree the doctrine of lis pendens does not apply to the sale of the property.

3. The defendant did not produce in evidence that a prohibitory order under Order 21, Rule 54(1) had been served on the judgment-debtor before the execution of the sale-deed in favour of the plaintiffs; nor has it been proved that the order was proclaimed at some place on or adjacent to the property attached as required by Cl.(2) of that rule. It was his duty to produce proof thereof, and in the absence of such proof it must be presumed that the prohibitory order was not served on the judgment-debtor nor proclaimed at the property before 26th March 1926. There is a Full Bench ruling of the Madras High Court on the subject, Sinnapan v. Arunchalam [1919] 42 Mad 844. It was held in that case that an attachment operates as a valid prohibition against alienation of the attached property only from the date on which the necessary proclamation is made and copy of the order affixed as contemplated in Order 21, Rule 54.

4. This appeal is dismissed with costs.