

Sobla and anr. Vs. Jethmal

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Court : Rajasthan

Decided On : Oct-24-1960

Reported in : AIR1961Raj191

Judge : Jagat Narayan, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 151 - Order 21, Rules 94 and 95

Appeal No. : Civil Revn. No. 388 of 1960

Appellant : Sobla and anr.

Respondent : Jethmal

Advocate for Def. : Hastimal, Adv.

Advocate for Pet/Ap. : Sumerchand, Adv.

Disposition : Application dismissed

Judgement :

ORDER

Jagat Narayan, J.

1. This is a revision application by the judgment-debtors against two orders of the execut-ing court one dated 16th August, 1960 amending the sale certificate and

the other dated 20th August 1960 ordering delivery of possession over the property sold in execution of the decree.

2. The facts which have given rise to this application are these. Jethmal obtained a money decree against Sobla and Harjida judgment-debtors and put it into execution. In the execution application he prayed for the attachment and sale of the house of the judgment-debtors consisting of a Kholda, a Jhumpa and a Bara bounded as follows:

North --

Modiaand Surta Bambi.

West --

Dhanias/o Suja Bambi.

South --

Door,Guzar, Dharma Bambi, and Shrimali Jata Shanker.

East --

Khalsaland.

The estimated value of this property was shown as Rs. 400/- in this application. This very property was attached. It was fully described in the warrant of attachment in the same way as in the execution application. In the sale proclamation however the details of the property namely that it consisted of Kholda, Jhumpa and Bara were omitted. Ail that was mentioned was that the houses of the judgment-debtors bounded as shown in the execution application were to be sold. The property was sold in favour of the decree-holder who applied for delivery of possession under Order 21 Rule 95 C. P. C.

The application was opposed by the minor sons of the judgment-debtors inter alia on the ground that there was no property of the judgment-debtors answering the description given in the sale proclamation. The decree-holder filed a reply saying

that by mistake the northern boundary of the property was shown as southern boundary and the southern boundary as northern boundary and that the property sold was identifiable. The application of the decree-holder for possession was dismissed by the executing court by order dated 5-3-60 on the ground that there was no property answering the description given in the sale proclamation.

The decree-holder thereupon filed an application for the amendment of the sale certificate under Section 151 C. P. C. On this application the executing court ordered the correction of the boundaries given in the sale certificate. Thereafter it ordered the delivery of possession to the decree-holder on the basis of the amended sale certificate.

3. I have perused the material on record with the assistance of the learned counsel for the parties. The judgment-debtors executed a sale-deed of their house and the land attached thereto in favour of a third party after the auction sale had taken place. A comparison of the boundaries given in this sale-deed with the boundaries mentioned in the sale certificate goes to show that what was intended to be sold and was actually sold was the Kholda, Jhumpa and Bara belonging to the judgment-debtors and bounded as shown in the sale-deed.

It appears that the property owned by Moodia and Surta Bambi was sold in favour of Modi Keshri-mal after the execution application had been filed. The first objection taken on behalf of the applicants is that this is not a case of misdescription. Reliance was placed on some observations made in *Thakur Barmha v. Jiban Ram*, 41 Ind App 38 (PC). In that case the property described in the warrant of attachment and the sale proclamation did exist on the spot.

In the present case there is no property answering the description given in the execution application, the warrant of attachment and the sale proclamation. It is however clear that by mistake the property was misdescribed inasmuch as in place of the northern boundary the southern boundary was given and vice versa.

4. Next it was argued that a mistake of this nature could not be corrected on an application under section 151 C. P. C. Reliance was placed on a Single Bench decision of the Patna High Court in *Ramasanker v. Khudiram*, AIR 1942 Pat 328.

In that case Khewat Nos. 11/1, 11/2 and 11/3 having an area of 47.28 acres were advertised for sale and were sold. Subsequently an application under Section 151 C. P. C. was made for the amendment of the sale certificate on the ground that the total area of these plots was 117.13 but that by mistake the area was shown as 47.28 acres.

The sale certificate was corrected by the executing court under Section 151 C. P. C. but this order was set aside by the High Court. It was observed that Section 151 C. P. C. is a section which can be applied to make orders necessary for the ends of justice in those cases only where no other provision is applicable. But that was not the sole basis of decision in that case. The property had been purchased by third parties. It was observed:

'The property which has been purchased by the auction purchaser was advertised for sale at the instance of the decree-holders, and the question as to what they asked the Court to sell is by no means an irrelevant question and cannot be decided in their absence'.

The executing court amended the sale certificate relying on the authority of *Surji Din v. Ram Prasad Singh*, AIR 1937 Oudh 144 and some other decisions. On behalf of the applicants it was argued that these decisions cannot be considered to be good law in view of the D. B. decision of our Court in *Mst. Chanda v. Mst. Bilam Kunwar*, ILR (1953) 3 Raj 914. I have carefully gone through this decision, A mistake had been made in describing the mortgaged property in the mortgage-deed in that case which was repeated in the plaint, the decree and the sale proclamation etc.

Relying on *Shujaat Mand Khan v. Govind Behari*, AIR 1934 All 100(2) and *T. M. Ramakrishnan v. G. Radhakrishnan*, AIR 1948 Mad 13, it was held that a mistake anterior to the suit could not be corrected on an application under Section 151 C. P. C. and that the proper remedy of the aggrieved party was to institute a suit under Section 31 of the Specific Relief Act. In the present case the mistake which it is sought to get corrected is not anterior to the suit.

It is a mistake made in giving the boundaries in the execution application which was repeated in the warrant of attachment, the sale proclamation and the sale certificate. I see no reason why this mistake cannot be corrected on an application under Section 151 C. P, C. It is in the ends of justice that this injury should be remedied and needless expense and inconvenience to parties avoided.

5. Another argument advanced on behalf of the applicants was that the executing court having dismissed the application of the decree-holder under Order 21 Rule 95 once, his remedy was either to prefer an appeal against that order or to bring a suit. That application was dismissed on the ground that there was no property answering the description given in the sale certificate on the spot. That order did not debar the decree-holder from applying for correction of the boundaries and then applying again for delivery of possession on the basis of the amended certificate.

6. I accordingly see no reason to interfere with the order of the lower court and dismiss the application. In the circumstances of the case, I direct that parties shall bear their own costs.