

Badrabahu Nainar Vs. Devendra Nainar and ors.

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Court : Chennai

Decided On : Feb-16-1967

Reported in : (1969)2MLJ163

Appellant : Badrabahu Nainar

Respondent : Devendra Nainar and ors.

Judgement :

T. Ramaprasada Rao, J.

1. The third defendant in the suit is the petitioner in this Civil Revision Petition. The auction purchaser after obtaining the sale certificate in his favour of the suit property which was sold in execution of a decree applied to the lower Court, under Order 21, Rule 95, Civil Procedure Code for delivery of possession of the property purchased by him. The sale was confirmed on 10th March, 1959, after the disposal of Execution Application No. 147 of 1959 filed by the judgment-debtor for extension of time for payment of the decree amount under an arrangement by then entered into between him and the decree-holder. After the dismissal of Execution Application No. 147 of 1959 the judgment-debtors took up the matter in revision in Civil Revision Petition No. 1071 of 1959. This revision petition was dismissed on 26th August, 1960. The present application for delivery is filed on 19th August, 1963, within three years from the date of disposal of the Civil Revision Petition by this Court. The point for consideration, therefore, is whether this application for

delivery was made within three years from the date when the sale became absolute.

2. What is, therefore, the meaning of the expression 'when the sale becomes absolute?' The words have a special significance and have to be interpreted. Whether the absoluteness or finality is attached to the sale on the date when the Court sale is confirmed by the executing Court or when a finality is reached by referring to all the incidental proceedings taken thereafter is indeed a question of fact and depends on the circumstances of each case. But if the proceedings taken pursuant to such execution proceedings are so intimately connected as to create a sufficient legal nexus between one and the other, it can be presumed that the proceedings in execution are still at large and there has not been such a finality as would impress the sale with the seal of absoluteness within the meaning of Article 134 of the Indian Limitation Act of 1963. As sales of immovable properties in execution of decrees and the proceedings relating thereto are envisaged in the main, in certain defined rules of the Code of Civil Procedure, it is necessary to bear in mind such rules before deciding whether a sale has become absolute. The expression 'when the sale becomes absolute' has to be interpreted with reference to its associate meaning : found elsewhere in the Code. The principle of the doctrine of *noscitur a sociis*, 'the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it,' is applicable equally in gathering the meaning of composite expressions like the one under review by referring to the other provisions of the Code.

3. Whether a sale has become absolute or not depends upon whether any legal proceeding intimately connected with it is still pending so as to create a cloud of doubt about its finality. No doubt, such a legal proceeding must have a nexus to the original one relating to the sale of the immovable property in execution. In *Sornam Pillai v. Tiruvazhiperumal Pillai* : AIR1926 Mad857 , it was rightly pointed out that a suit to set aside the sale on the ground that the decree itself is invalid is quite alien to the execution proceedings and in such a case the time taken for the disposal of the said suit cannot be excluded for computing the period of limitation under Article 134. (old Article 180) of the Limitation Act. This is because there is

no reasonable connection or relation between the proceedings taken by the judgment-debtor and the fact of confirmation of sale in favour of the auction-purchaser. But in the instant case the judgment-debtor wanted time to pay off the decree amount and thus avoid the forced sale. There was a joint memo, filed by both the decree-holder and the judgment-debtor whereby the judgment-debtor was granted some indulgence to pay off the decree amount in two instalments. On the failure of the judgment-debtor to pay the second instalment, the executing Court refused to grant further time. As against this, Civil Revision Petition No. 1071 of 1959 was filed in this Court and stay of delivery of possession to the auction-purchaser was also asked for. The Civil Revision Petition was finally heard and dismissed, on 26th August, 1960. In these circumstances it is to be considered whether these proceedings initiated by the judgment-debtor are so intimately connected with the sale and whether they have any bearing upon it. If this Court ultimately had granted time to the judgment-debtor, no question of delivery of possession of the properties sold to the auction-purchaser will arise. Therefore the absoluteness or finality of the sale was indeed at large during the pendency of the Civil Revision Petition No. 1071 of 1959. Therefore, the crucial test to ascertain whether the sale has become absolute within the meaning of Article 134 (old Article 180) of the Limitation Act of 1963, is to see whether there are any contemporaneous proceedings taken by any party to the suit questioning the sale or to postpone it or avoid it and if any such perceptible connection is there between such a pending proceeding and the sale itself, then it can reasonably be presumed that the finality in the Court sale has not yet reached. It is also important to note that in Execution Application No. 147 of 1959 the lower Court confirmed the sale on 10th March, 1959 and it was this order which was impugned in Civil Revision Petition No. 1071 of 1959 and which was ultimately disposed of on 26th August, 1960. It is convenient to refer to the following observations of the Judicial Committee of the Privy Council reported in *Chandramani Shaha v. Anarjan Bibi* .

Take a case in which the Subordinate Judge allowed the application to set aside the sale; in that case, of course, there could be no confirmation of the sale as far as the Subordinate Judge was concerned, as there would be no sale to be confirmed. But if, on appeal, the High Court allowed the appeal, and disallowed the application to set aside the sale, the High Court, would then be in a position to

confirm the sale, and, on such an order of confirmation by the High Court, the sale would become absolute. Again, take a case in which the Subordinate Judge disallowed the application to set aside the sale; there would then be confirmation of the sale by the Subordinate Judge and the sale would become absolute as far as this Court was concerned. If the High Court allowed an appeal, and set aside the sale, there would then be no sale, and, of course, no confirmation and no absolute sale.

Upon consideration of the sections and orders of the Code, their Lordships are of opinion that in construing the meaning of the words 'when the sale becomes absolute' in Article 180 of the Limitation Act, regard must be had not only to the provisions of Order 21, Rule 92 (1) of the Schedule to the Civil Procedure Code, but also to the other material section and orders of the Code, including those which relate to appeals from orders made under Order 21, Rule 92 (1). The result is that when there is an appeal from an order of the Subordinate Judge, disallowing the application to set aside the sale, the sale will not become absolute within the meaning of Article 180 of the Limitation Act, until the disposal of the appeal, even though the Subordinate Judge may have confirmed the sale, as he was bound to do, when he decided to disallow the above mentioned applications.

4. The only distinguishing feature in the case under discussion is that the confirmation of sale was sought to be kept in abeyance by an interlocutory application taken by the judgment-debtor on the ground that there was an arrangement inter se between the judgment-debtor and the decree-holder to avoid the sale and that he might be given relief on such an alleged understanding. This proceeding which is also a legal proceeding, is so intimately connected with the sale that it cannot be said with reasonable certainty that the sale, in so far as the very Court is concerned and for all purposes, has become final in the eye of law. In *Kamakshi Ammal v. Arukkani Ammal* : AIR1957 Mad440 , Rajammannar, C. J., and Panchapakesa Ayyar, J., were considering a case where after the so called confirmation of sale, an application was filed by a third party under Order 21, Rule 58, Civil Procedure Code. There the learned Judges laid down.

We are clearly of the view that the sale could not be said to have become absolute till the claim suit was finally disposed of on 15th August, 1944. Till then the title of the judgment-debtor remained to be finally settled, namely, whether the judgment-debtor was entitled to the entire property unencumbered or she was entitled to the equity of redemption at the time of the attachment and the sale.

Till the rights were finally adjudicated in the course of the execution proceedings, it cannot be predicated what exactly the purchaser is entitled to get by virtue of his purchase. It will be only then that she can file an application for delivery of possession.

5. In the instant case, there has been a terminus a quo in the concerned proceedings only on 26th August, 1960 when Civil Revision Petition No. 1071 of 1959 was finally disposed of by this Court. Till then the sale was at large. The auction-purchaser cannot be said to have secured an identifiable end enforceable right, compelling him to apply for delivery of possession of the property. Therefore, the application for such delivery made within three years from 26th August, 1960, by the respondent is in time and is proper. The lower Court rightly appreciated the question of law. The Civil Revision Petition, is, therefore, dismissed with costs.

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