

Chandan Singh Vs. Ramdeni Singh

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Court : Kolkata

Decided On : Feb-17-1904

Reported in : (1904)ILR31Cal499

Judge : Stevens and; Mitra, JJ.

Appellant : Chandan Singh

Respondent : Ramdeni Singh

Judgement :

Stevens and Mitra, JJ.

1. The plaintiff-respondent obtained a decree for rent against the defendants-appellants on the 6th December, 1901. The defendants unsuccessfully questioned in the first Court the rate of rent on the basis of which the plaintiff had t laid his claim and they preferred an appeal which was decided in their favour on the 2nd June, 1902. In the meantime and before the decision of the Appellate Court, the plaintiff brought the holding to sale in execution of his decree. The sale took place on the 14th March 1902 and it was confirmed on the 22nd April, The plaintiff afterwards took possession of the property purchased by him. Thereafter an application was made, by the defendants under Section 244 of the Code of Civil Procedure to have the sale set aside.

2. Their main contention was that the decree under which the sale had taken place had been practically reversed and that they were entitled to have the sale set aside on that ground.

3. The Munsif gave effect to their contention and held, relying on the cases of *Sadasivayyar v. Muttu Sabapathi Chetti* (1881) I.L.R. 5 Mad. 106 and *Set Umenmal v. Srinath Ray* (1900) I.L.R. 27 Calc. 810, that the sale could not stand.

4. The plaintiff appealed to the District Judge, who dismissed the defendant's application and confirmed the sale holding that, inasmuch as the decree was not reversed, but was only modified, the sale could not be set aside upon the authorities referred to by the Munsiff.

5. The present appeal is against this decision of the District Judge; and the defendants repeat the contention which they urged in the lower Courts.

6. It is now settled law that, when a decree-holder purchases under his decree and the decree is afterwards reversed in appeal, he is not entitled to the benefits of the execution proceeding and the sale thereunder. The principle is distinctly laid down by the Judicial Committee in the case of *Zainul-abdin Khan v. Muhammad Asghar Ali Khan* (1887) I.L.R. 10 All. 166 : L.R. 15 I.A. 12 and has been followed in a case somewhat different in *Set Umedmal v. Srinath Ray* (1900) I.L.R. 27 Calc. 810. In the latter case the decree-holder under an ex parte decree brought the judgment-debtor's property to sale and the sale was confirmed. Afterwards the judgment-debtors applied to have the decree set aside-under Section 108 of the Code of Civil Procedure. The decree was set aside, but was restored on the second hearing of the case. The sale, however, which had taken place under the first decree, was set aside, because the precise decree under which the sale had been held had been set aside on the application under Section 108 of the Code of Civil Procedure.

7. In the case before us the Appellate Court set aside the decree and made a new decree, in lieu of the decree passed by the Munsif. The sale had taken place in execution of the decree, which was set aside by the Appellate Court; and we can see no-distinction in principle between the present case and the case of *Set*

Umedmal v. Srinath Ray (1900) I.L.R. 27 Calc. 810. We think the same principle applies and the District Judge has erred in the view he has taken in reversing the decision of the Munsif.

8. We therefore restore the decision of the Munsif with costs.

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