

Bujha Roy Vs. Ram Kumar Pershad

Bujha Roy Vs. Ram Kumar Pershad

SooperKanoon Citation : sooperkanoon.com/853097

Court : Kolkata

Decided On : Feb-16-1899

Reported in : (1899)ILR26Cal529

Judge : Ghose and ;Stevens, JJ.

Appellant : Bujha Roy

Respondent : Ram Kumar Pershad

Judgement :

Ghose and Stevens, JJ.

1. This is an appeal against an order of the Subordinate Judge of Shahabad, dated the 2nd September 1897, directing that a sale-certificate granted to the auction-purchaser--the decree-holder at whose instance a certain property was sold--be amended, as prayed for by the said auction-purchaser.

2. It appears that the auction-purchaser had previously made an application for delivery of possession in accordance with the boundaries which he set forth as the correct boundaries of the lands which had been sold; but his prayer was refused on the 7th December 1895, upon the ground that the boundaries as set forth by him did not agree with those in the certificate of sale. An application was subsequently made on the 27th February 1896, for amendment of the sale-certificate. It was treated as an application for review under Section 623 of the

Code; and a review was granted on the 13th June 1896. An investigation was then ordered, the result of which was that on the 2nd September 1897, an order was made, directing the amendment of the sale-certificate in the manner applied for by the auction-purchaser as far as one of the plots, viz., No. 2, was concerned. In this appeal, the propriety of the order of the 2nd of September 1897, as also that of the order dated the 13th June 1896, granting the review, have been questioned. The respondent, however, has raised a preliminary objection upon the ground that no appeal lies to this Court against the order complained against. We think that this objection must prevail. The Code does not provide for an appeal against such an order. The only section of the Code which the appellant relies upon is Section 244, it being contended that the question raised was one relating to the execution, discharge or satisfaction of the decree. We are unable to accept this contention as correct; for the decree itself has already been executed, and no question now arises in relation to the execution thereof, the only question being whether the certificate given to the auction-purchaser gives a right description of the property sold. In this view, we are supported by the case not *Bhimal Das v. Ganesha Koer* (1897) 1 C.W.N., 658, decided by Trevelyan and Stevens, JJ. We hold that this appeal is incompetent, and must therefore be dismissed.

3. We have, however, been asked to deal with this appeal as an application under Section 622 of the Code, but we do not think we ought to do so in the present proceedings.

4. We make no order as to costs in this appeal.