

Sariatoolla Molla Vs. Raj Kumar Roy and anr.

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Court : Kolkata

Decided On : Apr-03-1900

Reported in : (1900)ILR27Cal709

Judge : Francis W. Maclean, K.C.I.E., C.J. and ;Banerjee, JJ.

Appellant : Sariatoolla Molla

Respondent : Raj Kumar Roy and anr.

Judgement :

Maclean, C.J.

1. The question we have to decide is a very short one, whether the application by the decree-holder of the 20th of July 1895 to be put into possession of the property which he had purchased under the execution proceedings is an application made in accordance with law to the proper Court to take some steps in aid of execution within the meaning of Sub-section 4 of Article 179 of the second schedule to the Limitation Act. If the question be answered in the affirmative the present application, of the 6th of August 1898, is admittedly not out of time, but, if it be answered in the negative, the present application is time barred.

2. There is no authority, so far as we know, or so far as our attention has been directed, in the High Court of this province bearing directly upon the question. We have, it is true, been referred to various decisions, which lay down what does, and what does not in certain cases, and under the particular circumstances of those

cases, constitute such an application. For my own part, however, inasmuch as each of those decisions depends upon the particular circumstances of the case, and the particular nature of the application which was made, I do not think that they afford a very useful guide to the present case.

3. There is a direct decision of the Allahabad High Court in the case of *Moti Lal v. Makund Singh* (1897) I.L.R., 19 All., 477, that an application such as the present is within Clause 4 of Article 179 of the second schedule of the Limitation Act, as an application to take some steps in aid of execution. That decision, it is true, is not binding upon this Court, but it is a decision which is entitled to every attention and to every respect at our hands, and it is one in which I agree with the conclusion arrived at. It is somewhat difficult to say that such an application, as we are considering, does not fall within the language of the statute read literally. It has not been disputed that the application was made to the proper Court and in the execution proceedings, and that, in those proceedings, the Court had power to make an order for possession.

4. The object of the application was to complete the matter: to complete, by giving possession, the purchase which the applicant had made. It is said that this was not a step in aid of execution, as upon the confirmation of the sale those execution proceedings came to an end. There was nothing more to be done. That is the argument. We are invited to read the expression 'execution' as applying, not to what has taken place, but only to that which is about to take or is in course of taking place. I am not disposed to put so narrow a construction upon the language of the article, and there are cases in this Court which tend to show that, in circumstances not so strong as the present, applications have been held to be applications to take a step in aid of execution, from which I infer that the Courts are disposed to place, and I think rightly, a somewhat broad and liberal construction upon the article rather than a limited or confined one. Here it was a step in aid of execution, in the sense that it was a step to make that which had been done final and complete, and, in this sense, to aid the execution, which can hardly be said to have terminated, as, admittedly, the application was properly made in the execution proceedings, which must thus be regarded as still pending, and, if properly made in those proceedings, it is difficult to see, if it were not a step

in aid of execution, what sort of a step it was, or what was its object.

5. Upon the best consideration, which I can give to the case, I think the application of the 20th July 1895 was such a step, and the appeal, consequently, must be dismissed with costs.

Banerjee, J.

6. I am of the same opinion. I think that, unless the contention that has been raised on behalf of the judgment-debtor-appellant, can be pushed to this extent, that the words 'applying in accordance with law to the proper Court to take some step in aid of execution of the decree' in Clause 4 of Article 179 of the second schedule of the Limitation Act, refer to the taking of some step in aid of execution in the future and not in aid of execution commenced and carried out in the past, an application like the one under consideration in this case, that is the application of the 4th of July 1895, must be held to be one coming within the clause of the article referred to above; and I am not prepared to hold that the words of the clause are used in the limited sense of referring only to steps in aid of execution to be had in the future. There is no case in point in this Court that we are aware of; and though some of the cases cited by the learned vakil for the appellant may lend some support to his contention, arguing by analogy, I feel bound to say with all deference to the learned Judges who decided those cases that I am unable to assent to the proposition therein laid down. But I do not think they stand in the way of our deciding the present case in the way we think it ought to be decided, or render it necessary for us to refer it to a Full Bench.

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