

Devi Singh Vs. Tara Chand

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Court : Himachal Pradesh

Decided On : May-20-1961

Reported in : AIR1962HP8

Judge : C.B. Capoor, J.C.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Section 47 - Order 21, Rule 98

Appeal No. : Execution Second Appeal No. 1 of 1959

Appellant : Devi Singh

Respondent : Tara Chand

Advocate for Def. : Kirti Ram, Adv.

Advocate for Pet/Ap. : Hira Lal Vaidya, Adv.

Disposition : Appeal dismissed

Judgement :

C.B. Capoor, J.C.

1. This appeal by the judgment-debtor is directed against an appellate order of the learned District Judge Mandi and Chamba Districts whereby an appeal preferred by the appellant against an order of the learned Senior Sub-Judge dismissing an objection under Sections 47 and 151 of C. P. C., was dismissed on the ground that

no appeal lay. The respondent -- a stranger to the decree -- had purchased at auction certain property and an application was made by him for delivery of possession of the said property.

That application was resisted by the judgment-debtor appellant on a variety of grounds which did not find favour with the learned Senior Sub-Judge, and as already observed an appeal filed by the appellant before the learned District Judge was dismissed on the ground that the objections raised did not relate to execution, discharge or satisfaction of the decree and as such Section 47 of C. P. C. did not apply and no appeal lay.

2. A preliminary objection has been raised on behalf of the respondent that the appeal is not maintainable. The same considerations apply to the preliminary objection as to the main question arising in the appeal, namely as to whether an appeal lay against the order of the executing Court directing the respondent auction purchaser to be put in possession of the property on the finding that the obstruction by the appellant to the delivery of possession proceeding was without any just cause.

3. An order made under Order 21, Rule 98 of C. P. C. is not appealable under Section 104 of C P. C. or under Order 43 Rule 1 of that Code. An appeal against such an order can lie, if the resistance offered by the judgment-debtor to the delivery of possession proceedings in pursuance of the sale certificate can be held to be covered by Section 47 of C. P. C.

4. The relevant portion of Section 47 C. P. C. runs as below:--

'All questions arising between the parties to the suit in which the decree was passed or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

Explanation -- For the purposes of this section, a plaintiff whose suit has been dismissed, a defendant against whom a suit has been dismissed and a purchaser at a sale in execution of the decree are parties to the suit.'

5. There was a conflict of judicial authority on the question as to whether an auction purchaser in execution of a decree whether he be the decree-holder himself or a stranger was a party to the suit under Section 47 of C. P. C. or not but that conflict has now been set at rest by the amendment of Section 47 by Act 66 of 1956. An explanation has been added to the aforesaid section providing inter alia that a purchaser at a sale in execution of a decree is a party to the suit for the purposes of the section.

6. It is, however, significant that when the aforesaid explanation was added Rule 103 of Order 21 was not amended. That rule provides that any party other than a judgment-debtor against whom an order is made under Rule 98, Rule 99, or Rule 101 may institute a suit to establish the right which he claims to the present possession of property. There is some conflict between Section 47 and Order 21 Rule 103 inasmuch as while according to the former section, a separate suit is barred if a question relating to execution, discharge or satisfaction of the decree arises between the decree-holder purchaser and the judgment-debtor, where as according to Rule 103 a separate suit may be filed by a party other than a judgment-debtor, if such a question is decided against that party. Rule 103 was perhaps omitted to be amended when Section 47 was amended by Act 66 of 1956.

7. There has also been conflict of judicial opinion on the point as to whether a question relating to delivery of possession of the property sold at auction is a question relating to execution, discharge or satisfaction of the decree. Where the auction purchaser is the decree-holder himself one view is that the question relating to delivery of possession of the property sold at auction is a question relating to execution, discharge or satisfaction of the decree.

The reasoning is that a decree cannot be said to be satisfied until the decree-holder has either obtained the sale proceeds or possession of the property which represent money for which he obtained his decree, vide *Varalakshamma v. Kosaraju Jannayya*, AIR 1943 Mad 318; *Debi Prosad v. Satish Chandra*, AIR 1944 Cal 328 (1), *Balaji Kashinath v. Anandrao*, AIR 1927 Nag 294 and *Pirimal v. Sanghay*, AIR 1925 Sind 171.

8. The other view is that there is no distinction in the Civil Procedure Code between a decree-holder auction purchaser and a stranger auction purchaser. The decree-holder purchaser does not seek to get possession in execution of his decree but by virtue of his being declared the purchaser at the auction sale and that upon the judgment-debtor's property being sold and the amount due under the decree being realized the decree is fully executed, discharged and satisfied and no question relating to the execution, discharge or satisfaction of the decree remains to be considered; Vide Hargovind Fulchand v. Bhudar Raoji, AIR 1924 Bom 429 (FB), Gaya Bakhsh Singh v. Rajendra Bahadur Singh, AIR 1928 Oudh 199 (FB); J.A. Martin v. S.M. Hashim, AIR 1930 Rang 61; Firm Ram Singh Gopal Singh v. Firm Abdullah Habibullah, AIR 1944 Lah 402 (FB); Abdul Gani v. Raja Ram, AIR 1916 Pat 216 (FB); Savlaram Gangaram v. Vishwanath Anant, AIR 1945 Bom 386 and Bhagwati v. Banwari Lal, ILR 31 All 82.

9. In the case of a stranger auction purchaser also judicial opinion is divided. It has been held by the Nagpur and the Madras High Courts that a question as to delivery of possession between stranger auction purchaser and judgment-debtor relates to execution, discharge or satisfaction of the decree and is covered by Section 47, vide Veyindramuthu Pillai v. Maya Nadan, AIR 1920 Mad 324. (FB); Rambhau Vithalrao v. Nagarmal Jitmal, AIR 1948 Nag 94 and Ramautar Laxman Parsad v. Mst. Jagrani Bai, AIR 1956 Nag. 81.

10. In the 1920 Madras case it was assumed that the question of delivery of possession is a question relating to execution, discharge or satisfaction of the decree. The 1956 Nagpur Case was based on an earlier decision reported as AIR 1948 Nag 94. In the last mentioned case reliance was placed upon a decision of the Privy Council reported in Prasunno Coomar Sanyal v. Kali Das Sanyal, ILR 19 Cal 683. In that case it was admitted in arguments before their Lordships of the Judicial Committee that it was the practice in India to join the auction purchaser to an execution application in the executing Court, because he was the person most interested in the result, and in the course of their judgment the following observations were made by their Lordships:

'It is of the utmost importance that all objections to execution sales should be disposed of as cheaply and as speedily as possible.'

Their Lordships are glad to find that the Courts in India have not placed any narrow construction on the language of Section 244.' (now Section 47) .

11. Relying upon those observations their Lordships of the Nagpur High Court expressed their view in the following words:--

'In our judgment the language of Section 47 is wide enough to embrace both the propositions we have set out above. That being so, we are of opinion that Courts should interpret the section in its wider form even if a narrower construction is possible. We say this because of the broad rules of policy to which their Lordships of the Privy Council refer and also because it obviates anomalies.'

12. On the other hand it has been held by the Allahabad High Court in Hari Kishan v. Radha Kishan reported in AIR 1957 All 251, that the question of delivery of possession to an auction purchaser has nothing whatsoever to do with execution, discharge or satisfaction of the decree and as such no appeal lies against such an order.

13. The use of the words 'a purchaser at a sale in execution of the decree' in the explanation to Section 47 makes it abundantly clear that the Legislature did not intend to make any distinction between a decree-holder auction purchaser and a stranger auction purchaser.

14. It is significant that according to Order 21 Rule 103 of C. P. C. a judgment-debtor against whom an order is made under Order 21 Rule 98 of C. P. C. has no right to file a separate suit challenging that order and the position boils down to this that a judgment-debtor against whom an order is made under Order 21 Rule 98 of C. P. C. will have neither a right to file a separate suit nor a right to file an appeal, if the question relating to delivery of possession as between a stranger auction purchaser and a judgment-debtor is not held to relate to execution, discharge or satisfaction of the decree.

The intention of the Legislature might well have been that the disputes between auction purchaser and the judgment-debtor regarding delivery of possession over the property purchased at auction should be decided by the Court executing the decree under Section 47 of C.P.C. It is, however, a well established canon of interpretation that the words of a statute if they are not ambiguous should be given their natural and grammatical meaning and the intention of the legislature has primarily to be gathered from the words used, and questions of hardship cannot be taken into consideration. The duty of a Court of law is to interpret the law as it finds it and not as according to it should be.

15. While I agree that the words 'relating to execution, discharge or satisfaction of the decree' should not be construed in a narrow sense. I doubt if the said words can reasonably and without undue straining of the language cover a question relating to delivery of possession as between a stranger auction purchaser and judgment-debtor. The execution, discharge or satisfaction of the decree is not affected if possession to the stranger auction purchaser is not delivered over the property sold at auction.

The decree-holder purchases the right, title and interest of the judgment-debtor and if on account of some defect in the title he is not able to get possession over the property purchased the decree will be held to have been satisfied to the extent of the price fetched at the auction safe and deposited by the auction purchaser to the credit of the decree-holder. I, therefore, with respect agree with the view expressed by the High Court of Allahabad in the 1957 Allahabad case *supra* and dissent from the one expressed in the 1948 and 1956 Nagpur cases referred to above. (16) In conclusion the appeal fails and is hereby dismissed with costs.