Beche Lal And Ors. vs Hem Singh And Ors. on 6 November, 1952

Equivalent citations: AIR1953ALL485, AIR 1953 ALLAHABAD 485

JUDGMENT

Agarwala, J.

1. This is an application in revision against an order allowing an application for amendment of, a decree under Sections 151, 152 and 153, Civil P. C. The facts briefly stated are as follows :

2. One Bhudher Singh executed a usufructuary mortgage on 18-8-1893 in favour of one Balwant Singh mortgaging 7 biswas, 2 kachwansis and 10 nanwansis in village Bijgawan for a consideration of Rs, 400/-, A deed of further charge was executed about a year later on 15-8-1894, securing a sum of Rs. 200/-. Bhudher Singh died leaving Khanzade Singh as his legal representative. Balwant Singh mortgagee sub-mortgaged his mortgagee rights by a deed, dated 31-5-1915. in favour of one Kunj Behari Lal for a consideration of Rs. 200/-. Khanzade Singh, the representative of the mortgagor, purchased the mortgagee rights of Balwant Singh at an auction sale in execution of a decree and stepped into Balwant Singh's shoes. This would be, however, subject to the right of the sub-mortgagee, Kunj Behari Lal. In 1927, Kunj Behari Lal, the sub-mortgagee, sued upon his sub-mortgagee, impleading Balwant Singh and Khanzade Singh as defendants and claiming a sum of Rs. 1,582/10/-. He prayed that this sum may be recovered by sale of either the proprietary rights in 7 biswas, 2 kachwansis and 10 nanwansls or, if that was not possible, by sale of the mortgagee rights therein. The suit was decreed on 4-11-1927. The Court ordered a decree for sale of tbe mortgagee rights to be prepared under Order 34 Rule

4. Civil P. C. Inspite of the express terms of the judgment that the decree for sale was to be in respect of the mortgagee rights, a decree was prepared mentioning the proprietary rights in the property mortgaged to be sold. Nobody, however, noticed this discrepancy between the judgment and the decree.

3. It appears that Kunj Behari Lal had an undisclosed partner with him in the transaction of the sub-mortgage and also in the transaction of the suit. Kunj Behari Lal and this undisclosed partner executed a deed of sale in respect of the half share in the sub-mortgage and the preliminary decree to one Kanhaiya Lal. In the sale deed it was expressly mentioned that the sub-mortgage was with respect to the mortgagee right in 7 biswas and odd share & that a suit on the basis of the sub-mortgage for the sale of the mortgagee rights had been instituted by Kanhaiya lal. Thereafter, Kanhaiyalal and Kunj Behari Lal jointly made an application for the preparation of a final decree. On 10-8-1929, a final decree was prepared and the description of the property to be sold was copied from the preliminary decree. No money having been paid under the decree, an execution application

was made for sale of the property. Notices were served on Khanzade Singh. Under Order 21, Rule 66, Civil P. C. an order for sale was passed. On 20-7-1933 Khanzade Singh applied for postponement of the sale for a week. The sale was postponed to 28-7-1933. The property was ultimately sold on that date by the Collector and was purchased by the decree-holders themselves in lieu of the decretal amount and they certified full satisfaction of the decree and possession was delivered to them on 10-8-1934.

4. Kunj Behari Lal and Khanzade Singh died and the heir of Kunj Beharilal sold their half share of the property, purchased by them at the aforesaid auction sale, to the heirs of Khanzade Singh by means of two documents dated 21-7-1942, and 30-9-1943. It was after the execution of these sale-deeds that the discrepancy between the judgment and the decree of 4-9-1927, was discovered. An application for amendment of the decree as also of all subsequent proceeding's including the sale certificate was made by the heirs of Khanzade Singh on 5-8-1946. It may be noted that this application was within 12 years of the date on which possession was delivered over the property to Kanhaiyalal and Kunj Behari Lal on 10-8-1934. In the application for amendment, it was alleged that the decree-holders had knowledge of the mistake in the decree and the fact had been fraudulently suppressed by them from the Court.

5. The opposite-party contested the application on several grounds, namely, that there was no mistake in the decree, that after the satisfaction of the decree the Court became 'functus officio' and had no jurisdiction to amend the decree, that Kanhaiyalal purchased half the decree in good faith believing that it was a sale of the Zamindari property, that Khanzade Singh and his heirs were estopped from making the application because they had knowledge of what was being sold, that the application was barred by the principle of constructive 'res judicata' and also by Order 21, Rule 92, Civil P. C. and that on equitable grounds, the amendment sought for ought not to be made after a long lapse of time. The learned Judge of the Court below rejected these contentious and ordered the amendment of the decree though not of the sale certificate or other proceedings. On behalf of the heirs of Kanhaiyalal the same contentions have been urged before me in this revision application. On the other hand, on behalf of the heirs of Khanzade Singh it has been urged that the lower Court having allowed the application for amendment this Court will not interfere with the exercise of that discretion, as no question of jurisdiction is involved. In my opinion none of the contentions raised by the learned counsel for the applicant has force.

6. There can be no doubt that the decrees, both preliminary as well as final, were wrongly prepared.

7. As regards the contention that, after a decree is satisfied, the Court becomes 'functus officio', it may be conceded that, after a decree has been executed and satisfied, there is an end of the decree in the sense that nothing more remains to be done by way of execution and the Court is 'functus officio' in the sense that having executed the decree, it has nothing more to do and its authority is at an end. But the authority, which is so terminated is the authority to execute the decree and not the authority to correct accidental slips and errors or to review its own orders. A Court is not in the same position, as for example, an arbitrator. An arbitrator having given his award may not have the power to modify or correct it but a Court has inherent power to correct accidental slips or errors. The power to correct its errors which have been occasioned by inadvertence or accident is based upon two

principles. One was referred to by Lord Cairns in --'Rodger v. The Comptoir D'Escompte De Paris', (1871) L. R. 3 P. C. 465(A):

> "One of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the suitors."

and the other was mentioned by the Privy Council in --'Piyaratana Unnanse v. Wahareke Sonuttara Unnanse', 1950 All LJ 587(B), (a case from Ceylon).. Sir John Beaumont delivering the judgment of the Board stated the law on the subject in the following words :

> "The general rule is clear that once an order is passed, and entered or otherwise perfected in accordance with the practice of the Court, the Court which passed the order is 'functus officio' and cannot set aside or alter the order, however wrong it may appear to be. That can only be done on appeal. Section 139, Civil P. C. of Ceylon which embodies the provisions of Order 28, Rule 11, English Rules of the Supreme Court (same as Section 152, Civil P. C. of India) and the inherent jurisdiction vested in every Court to ensure that its order carries into effect the decision at which it arrived, provides an exception to the general rule, but it is an exception within a narrow compass."

In Section 152, Civil P. C. no time limit is fixed for making an amendment in a judgment or decree which has been occasioned by an accidental slip or error. Such an amendment may be made at any time subject, of course, to equities which may have arisen in favour of the party against whose interest the amendment is to be made.

8. In --'Hatton v. Harris', (1892) AC 547(C), Lord Macnaghten observed that an error in a decree arising from any accident, slip or omission may at any time be corrected without appeal, and that the only limitation upon this power of the Court is to be found in cases where third, parties have acquired rights under the erroneous judgment in the interval. Said Lord Watson in the above case :

> "When an error of that kind has been committed, it is always within the competency of the Court, if nothing has intervened which would render it inexpedient or inequitable to do so, to correct the record in order to bring it into harmony with the order which the Judge obviously meant to pronounce."

Lord Herschell further explained the limitation upon the rule :

> "There is one observation which I ought to make and it is this, that there may possibly be cases in which an application to correct an error of this description would be too late. The rights of third parties may have intervened, based upon the existence of the decree and ignorance of any circumstances which would tend to show that it was erroneous, so as to disentitle the parties to the suit or those interested in it to come at so late a period and ask for the correction to be made."

The application for correction in that case was taken to have been made upon the hearing of the appeal which came up about thirty nine years after the decree had been made. This case has been followed in India, vide --'Midnapur Zamindari Co Ltd. v. Abdul Jalil Miya AIR 1933 Cal G27 (D); --'Narayana Iyer v. Biyari Bibi', AIR 1923 Mad 57 (E); --'Joy Chandra Das v. Govinda Chandra Dhar', 44 Cai WN 108 (F); --Sanwaley Rai v. Sant Rai', AIR 1941 Oudh 344 (G); --'Raj Bahadur Singh v. Shatranjai', AIR 1942 Oudh 226 (H). For the proposition that a decree can be amended even after it has ostensibly been fully satisfied reference may be made to --'Sheo Prasad v. Dharam Sen', AIR 1919 Pat 141(1); --'Munuswami Mudali v. Jagannadha Reddi', AIR 1929 Mad 830 (J); --'Khudu Mahto v. Bhim Mahto', AIR 1950 Pat, 183(K) and --'Samal Singh v. Jhunkoo Singh', AIR 1946 Oudh 210 (L).

9. The learned counsel for the applicants relied upon an observation of Daniels J. in --'Pitamlal v. Balwant Singh', AIR 1925 All 556(M). The facts of the case are not sufficiently reported. No reason or authority was cited by the learned Judge in support of his view. Obviously it was an 'obiter dictum', and respectfully I am unable to agree with it.

10. Reliance was also placed on the decision in --'Kartar Singh v. Zorawar Singh' AIR 1929 Lah 121 (N). The facts of that case were entirely different. The facts of ---'Munuswami Pillai v. Husain Khan', AIR 1926 Mad 516 (O), were also quite different. In --'Pandurang v. Narhar', AIR 1925 Bom 389 (P), the interests of a third party had intervened and the exception laid down in --'(1892) A.C. 547(C), was applied.

11. The learned counsel for the applicants urged that the present case fell within the exception laid down in --'Hatton's case (C). I do not think that this contention is correct. Kanhaiya Lal, father of the applicants, acquired half the rights in the sub-mortgage and the decree for Rs. 575/- under a sale-deed of 1929 in which specific reference was made to the fact that the mortgage was of a mortgagee rights in 7 biswas and odd share in the Zamindari property, and that in the suit filed on the basis of the sub-mortgage, the 'mortgages rights' in the property had been claimed to be sold. Though this was not quite correct inasmuch as in the plaint a prayer, in the alternative, was made -- the sale of the Zamindari property and in the alternative, of the mortgagee rights in that property -- yet it indicated to Kanhaiya Lal, what property was expected to be sold under the decree. The original mortgage in favour of Balwant Singh not being sued upon in Kunj Beharilal's suit, the Zamindari property could not have been ordered to be sold and the relief asking for the sale of mortgagee rights alone could have been granted to Kunj Behari Lal. It was, in fact, so granted by the judgment. Kannaiyalal was, therefore, affected with notice of the contents of the judgment. By his purchase he could not be assumed to have paid the price of the property because at that time what he purchased was the sub-mortgagee rights and the rights to have the mortgagee rights sold under the decree and not the property itself. The mistake in the decree was not due to any act of the judgment-debtors but was a mistake made by the office of the Court. No question of any estoppel against Kunj Behari Lal or his heirs could arise in the case so far as the purchase by Kanhaiyalal of the interests in the decree was concerned. Even Kanhaiyalal's purchase of the property in execution of the decree could not be said to have invested him with any greater equity. It is true that the decree did not mention the mortgagee rights but mentioned the zamindari property itself as the property to be sold. It is also true that in all subsequent proceedings right up to the grant of the sale certificate,

the property proclaimed to be sold was the zamindari property and not the mortgagee rights therein. Further, it is true that the judgment-debtors did not raise any objection to the description of the property to be sold. Indeed in the sale made by Kunj Behari Lal's heirs to the heirs of Khanzade Singh, the property sold was described not as mortgagee rights but as zamindari property. But, as the Court below has found, this was entirely due to ignorance on the part of Khanzade Singh as to the discrepancy between the judgment and the decree in regard to the property ordered to be sold and since Kanhaiyalal must be deemed to have had notice of the contents of the judgment and of the true state of affairs, he cannot take any advantage of the mistaken description of the property to be sold in the decree. It is well settled that when the truth is known to a party, he cannot plead estoppel against his opponent. In my judgment, since the mistake in the decree was due to the action of the office of the Court and Kanhaiyalal, auction purchaser, had constructive notice of the true facts, his case does not fall within the exception mentioned in 'Hatton's case' (C) & the principle of estoppel does not debar Khanzade Singh's heirs from making the application for amendment.

12. It was next urged that the sale cannot be set aside after the sale certificate had been issued. The answer to this contention is twofold. Firstly, the lower Court having amended the decree and not the sate certificate, we are not concerned with the setting aside of the sale in the present proceedings. Secondly, the bar to the setting aside of a sale as laid down in Order 21, Rule 93, Civil P. C. relates to a suit to set aside an order confirming a sale and does not refer to an application for amendment under Section 152, Civil P. C.

13. The contention that the application for amendment was barred by the principle of 'res judicata,' has also no force. The principle of 'res judicata' has no application to the correction of accidental errors or mistakes in the decree or judgment.

14. The contention that the application has been made after a long lapse of time also is without foundation. The application was made as soon as the mistake was discovered. It is immaterial that the discovery of the mistake was made after a long lapse of time.

15. The principle that wherever one of two innocent persons must suffer by the acts of a third person, he, who had enabled such third person to occasion the loss, must sustain it (--'Lickbarrow v. Mason', (1787) 100 ER 35 (Q)) is not applicable when the mistake is of the Court. The Court is not a person and the third person in the principle enunciated is a person other than the Court.

16. Lastly, I think the contention of the learned counsel for the opposite-party that I should not interfere with the order of the lower Court, in exercise of my revisional jurisdiction, is also not without force. The Court below had jurisdiction to amend the decree or not to amend it. I cannot say that in amending the decree it has exercised a jurisdiction not vested in it by law or that it has acted with any illegality or irregularity in the exercise of its jurisdiction. For all these reasons, I dismiss the application with costs.