Mst. Suraj Dei vs Mst. Gulab Dei on 11 October, 1954

Equivalent citations: AIR1955ALL49, AIR 1955 ALLAHABAD 49, ILR 1956 1 ALL 45

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. The short point referred to the Pull Bench is as follows :

> "Was the respondent's application for execution within time in respect of the earlier three years?"

The facts of the case are that Shrimati Gulab Dei, respondent, filed a suit in the year 1920 against Sadhu Saran for arrears of maintenance and for future maintenance. She claimed that she was the widow of a member of the joint Hindu family and after the death of her husband she was liable to be maintained from the funds of that family of which Sadhu Saran was in possession as Karta. On 13-12-1920, there was a compromise and a sum of money was paid towards the arrears and the future maintenance was fixed at Rs. 250/- per annum payable in four equal instalments falling due on the 31st of March, 30th of June, 30th of September and 31st of December in each year. A charge was also created on certain properties mentioned in the Compromise. A decree was passed by the court in terms of the compromise.

2. The judgment-debtor did not, however, pay the maintenance allowance regularly and a series of applications had to be made for execution of the decree. It is not necessary to deal with the earlier applications. The seventh application was filed on 3-3-1938, and the arrears claimed were up to 31-12-1937. It was prayed that certain items of property mentioned in the execution application and over which a charge had been created should be sold by auction. On 4-4-1940, the property was sold. On 8-6-1940, the sale was confirmed. On 22-2-1943, the decree-holder auction-purchaser applied for possession of the property purchased by her at auction. On 30-3-1943, possession was delivered. That terminated those proceedings.

3. On 18-2-1941, the eighth application for execution was filed in which arrears of maintenance were claimed for the years 1938, 1939 and 1940. This application was dismissed for want of prosecution on 23-4-1941.

4. The ninth application, with which we are concerned, was filed on 2-11-1944, and the amount claimed was from 1-1-1938, to 30-9-1944. The judgment-debtor filed an objection that the application was barred by time, but the objection was dismissed by the execution Court. In this appeal by the judgment-debtor the learned counsel for the appellant has confined his objection only to the claim for the first three years, i.e., 1938, 1939 and 1940.

5. An argument was advanced before the Bench hearing the appeal that the application dated 22-2-1943, was a step-in-aid of execution. The question that has, therefore, to be decided is whether the application dated 22-2-1943, could be considered as a step-in-aid of execution. Article 182, Limitation Act, provides a period of three years for execution of a decree from the date of the decree or order, or where the application for execution has been made previously, from the date of the final order or where some step-in-aid in execution of the decree or order had been taken, from that date. The answer to the question whether the application dated 22-2-1943, was a step-in-aid of execution would depend on whether the application filed by Shrimati Gulab Dei was in her capacity as a decree-holder and whether it was an application that related to execution, satisfaction or discharge of her decree.

6. It cannot be disputed that Shrimati Gulab Dei had no right under the decree either to claim possession of the property or even to claim that the property be sold to her. The only right that the decree conferred on her was to put it into execution in the manner provided in the Code and one of the modes provided in the Code was to have the property of the judgment-debtor put to sale so that from the sale proceeds the decree might be satisfied. Under Order 21, Rule 72 of the Code, before it was amended, a decree-holder did not even have a right to bid at auction and he could only do so with the express permission of the Court.

That rule has, however, been amended by this Court and the decree-holder has now been put in exactly the same position as any other person and is entitled to bid at the auction. If his bid happens to be the highest, he can claim that the sale be confirmed in his favour. If the sale is confirmed in his favour then he becomes entitled to get the sale certificate and possession of the property. The auction-purchaser can apply under Order 21, Rule 95 to the Court granting the sale certificate that he be put in possession of the property and the Court can put him in possession, if need be, by removing any person who refuses to vacate the same, and the person made to vacate the property has a right to file a suit in the civil court for possession of the property within a period of one year under Article 11A, Limitation Act. The right of the decree-holder to have the property sold and possession delivered to him flows from his being the highest bidder and not from the decree. The position, therefore, of a decree-holder is exactly the same as that of any other person who bids at an auction sale and whose bid being the highest is accepted by the Court and the sale is confirmed in his favour.

7. Two points have been raised in support of the contention that the application dated 22-2-1943 was a step-in-aid of execution. It is urged that the decree-holder's position remains still that of a decree holder and any application that he may file would be deemed to be an application by a decree-holder against his judgment-debtor and it must, therefore, come under Section 47 of the Code. Prom what we have already said it is clear that the application for delivery of possession could

not be made by the decree-holder as such, as the decree gave him no such right and it was an application by him as the auction-purchaser of the property.

It is also urged that so long as the decree-holder has not got possession of the property it cannot be said that his decree has been satisfied. This latter argument was met in a very apt illustration given by the learned Chief Justice, Sir Shah Mohammad Sulaiman, in -- 'Kedar Nath v. Arun Chandra Sinha', AIR 1937 All 742 (FB) (A). He pointed out that, if after the sale certificate had been issued but before possession had been delivered the property was destroyed by an earthquake, the decree-holder could not claim that since he had not got possession of the property he could again claim the right to execute his decree.

8. Learned counsel has also urged that, since there is a provision in O: 21 for delivery of possession of the property after confirmation of the sale, it must be deemed that the question of delivery of possession of the property to the auction-purchaser is a question relating to execution, discharge or satisfaction of the decree. As was pointed out by the learned Chief Justice in --'Kedar Nath's case (A)', the mere fact, that the executing court is authorised after it has confirmed the sale in favour of the auction-purchaser to direct delivery of possession to him, does not necessarily make it a question relating to execution, discharge or satisfaction of the decree. If the auction-purchaser is a third party and he has deposited the money after the purchase, as he has to do within 15 days under Order 21, Rule 85 of the Code, the money can be paid to the decreeholder towards the satisfaction of his decree and the question of delivery of possession to the auction-purchaser under Order 21, Rule 95 has nothing to do with the decree-holder and cannot be said to relate to execution, discharge or satisfaction of the decree, which has already been executed and discharged or satisfied. If the decree-holder is the auction purchaser and has recorded satisfaction under Order 21, Rule 72 of the Code, the same result would follow and it cannot be said that anything further remains to be done towards the execution, discharge or satisfaction of the decree.

9. In any case, as was pointed out by the learned Chief Justice, again in -- 'Kedar Nath's case (A)', the auction-purchaser is not a representative of the decree-holder but of the judgment-debtor and any dispute arising between the auction-purchaser and the judgment-debtor would amount to a dispute between the judgment-debtor and his own representative and cannot come under Section 47 of the Code.

10. The learned Chief Justice in -- 'Kedar Nath's case (A', in support of his decision referred to a Full Bench decision of the Bombay High Court in -- 'Hargovind Fulchand v. Bhudar Raoji', AIR 1924 Bom 429 (B), a Pull Bench of the Patna High Court in -- 'Tribeni Prasad v. Ramasray Prasad', AIR 1932 Pat 80 (C), and a Pull Bench of the Oudh Chief Court in -- 'Gaya Bakhsh Singh v. Rajendra Bahadur', AIR 1928 Oudh 199 (FB) (D), as also the Division Benches of Lahore and Rangoon, in -- 'Punjab National 'Bank v. Biri Mal', AIR 1930 Lah 363 (E), and --'J. A. Martin v. S. M. Hashim', AIR 1930 Rang 61 (F).

The Full Benches of the Calcutta High Court and the Madras High Court in -- 'Kailash Chandra v. Gopal Chandra', AIR 1926 Cal 798 (FB) (G), and -- 'Veyindramuthu Pillai v. Maya Nadan', AIR 1920 Mad 324 (FB) (H), which had taken a contrary view, were also discussed and it is not necessary for

us to repeat all that was said in -- 'Kedar Nath's case (A)', or in the well considered judgment, if we may say so with respect, of Banerji, J., in -- 'Bhagwati v. Banwari Lal', 31 All 82 (FB) (I). The consistent view of this Court has been that a decree-holder auction-purchase is in no different position from any one else who might have purchased the property at an auction sale in execution of a decree and the same considerations should apply to both.

11. Before parting with this case, however, we may mention that the learned Judges referred this case for consideration by a larger Bench by reason of two Division Bench rulings of this Court -- 'Moti Lal v. Makund Singh', 19 All 477 (J) and -- 'Babu Ram v. Pearey Lal', AIR 1919 All 309 (K). 'Moti Lal v. Makund Lal (J)', was decided before the Full Bench and after the decision of the Full Bench it is no longer good law. In -- 'Babu Ram's case (K)', the Full Bench in -- 'Bhagwati v. Banwari Lal (I)', was cited but the learned Judges did not follow that decision on the ground that the question for decision in that case before them, was the same as in --'Moti Lal's case (J)', which they purported to follow and which decision according to them had not been overruled by the Full Bench. We do not think that the learned Judges were right in that view, and in any case we have no hesitation in overruling the decision in -- 'Babu Ram v. Pearey Lal (K)', on the ground that it does not lay down correct law.

12. In our view the answer to the question must be in the negative. The case may now be put up before the Bench concerned.