

Allahabad High Court

Bhairon vs Musammat Rajania on 30 January, 1917

Equivalent citations: 38 Ind Cas 299

Author: P Banerji

Bench: P Banerji

JUDGMENT P.C. Banerji, J.

1. This application for revision was filed under the following circumstances: An ex parte decree was obtained by the applicant Bhairon against one Gokul in respect of a debt said to have been due by one Sheodial. In execution of that decree certain property was attached as the property of the judgment-debtor. Musammat Rajania preferred an objection asking for the release of the property on various grounds. She contended that the property belonged to her and had been attached from her possession; that the property was not saleable inasmuch as Sheodial was an agriculturist, and that the decree was invalid and illegal and had been passed without jurisdiction. The Court found the first two contentions to be untenable and held that the property had not been seized from the possession of the objector. It proceeded, however, to consider whether the decree was legally valid. It held that as a suit in respect of this very debt had been filed and dismissed on a previous occasion, a second suit in respect of the same matter could not be maintained and the decree was consequently illegal. On this ground it allowed the objection and ordered the property to be released on the 5th of February 1916. It is from this order directing the release of the property that the present application has been preferred.

2. No doubt the Court ought to have overruled the objection preferred by the objector if it found that the property in respect of which the objection had been preferred, was not in the possession of the objector. However, the Court did proceed to decide the case on other grounds and it allowed the objection and ordered the property to be released. The question is whether this Court could interfere in revision. It has been repeatedly held that where a party has some remedy open to him, he is not entitled to invoke in aid the revisional powers of this Court. In all probability the applicant had a right under Order XXI, Rule 63, to bring a suit against the objector to establish his right to have the property sold. He had also a remedy by appealing against the order of the Court disallowing his application for execution. It appears from the record which is before me that, on the day on which the objection was allowed and the Court held that the decree was incapable of execution, it made an order striking off the execution case. The decree-holder applicant was entitled to appeal against the order striking out the execution case and dismissing his application for execution. As he could resort to these remedies and did not do so, the present application for revision cannot be maintained. I accordingly dismiss it but under the circumstances I make no order as to costs.