

Rajasthan High Court

Girdharlal And Ors. vs Md. Hanif on 31 August, 1956

Equivalent citations: AIR 1957 Raj 399

Author: Bapna

Bench: Bapna

ORDER Bapna, J.

1. This is a revision against an order of the learned Civil Judge, Jaipur City, dated 24th September, 1954.

2. One Ganesh Lal had a decree against Hakim Afsal Hussain, and in execution of the decree got a certain property of the judgment-debtor sold. The property was purchased by Mohammad Hanif and the sale was confirmed on 12th August, 1948. The money deposited by the auction-purchaser was paid to the decree-holder. Subsequently to this the Custodian of Evacuee Property made an application under Section 17(2) of the Administration of Evacuee Property Ordinance (No. XXVII of 1949) stating that the property had been evacuee property, and the sale thereof should be set aside. This petition was allowed by the Court on 22nd July, 1950.

The sale was set aside, and the decree-holder was directed to pay back into the Court the money which he had received for refund to the auction-purchaser. The decree-holder filed an appeal, which was held incompetent, and the same view was upheld on second appeal by judgment of this Court dated 13th July, 1953. Md. Hanif thereafter made an application to the Civil Judge on 23rd April, 1954, for proceeding against the decree-holder in order to compel him to pay back the amount which he had received. Objections were raised on behalf of the decree-holder that the Court had no jurisdiction to direct the decree-holder to pay back the amount, and, in any case, the remedy of the auction-purchaser was by a separate suit. The Civil Judge rejected both the objections by order of 24th September, 1954, and the decree-holder, now represented by his sons Girdhar Lal, Premchand, Praveen Chand and Manakchand, has filed this revision.

3. Learned counsel for the applicants relied on V. Macha Koundan v. V.K. Kottora Koundan, AIR 1936 Mad 50 (A); Rameshwar Lal v. Ram Charan Prasad Sahu, AIR 1938 Pat 447 (B); Sahu Deputy Shankar v. Mangal Sen, AIR 1933 All 63 CO), and Amolak Chand Mewa Ram v. Mohammad Shafi, AIR 1948 EP 1 (D) in support of his contention that the remedy, if any, of the auction-purchaser Md. Hanif was by a separate suit. All these cases are of the kind where the sale in execution of the decree was confirmed by the Court, and thereafter the title of the third party to the property sold had been upheld in a separate suit, and as a result of those decrees in separate suits, the judgment-debtor was held to have no interest in the property sold, and the sale was set aside. In the present case the law laid down in Section 17, Sub-section (2) of the Administration of Evacuee Property Act is:

"Save as otherwise expressly provided in this Act, any attachment or injunction subsisting on the commencement of this Act in respect of any evacuee property which has vested in the custodian shall cease to have effect on such commencement, and any transfer of evacuee property under orders of a Court or any other authority made after the 1st day of March, 1947, shall be set aside, if an application is made to such Court or authority by or at the instance of the Custodian within six

months from the commencement of this Act."

The said sub-section declared in the first instance that any attachment subsisting on the date of the commencement of the Act shall (except as laid down in the Act) cease to have effect. If the attachment ceased to have effect, the subsequent sale was illegal. The present case is, therefore, one where the Court had no jurisdiction to sell, and the sale itself was illegal. The authorities cited have no application, because in all those cases the sale would have been valid and effective until the title of some other person was declared subsequent to the sale. Obviously, if the sale was illegal, the decree-holder, at whose instance the sale was effected, could not continue to retain the advantage under the sale. The order of the Court directing the decree-holder to deposit the amount, and the proceedings taken by the Court to enforce its order are correct.

4. This revision has no force, and is accordingly dismissed with costs.