

Supreme Court of India

Pattam Khader Khan vs Pattam Sardar Khan & Anr on 9 July, 1996

Equivalent citations: 1996 SCC (5) 48, JT 1996 (6) 201

Author: M Punchhi

Bench: Punchhi, M.M.

PETITIONER:

PATTAM KHADER KHAN

Vs.

RESPONDENT:

PATTAM SARDAR KHAN & ANR.

DATE OF JUDGMENT: 09/07/1996

BENCH:

PUNCHHI, M.M.

BENCH:

PUNCHHI, M.M.

MANOHAR SUJATA V. (J)

CITATION:

1996 SCC (5) 48 JT 1996 (6) 201

1996 SCALE (5) 63

ACT:

HEADNOTE:

JUDGMENT:

THE 9TH DAY OF JULY, 1996 Present:

Hon'ble Mr. Justice M.M. Punchhi Hon'ble Mrs. Justice Sujata V. Manohar D. Prakash Reddy, Adv., R. Santhana Krishnan, D. Mahesh Babu, Advs. for K.R. Nagaraja, Adv. for the appellant S. Markandeya, Adv. for Ms. Chitra Markandeya, Adv. for the Respondents.

J U D G M E N T The following Judgment of the Court was delivered: Pattam Khader Khan V.

Pattam Sardar Khan & Anr.

J U D G M E N T Punchhi, J.

Pattam Rasool, the second respondent herein, filed a suit before the Civil Court for partition and separate possession, claiming one sixth share in a residential house in the town of Nellore in the State of Andhra Pradesh. Pattam Khader Khan, the appellant herein, was one of the defendants therein. On January 7, 1977, a preliminary decree was passed by the court in his favour. Thereafter, the plaintiff/second respondent made an application for appointment of an Advocate Commissioner for effecting partition, which was allowed. The Commissioner becoming seisin of the matter, reported to the trial court that the house was not partible and resort be had to a sale thereof, so that the sale proceeds can be apportioned amongst the co- sharers. A public auction was thus on permission conducted by the Commissioner, whereby the sale was knocked down in favour of the first respondent, Pattam Sardar Khan; no other than the son of the plaintiff, at a price of Rs.17,000/-. No objection of any sort from any quarter was raised against the sale or the conduct thereof. The sale was thus confirmed by the court on 7.8.1984. A sale certificate was issued in favour of the auction-purchaser about five and quarter years later on 9.11.1989. The matter in this way stood finalised.

Having obtained the sale certificate, an application under Order 21 Rule 95 read with Section 151 of the Civil Procedure Code was moved by the auction-purchaser first respondent on 9.11.1989, seeking delivery of possession of the auctioned house. An objection was raised thereto by the appellant stating that since the application of the first respondent was barred by the limitation prescribed under Article 134 of the Limitation Act, 1963, no order for delivery of possession could be given in favour of the first respondent, The executing court of the. District Munsif, Nellore, on 14.12.1990 sustained the objection-regarding the bar of limitation, which made the first respondent move the High Court of Andhra Pradesh at Hyderabad in revision, The High Court on 29.11.1993 allowed the revision petition of the first respondent, holding that April 15, 1924. The sales were confirmed by the executing court on April 22, 1924. The appeals against orders dated 15.4.1924, disallowing objections, were preferred before the High Court, on July 21, 1924. The High Court dismissed the appeals on March 17, 1927. Sales certificates were issued by the executing Court on May. 19, 1928 and June 6, 1928 respectively. Applications for delivery of possession under Orders 21 Rule 95 CPC were made by the appellants therein on September 10, 1928. The applications were within the prescribed period of limitation if computed from the date of the issuance of sale certificates, but beyond the prescribed period of limitation computed from the date when the sales were confirmed.

Order 21. Rule 92 (1) provides that where no application is made under Rule 89, Rule 90 or Rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale and thereupon the sale shall become absolute. In strict conformity therewith the sales in the Privy Council's case became absolute on April 22, 1924. All the same the judgment-debtors therein had a right of appeal under Order 43 Rule 1 against the orders of the executing Court dated April 15, 1924, rejecting their applications to set aside the sales. On the availing of such right, the High Court re-examined the matter and dismissed the appeal, confirming the orders of the executing Court making the sales effective and absolute. On this premise, the Privy Council expressed itself in the following words :

"Upon consideration of the sections and orders of the Code, their Lordships are of opinion that in construing the meaning of the words "when the sale becomes

absolute" in Article 180, Limitation Act, regard must be had not only to the provisions of Order 21 Rule 92 (1) of the schedule to the Civil Procedure Code, but also to the other material sections and orders of the Code, including those which relate to appeals from order made under Order 21, Rule 92 (1). The result is that where there is an appeal from an order of the Subordinate Judge, disallowing the application to set aside the sale, the sale will not become absolute within the meaning of Article 180, Limitation Act, until the disposal of the appeal, even though the Subordinate Judge may have confirmed the sale, as he was bound to do, when he decided to disallow the above-mentioned application." And further :

Their Lordships therefore are of opinion that on the facts of this case the sales did not become absolute within the meaning of Article 180, Limitation Act, until 17th March 1927, and that the applications for possession of the properties purchased at the auction sales were not barred by the Limitation Act."

To recall, March 17, 1927, the day from which the period of limitation was viewed to start, was the day when the appeals were dismissed by the High Court and not the day on which the sale certificates were issued by the executing Court. The High Court in the instant case thus missed the point, The Privy Council had nowhere ruled that the period of limitation under Article 180 would run from the date of issuance of the sale certificates. The High Court was therefore in error.

The view of the Division Bench of the Madras High Court in Kamakshi Ammal and Anr. Vs. Arukkani Ammal and Anr. AIR 1957 Madras 440, following the Privy Council decision, had also mistakenly been taken by the High Court to have taken the view it has taken, as also in some other cases. Far from it. Rather the Madras High Court had clearly opined that even though the third Column of Article 180 of the Limitation Act, 1908 refers to the date of commencement of the period of limitation as the date when the sale becomes absolute, that clause must be read not only with the provisions of Order 21 Rule 92 (1) CPC, but also with the other, material sections and orders of the Court as had been authoritatively enunciated by their Lordships of the Privy Council in Chandra Mani Saha & Ors. Vs. Anarjan Bibi & Ors. AIR 1934 Privy Council 134.

This Court in Rama Krishna Rao Vs. Challayamma AIR 1953 SC 425, has also followed and approved Chandra Mani Saha's case of the Privy Council, ruling as follows:

"Where a Subordinate Judge has disallowed an application under Order 21, Rule 90, to set aside an sale in execution, and has made an order under rule 92 (1) confirming the sale, and an appeal from disallowance has been dismissed by the High Court, the three years' period provided by the Indian Limitation Act, 1908, Schedule I, Article 180, for an application under. Order 21, Rule 95, by the purchaser for delivery of possession runs from the date of the order on appeal, the High Court having under the Code of Civil Procedure, 1908, the same powers as the Subordinate Judge, the time when the sale becomes absolute', for the purpose of Article 180 is when the High Court disposes of the appeal."

And hence, not from the date of issuance of the sale certificate, despite the suggestive language of Order 21 Rule 95. Thus, where there is no application to set aside a sale, as in the instant case, the order of confirmation of sale in itself is the final step in making the sale absolute and the matter is thus put to rest.

This Court again in *Ganpat Singh (Dead) by Lrs. Vs. Kailash Shankar & Ors.* -(1987) 3 SCC 146 has noticed the state of law as laid down in *Chanda Mani Saha's* case, and as followed by the Madras High Court in *Kamakshi Ammal's* case. The matter in that regard thus stands crystalized. There is no stray thought to the contrary in any of the decision of various High Courts cited on behalf of the appellant before us.

Now to the spirit of it. A Court sale is a compulsory sale, conducted by or under orders of the Court. The title to the property sold does not vest in the purchaser immediately on the sale thereof unlike in the case of a private sale. The law requires that it does not become absolute until sometime after the sale; a period of at least 30 days must expire from the date of sale before the sale can become absolute. In that while, the sale is susceptible of being set aside at the instance of the judgment-debtor on the ground of irregularity in publication or conduct of the sale or on defalcation as regards deposit of money etc. as envisaged in Rules 89 and 90 of Order 21. Where no such application is made, as is the case here, the Court was required, as indeed it did, to make an order, confirming the sale and it is upon such confirmation that the sale becomes, and became, absolute in terms of Order 21 Rule 92. After the sale had become absolute, a certificate is required to be granted by the Court to purchaser, termed as 'certificate of sale' in Order 21 Rule 94. Such certificate bears the date as on which the sale became absolute. It is on the sale becoming absolute that the property sold vests in the purchaser. The vesting of the property is thus made to relate back to the date of sale as required under Section 65 CPC.

Order 21 Rule 95 providing for the procedure for delivery of property in occupation of the judgment-debtor etc, requires an application being made by the purchaser for delivery of possession of property in respect of which a certificate has been granted under Rule 94 of Order 21. There is nothing in Rule 95 to make it incumbent for the purchaser to file the certificate along with the application. On the sale becoming absolute, it is obligatory on the Court though; to issue the certificate. That may, for any reason get delayed. Whether there be failure to issue the certificate or delay of action on behalf of the Court or the inaction of the purchaser in completing the legal requirements and formalities, are factors which have no bearing on the limitation prescribed for the application under Article 134. the purchaser cannot seek to extend the limitation on the ground that the certificate has not been issued. It is true though that order for delivery of possession cannot be passed unless sale certificate stands issued. It is manifest therefore that the issue of sale certificate is not "sine qua non" of the application, since both these matters are with the same Court. The starting point of limitation for the application being the date when the sale becomes absolute i.e. the date on which title passed, the evidence of title, in the form of sale certificate, due from the Court, could always be supplied later to the Court to satisfy the requirements of Order 21 Rule 95. See in this regard *Babulal Vs. Annapurnabai* - AIR 1953 Nagpur 215, which is a pointer. It therefore becomes clear that the title of the Court auction-purchaser becomes complete on the confirmation of the sale under Order 21, Rule 92, and by virtue of the thrust of Section 65 CPC, the property vests in the

purchaser from the date of sale; the certificate of sale, by itself, not creating any title but merely evidence thereof. The sale certificate rather is a formal acknowledgement of a fact already accomplished, stating as to what stood sold. Such act of the Court is prestinely a ministerial one and not judicial. It is in the nature of a formalisation of the obvious.

Such being the state of law on the subject, we fail to see how the High Court could have come to the conclusion that even though the sale becomes absolute on confirmation under Order 21 Rule 92 CPC effectively passing title, the same can only be complete when evidenced by a sale certificate issued under Order 21 Rule 94, and that unless the sale certificate is issued, limitation cannot start for the purpose of an application under Order 21 Rule 95 CPC, vis-a-vis, Article 134 of the Limitation Act, 1963. The High Court, in our view erred in holding that it is only from the date when a sale certificate is issued, that the limitation starts running. Such view of the High Court would not only cause violence to the clear provisions of Article 134 of the Limitation Act but have the effect of unsettling the law already settled.

There can be a variety of factors conceivable by which delay can be caused in issuing the sale certificate. The period of one year limitation, now prescribed under Article 134 of the Limitation Act 1973, in substitution of a three year period prescribed under Article 180 of the Indian Limitation Act of 1908. is reflective of the legislative policy of finalizing proceedings in execution as quickly as possible by providing quick forum to the auction-purchaser to ask delivery of possession of the property purchased within that period from the date of the sale becoming absolute, rather than from the date of issuance of the sale certificate. On his failure to avail such quick remedy the law relegates him to the remedy of a suit for possession in a regular way.

Thus, for the aforesaid reasons, we have no hesitation to allow this appeal, set aside the impugned orders of the High Court, restoring that of the First Court, which we hereby do, relegating the first respondent to the remedy of a suit, should he be so advised, but without any order as to costs.