

(1932) 12 AHC CK 0001
In the Allahabad High Court

B. Hargobind Das

APPELLANT

Vs

Moti Chand and Another

RESPONDENT

Date of Decision : 09-12-1932

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 73

Citation : AIR 1933 All 337 : 145 Ind. Cas. 577

Hon'ble Judges : Mukerji, Acting C.J.

Bench : Division Bench

Judgement

Mukerji, Ag. C.J.

1. These two applications in revision have arisen out of the same execution proceedings but the orders were passed at two different stages. The facts appear to be these. The predecessor-in-title of the applicant before us Hargobind Das held a simple money decree against one Ram Nath Singh. In execution of that decree a certain share of Ram Nath Singh in village Jhanjhupur was put up for sale and was sold for Rupees 1,900. The sale was held by the agency of the Collector as the property was a revenue paying one. The decree-holder deducted the amount due to him under the decree from the sale price and paid the balance in cash which was a sum of Rs. 329-1-0. For the amount deducted he granted a certificate showing that his decree has been satisfied. Before this sale took place the opposite party Raja Moti Chand who held a simple money decree against Ram Singh and another had applied for the execution of his decree. At his instance the share in Jhanjhupur described above and another share in another village were put up for sale by the Collector and on 21st March 1932 Raja Moti Chand purchased the shares for Rupees 1,500. As the execution cases were pending before the Munsif and as the Collector was the only civil Court's agent to hold sales, the papers were forwarded by the Collector to the Munsif. The Munsif then discovered two things. First he discovered that Raja Hargobind Das had purchased at a higher price than Raja Moti Chand and he further discovered that Raja Moli Chand had already applied for execution of his decree

before the sale at which Hargobind Das made the purchase. The learned Judge accordingly held that the sale in favour of Hargobind Das should stand, that the sale, in favour of Raja Moti Chand should be cancelled, that Raja Moti Chand was entitled to a rateable distribution and that Hargobind Das should in the circumstances pay the entire" purchase money in cash. The conclusions arrived at by the learned Munsif were all correct.

2. u/s 73, Civil P.C., it is not necessary for a decree-holder to make a specific application for rateable distribution. All that is necessary is that he should apply for execution and should not have received satisfaction of his decree. On 18th June 1932 one of the orders complained of was passed. This order was passed on a consideration of Hargobind Das's objection which was to. the effect that a decree enforcing a charge might have been passed in favour of his predecessor-in-title and on that ground Hargobind Das was entitled to keep the sale proceeds to the extent of the decree held by him. Obviously this contention had no force and was rightly disallowed. The result is that the petition of revision being No. 426 of 1932 altogether fails and it is hereby dismissed with costs. The second order complained of is dated 27th June 1932. The learned Munsif on finding that Raja Moti Chand was entitled to a rateable distribution directed Hargobind Das to pay a sum of Rs. 1,570-7-0 in cash. Hargobind Das protested against this order but he said that if the Judge was definitely of opinion that his order should stand he might be given three weeks" time to pay. The three weeks expired, but Hargobind Das did not pay the money. Thereupon the order of 27th June 1932 was passed. It was to the effect that the sale in favour of Hargobind Das was confirmed, that the sum of Rs. 329-1-0 paid by him in cash should be given to Raja Moti Chand and that for the balance to which Raja Moti Chand was entitled by way of rateable distribution, namely, Rs. 1,083-13-0 a decree may be passed entitling Raja Moti Chand to recover the amount by execution. The learned Munsif said that a formal order should be prepared in terms of the order.

3. Now this order of 27th June 1932 has been challenged as passed without jurisdiction. There can be no doubt that this order is essentially wrong and as between the two decree-holders against the same judgment-debtor the executing Court below had no authority to pass an order that one decree-holder should pay a certain amount to the other decree-holder. The question in the circumstance's is what is the pro- per order that the Court below should have passed when he found that Hargobind Das was either unwilling or unable to pay the money in cash. It is clear that Hargobind Das had no right to. keep the entire sale proceeds to himself to the exclusion of Raja Moti Chand who was entitled to rate a Redistribution. In the circumstances the only thing that could be done was to annul the sale and to direct the property to be sold again so that out of the sale proceeds all persons entitled to reteable distribution may be paid.

4. We pass this order now and setting aside the order of 27th June 1932, we set aside the sale dated 20th April,1932 at which Hargobind Das purchased the share at Jhanhupur. The property will be resold. The purchaser must pay the

price in cash and the sale proceeds will be distributed among the decree-holders entitled to rateable distribution. As to costs we think that the parties should pay their own costs in this Court because the difficulties that appeared in the case were not clearly understood by any of the parties or the Court below and the respondents cannot be held responsible for the form in which the order was passed by the Court below.