

(1922) 02 AHC CK 0002
In the Allahabad High Court

Bhatelay Chunni Lal

APPELLANT

Vs

Chakkerpan Auction Purchaser and Pahalwan Singh

RESPONDENT

Date of Decision : 06-02-1922

Acts Referred:

Citation : AIR 1922 All 56 : 67 Ind. Cas. 934

Hon'ble Judges : Walsh, J;Piggott, J

Bench : Division Bench

Judgement

1. The object of the suit, out of which this appeal arises, was to set aside an auction-sale, held on the 20th of July 1915, of property belonging to the plaintiff. The defendants impleaded were the auction-purchaser and the decree-holders at whose instance the property was sold. The plaintiff came into Court with serious allegations of fraud against the defendants. We must not be understood to hold that, on the allegations made, the suit was not maintainable. As a matter of fact, however, there was no evidence worth discussing of any fraud on the part of the defendants. On the contrary, it was clear that the plaintiff had knowledge of the execution proceedings and an opportunity of being heard in the Execution Court. Practically all that was really contended in the Court below was that the property in suit, being in fact ancestral property, had been wrongly sold as non-ancestral. In the first place, the plaintiff failed to satisfy the Court below on the question of fact as to the nature, whether ancestral or non-ancestral, of the property. The oral evidence on which he relies we could not treat as sufficient in face of the contrary finding of the Court below. The point really argued before us has been that the Trial Court ought to have admitted additional documentary evidence on this point and the evidence is tendered before us for admission to-day. We think that no good case is made out for the admission of fresh evidence in face of the reasons given by the Trial Court in its judgment. In any case, however, the question sought to be raised could not influence the decision of the suit. It is quite clear that in the Execution Court the property in question was treated as non-ancestral to the knowledge of the present plaintiff, then judgment-debtor. It was in fact described by him as non-ancestral in a written pleading which he

entered before the Execution Court. The Court was, therefore, within its jurisdiction in putting up for sale property which, on the admission of the parties concerned before it, was rightly described as non-ancestral. If that description was in fact a mistake description, the plaintiff is to blame, and there is no proof on this record that he has really suffered substantial injury. On the principles laid down by this Court in the case of Behari Singh v. Mukat Singh 28 A. 273; (1906)A.W.N. 3 : 3 A.L.J. 140 and recently re-affirmed in the case of Dalip Narain Singh v. Parmaoti Bibi 67 Ind. Cas. 931 : 42 A. 58 : 17 A.L.J. 982 this suit could not succeed, even if by the admission of further evidence the plaintiff was to secure a finding that the property in suit was after all ancestral although the plaintiff had allowed it to be sold as non-ancestral. This appeal fails and we dismiss it accordingly with costs.