

(1965) 04 GAU CK 0001
In the Gauhati High Court
Case No : Civil Revision No. 13 of 1964

Birendra Chandra Deb

APPELLANT

Vs

Rasharaj Paul

RESPONDENT

Date of Decision : 08-04-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58

Citation : (1965) 04 GAU CK 0001

Hon'ble Judges : Rajvi Roop Singh, J.C.

Bench : Single Bench

Advocate : R.L. Chakraborty, for the Appellant; B. Chakraborty, for the Respondent

Final Decision : Dismissed

Judgement

Rajvi Roop Singh, J.—This is an application in revision on behalf of the petitioner Birendra Chandra Deb against the order of Sub-Judge. Tripura, dated 7-9-64 by which the Claim Case of the petitioner was dismissed.

2. The facts which have led up to this revision petition lie in a short compass and may be briefly narrated. On 8th July, 1964 Shri Birendra Chandra Deb filed an application under Or. 21 R. 58 C.P.C. and upon that the Claim Case No. 29 of 1964 was started. The contention of the petitioner was that the lands of Jote No. 8 covering an area of 7 kanis 10 gandas described in the first schedule of the execution petition belongs to the petitioner and he is in possession of the same. It was also alleged that the lands of jote No. 38 measuring 2 kanis described in the 2nd schedule of the execution petition were purchased jointly by the petitioner and pro forma opposite party No. 2 Makhan Chandra Deb therefore the entire property cannot be sold in execution of the decree. The petitioner further alleged that the property shown in the 3rd schedule of the execution petition was purchased by the petitioner himself and it has been in his possession, therefore it cannot be sold in the execution proceeding. It was also alleged that the boundaries of the lands of first schedule shown in the execution

petition attract the 2 kanis of lands of jote No. 11. The above-mentioned land belongs to the petitioner so it cannot be sold in execution.

3. The opposite party decree-holder filed an objection petition alleging that the petition is barred by res judicata and also by the principle of estoppel, waiver and acquiescence.

It has also been slated that the petitioner filed claim Case No. 32 of 1962 in the original suit which was dismissed for default on 26-11-62 A. D. so according to the provisions of Or. 21 R. 63 C.P.C. the petitioner's application is not entertainable at this stage. It was further alleged that the petitioner is the benamidar of the judgment-debtor and he does not possess the properties, therefore the petitioner's claim is liable to be rejected.

4. Thereafter the learned Sub-Judge heard the lawyers and dismissed the petitioner's Claims Case No. 32 of 1962.

5. Being aggrieved by this order of the learned Sub-Judge the petitioner has come to this Court in revision.

6. The learned counsel for the petitioner contended that the learned Subordinate Judge without entering into the investigation of the facts alleged by the petitioner held that the petitioner's claims case cannot be entertained in view of the fact that his claims petition was previously rejected on 26-11-62 in the original suit which was in connection with the same property of this Execution Case. This finding of the learned Subordinate Judge is erroneous and hence it should be set aside. There is no substance in this contention. From the perusal of the record and the judgment of the learned Subordinate Judge it is clear that he decided this case after recording the evidence of the parties.

7. The learned counsel for the petitioner next urged that the previous case was dismissed for default without any investigation, therefore, it does not come within the mischief of Or. 21 R. 63 C.P.C., and as such second application is maintainable. But the learned Subordinate Judge failed to appreciate this point, and hence he came to an erroneous finding. The finding being palpably wrong should be set aside. This contention too is not tenable in view of the principles laid down in the following 2 cases (1) Satindra Nath Banerji Vs. Siva Prasad Bhakat and Others, and (2) Jagjivan Dhondiram Kirad Vs. Gopal Vinayak Joshi, . In these cases, it was held that an order dismissing a claim for default is an order within the meaning of Or. 21, R. 63 of the Civil Procedure Code, and, subject to the result of a regular suit, is conclusive. It is now well settled that even if an order dismissing the application is passed for default in the enquiry, such an order becomes conclusive, subject to the result of a suit under Or. 21 R. 63 C.P.C.

8. I, therefore, find that this revision is without substance and hence it is dismissed with costs. Advocates fee Rs. 40/-.