(1936) 07 PAT CK 0010

In the Patna High Court

Chuni Lal and Another — APPELLANT

Vs

Ram Ranvijoy Prasad Singh — RESPONDENT

Date of Decision : 30-07-1936

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Limitation Act, 1963 — Article 166, 14

Citation : AIR 1936 Patna 558

Hon'ble Judges : Mohamad Noor, J

Bench : Division Bench

Judgement

Mohamad Noor, J.—These four applications in revision are directed against a decision of the District Judge of Shahabad where by that officer dismissed four appeals of the four petitioners from the orders of the Munsif of Buxar, refusing to set aside the sale of a certain holding in execution of a decree of the Maharaja of Dumraon. It appears that the holding in question was sold on 7th May 1932. On the 23rd of that month one of the judgment debtors applied for setting aside the sale under Order 21, Rule 89 and deposited a certain amount of money on the 25th. The sale was set aside on 7th June 1932. On 1st July the opposite party in this case, namely, the auction-purchaser, Lakhan Ojha, filed an application objecting to the setting, aside of the sale on the ground that the entire amount required to be deposited under the law was not deposited and therefore the sale could not be set aside. The learned Munsif overruled this objection and rejected the application of the auction purchaser. This order was upheld in appeal by the District Judge of Shahabad, but on an application for revision filed by the auction-purchaser in this Court the order of the lower Court was set aside on 7th April 1934, and the sale was confirmed. Thereafter four applications for setting aside the sale were filed on behalf of the four petitioners under Order 21, Rule 90. One of the petitioners is a judgment-debtor and the other three claim to have interest in the holding sold. The cases were heard by two Munsifs.

2. The cases of Chuni (petitioner in Civil Revision No. 11 of 1936) and Chandrika Ahir (petitioner in Civil Revision No. 55) were heard by Babu Bhagwan Prasad,

the Munsif of Buxar, and the other two cases, namely, those of Ram Asharfi Ojha (petitioner in Civil Revision No. 53) and Lal Mohan Ojha (petitioner in Civil Revision No. 54) were heard by his successor Babu Jugal Kishore Prasad. Both the learned Munsifs dismissed the applications. The petitions were obviously filed long after the expiry of the period of limitation and it seems that the petitioners relied apparently upon Section 14, Lim. Act, and contended that on account of the fraudulent suppression of the various processes the knowledge of the sale was kept back from them and that the applications were within thirty days of the date of knowledge. Babu Bhagwan Prasad held that there was proper service of the processes and that the two petitioners whose cases he decided had knowledge of the sale. Babu Jugal Kishore Prasad, on the other hand, held that the processes were not served but nevertheless he held that the petitioners before him had knowledge of the execution proceedings and of the sale. All the petitioners preferred appeals to the District Judge who dismissed them by one single judgment against which these four applications for revision have been filed.

3. The learned District Judge agreed with Babu Jugal Kishore Prasad and held that the processes were not served, but he also agreed with him in holding that the petitioners had full knowledge of the execution proceedings and, therefore, the applications were barred by limitation. It was contended before him that the period of limitation commenced to run from the date when this Court confirmed the sale. He overruled this contention. A preliminary objection was taken on behalf of the opposite party to the effect that under the circumstances stated above no revision lies. It has been contended on his behalf by Mr. Jayaswal that assuming that the learned District Judge has come to wrong conclusions about the applications being barred by limitation, that erroneous decision is not open to revision by this Court. The argument of Mr. Mahabir Prasad on behalf of the applicants is this. He has, first of all, contended that the learned District Judge has wrongly used the findings of Babu Jugal Kishore Prasad also in the two cases which were decided by Babu Bhag wan Prasad and this he had no jurisdiction to do, or at any rate this was a material irregularity in the exercise of jurisdiction and therefore a revision lies. There is, in my opinion, no force in this contention. What seems to me on a careful reading of the judgment of the learned District Judge is that he has adopted the reasons given by Babu Jugal Kishore Prasad as his own reasons for holding that all the applicants had knowledge of the sale. After referring to the views of Babu Jugal Kishore Prasad he says:

On the evidence therefore coupled with the circumstances, I have no hesitation in holding that the allegation of the applicants regarding their ignorance of the date of sale is not correct. They knew from before that the date of sale was 7th May 1932. Limitation therefore would run from that date in respect of the applications for setting aside the sale.

4. This is a finding of fact based upon evidence. Though the two learned Munsifs differed about the service or otherwise of the process so far as the knowledge of the petitioners was concerned, both of them were unanimous in holding that the

petitioners who were before each of them had knowledge of the sale. The judgment of the learned District Judge being of affirmance it was not necessary for him to enter into the facts in details. The finding is of such a nature that it would have been impossible for this Court to interfere even in second appeal, much less it can be interfered with u/s 115, Civil P.C., where the power of this Court is much more limited. There is no question in this case of either refusal to exercise a jurisdiction or exercising a jurisdiction not vested in the Court or of material irregularity in the exercise of jurisdiction. Here there were proper appeals before the learned District Judge and on the basis of the evidence before him he came to certain findings of fact which may or may not be justified on the evidence on record, but there is no ground for interference in revision.

5. Mr. Mahabir Prasad next contended as was contended before the learned District Judge that the learned District Judge has refused to exercise jurisdiction inasmuch as he did not calculate the period of limitation from the date when the sale was confirmed by the High Court on 7th April 1934. The argument of the learned advocate is that the sale having been set aside under Order 21, Rule 89, on deposit made, there was no sale left for the setting aside of which any application could have been filed. Therefore a fresh cause of action accrued to the petitioners when the High Court confirmed the sale on the date stated above. The fallacy in this argument is that it ignores the fact that the cause of action for filing an application for setting aside a sale is not the confirmation of sale but the sale and the period is to be counted not from the date of confirmation of sale but from the date of sale. In this particular case, as I have said, the sale was held on 7th May 1932. The application for setting it aside had already become barred on 7th June 1932, when, as I have said, the sale was set aside. Therefore the right of the petitioners of making an application for setting aside the sale became barred before the sale was set aside by the Court, and I know of no law under which this right can be revived on account of subsequent wrong order of the Court setting aside the sale passed on 7th June which order was ultimately reversed on 7th April 1934. I am aware of a decision of the Calcutta High Court affirmed by the Privy Council where, apart from the statute of limitation, the Courts have applied the principle that nobody should be deprived of his right on account of the actions of the Court, vide Lakhan Chunder Sen v. Madhusudan Sen (1908) 35 Cal 209 which was affirmed by the Privy Council in Nrityamoni Dasi v. Lakhan Chandra Sen 1916 PC 96. I can well imagine a case in which before the expiry of the time for making an application for setting aside the sale it is set aside by the Court erroneously and thereby the party who is entitled to apply for setting it aside is unable to do so.

6. If afterwards the sale which was erroneously set aside is affirmed the party whose right was taken away by the Court may well claim that the period during which on account of the sale being non existent he was prevented from making an application for setting it aside should, be excluded, but here as I have said the entire period expired before the sale was actually set aside. Mr. Mahabir Prasad has however urged that his contention was not that the running of the period of

limitation became suspended but that a fresh period of limitation commenced to run from the date of the confirmation of sale by the High Court on 7th April 1934. I have already pointed out that under Article 166, Lim. Act, the starting point of the period of limitation for setting aside a sale is not the date of the confirmation of sale but the date of sale, and in this case there is only one date of sale, that is 7th May 1932. The learned advocate has relied upon the decision in Muthu Korakkai Chetty v. Madar Ammal 1920 Mad 1 and the decision of the Privy Council in Baijnath Sahai v. Ramgut Singh, (1896) 23 Cal 775. In my opinion, none of these decisions is of any avail to the petitioners. In the Madras case the facts were that there was a sale which was confirmed. After the expiry of the period prescribed for making an application for setting aside the sale there was an application for setting it aside which was entertained and partly allowed, that is, the sale in respect of certain portion of the property sold was set aside. The decree holder auction purchaser applied for delivery of possession after three years from the date of the first order of confirmation of sale but within three years of the second order by which the sale of a portion of the property was set aside. The question was whether the period commenced to run from the first date or from the second date. The majority of the Full Bench held that the period commenced to run from the second date and that the second order gave a fresh cause of action to the decree-holder to make an application for delivery of possession. The difference between that case and the present one is that in this case, as I have said more than once, the cause of action is the sale and in that case the cause of action was the confirmation of sale under Article 180, Lim. Act. Similarly, the decision of the Privy Council has got no application. In that case the suit was for setting aside a revenue sale for which the period of limitation commences to run from the date of confirmation of sale. The sale was confirmed by the Commissioner but was set aside by the Board of Revenue, which on review again confirmed the sale.

7. The question was from what date the period began to run. It was held that it began to run from the date of the second order when the sale was ultimately confirmed. There also, as in the Madras case, the starting point of limitation was the confirmation of the sale and the question which their Lordships decided was that the date when the Board of Revenue ultimately confirmed the sale was the date from which the period commenced to run. I have discussed this point in detail because it was argued with some emphasis by the learned advocate who has appeared on behalf of the applicants. In my opinion, even if there had been any force in this contention, and my opinion would have been otherwise, the learned District Judge having considered and decided it against the petitioners it would not have been open to me to interfere in revision. The result is that all these applications fail. They are rejected with costs. There will be one hearing fee: two gold mohurs to be equally divided in all the four cases.

