
(1896) 07 AHC CK 0019
In the Allahabad High Court

Deoki Nandan Rai and Others

APPELLANT

Vs

Tapesri Lal and Others

RESPONDENT

Date of Decision : 15-07-1896

Acts Referred:

Citation : (1897) ILR (All) 22

Hon'ble Judges : Knox, J;Blair, J;Aikman, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

Knox, Blair and Aikman, JJ.—The parties to this second appeal are Babu Deokinandan Rai, and Rheobalak Rai, who have been compelled by an order made u/s 293 of the Code of Civil Procedure, to pay the deficiency of price which happened on a re-sale of property purchased by them and not paid for, and Tapesri Lal and others, the judgment-creditors, who by virtue of that order recovered from Babu Deokinandan Rai and Sheobalak Rai the aforesaid deficiency of price and the expenses on the re-sale. Babu Deokinandan Rai and Sheobalak Rai claimed in the suit out of which this appeal arises to recover the amount paid by them upon the ground that the judgment-creditor recovered the money without any certificate furnished by the officer holding the sale, a preliminary which they contend was absolutely necessary before the amount could be recovered. Both the Courts below have held that the absence of the certificate mentioned in Section. 293 of the CPC is a fatal defect. The order of the Court passed without this preliminary certificate is according to them illegal and Without jurisdiction. They accordingly decreed the suit brought by the respondents.

2. In appeal before us the contention is that the suit of the respondents is barred by Article 13 of Schedule II of the Indian Limitation Act, 1877, and further that the appellant is not prejudiced by the neglect or omission, if any of the officer holding the sale to certify to the Court the deficiency of price and the expenses attendant on the re-sale.

3. In our opinion the plea that the suit was barred by limitation entirely fails. It is true that the order passed by the Court under whose directions the sale was held is dated the 2nd of March 1889. But an appeal was lodged from that order, and the date of the final decision in the case by a Court competent to determine it finally was the 10th of March 1892. The respondents are entitled to have this period excluded in computing the period of limitation, and if it be so excluded, the present suit, which was instituted on the 9th of March 1893, was within one year from the 10th of March 1892, and consequently within time.

4. In arguing the second plea the learned vakil who appeared for the appellants divided his arguments into two heads the first being that a suit to set aside an order passed u/s 293 was not maintainable; and the second that the certificate mentioned in Section 293 was not so essential that its absence would prevent a judgment-creditor or a judgment-debtor, as the case might be, recovering from the defaulter. His argument was that the order in question had been passed by a competent Court; it was intended by the Legislature, who have made no provision for appeal, to be a final order. He drew our attention to Section 283, and contended that the absence of any similar section relating to orders passed u/s 293 was strong ground for the conclusion that the Legislature did not intend that a suit should be brought to set aside such orders. But there is a vast difference between orders passed under Sections 280, 281, or 282 and orders passed u/s 293. The former class of orders are judicial or quasi judicial orders. They are not to be passed except after an investigation made and opportunity given to the parties interested to adduce evidence. No such provision is made with regard to orders passed u/s 293. Section 293 contemplates that the officer holding the sale shall simply go through the arithmetical process of calculating accurately what deficiency of price has taken place and what the expenses attending the re-sale were. To no one interested is any opportunity given of being present at or of questioning the arithmetical process aforesaid. The officer draws up his certificate and upon that certificate the Court also proceeds, at the instance of the parties authorized to set it in motion, to recover the amount certified, just as if the certificate were a decree and the Court were the Court executing a decree. Any order, passed by a Court under such circumstances is in effect an administrative and not a judicial order. We know of no precedent or authority standing in the way of such orders being questioned by a separate suit. There being no enactment in bar, the suit was in our opinion one which the Court had jurisdiction to try, and the argument that the suit was not maintainable has no force.

5. As regards the question whether a certificate by the officer holding the sale is so essential a preliminary that without it a Civil Court cannot at the instance of the judgment-creditor or judgment-debtor, order a recovery from the defaulter, we were referred to no authority or precedent on the point, The learned Counsel for the respondents took his stand upon the language used in Section 293. He pointed out to us that the provision requiring a certificate did not exist in Act No. VIII of 1859. Its insertion in the present code must have been, so he argued, of

set purpose. A careful consideration of Section 293 satisfies us that we should not be warranted in drawing the conclusion he asked us to draw from the language contained in it. Two things are provided for by that section. The first is that the deficiency of price and expenses attending the re-sale shall be entered in a certificate to be drawn up by the officer-holding the sale. The second is that the deficiency in those expenses shall be recoverable from the defaulter in the manner set out. But each provision is independent of the other, and there is no word or expression compelling us to hold that the first is a condition precedent to the second. It is easy to see that if it were a condition precedent cases of very great hardship and injustice might ensue. The officer holding the re-sale might die before he had granted the certificate, or he might be prevented in other ways from making such a certificate. His incapacity to grant the certificate might be due to no fault of the judgment-creditor or the judgment-debtor. To debar these persons from recovering money to which they are entitled both in law and equity merely because of such an incapacity would amount to a miscarriage of justice. We prefer to put upon the section an interpretation which it can bear and which will not result in such hardships. The result, therefore, is that this appeal will prevail. The appeal will be decreed. The judgment and decree of the Lower Appellate Court will be aside and the case remanded to the Lower Appellate Court with instructions to re-admit it upon its original file of pending appeals and to dispose of it according to law. Costs will abide the event.