

(1924) 01 CAL CK 0022
In the Calcutta High Court

Giribala Dasi and Others

APPELLANT

Vs

Tarak Nath Jatan and Others

RESPONDENT

Date of Decision : 17-01-1924

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Limitation Act, 1908 — Section 18

Citation : AIR 1925 Cal 515

Hon'ble Judges : Suhrawardy, J

Bench : Division Bench

Judgement

Suhrawardy, J.—This Rule is directed against an order of the District Judge, 24 Parganas, setting aside a sale held in execution of a decree of the petitioners. The sale was held so far back as the 7th October, 1915 and the present application was presented by the opposite party for setting aside the sale under Order 21, Rule 20, on the 20th April, 1922. The Court of first instance found that the property was sold for an inadequate price, that the decree-holder was the purchaser, that the sale processes were duly served, and the judgment-debtor had given up possession of the land to the decree-holder by an amicable arrangement. On appeal, the learned District Judge has recorded his finding in the following words: "I am inclined to hold that the petitioners are still in possession and that they were not aware of the sale proceedings. The sale proceedings were irregular. The properties were misdescribed and sold for an inadequate price. The decree-holders were the purchasers. The appeal will be allowed and the sale set aside." It is argued that these findings are not sufficient. In my judgment, this objection ought to prevail. The sale was held seven years ago. The judgment-debtors came to Court with the allegation that they were kept back from the knowledge of the sale by the fraud of the decree-holder. The case can only be taken out of the bar imposed by the law of limitation by proof of such fraud. The findings that the judgment-debtors were not aware of the sale proceedings are not enough to attract the operation of Section 18 of the Indian Limitation Act. There should be a further finding that they were kept back from

the knowledge of the sale by the fraud of the decree-holder. It is clear that such fraud must be distinctly and clearly found in order to extend the period of limitation prescribed under the Limitation Act. The judgment of the learned District Judge is so short and laconic that it is difficult to ascertain if he had directed his mind to the entire evidence in the case and the points arising in it; for instance, the Munsif has found that there was a due publication of the sale proclamation. The learned Judge has not said a word with reference to that finding though it may be very important in determining the question whether the judgment-debtors were aware of the sale or not.

2. It is next contended by the opposite party that it is not a proper case in which I should interfere u/s 115, Civil Procedure Code. Speaking for myself, I am always reluctant to interfere in such matters. But I consider this case to be an exceptional one in that the result of the setting aside of the sale would be that the petitioners would lose all the benefit that they have got under their decree the execution of which would now be barred by limitation. Equities being equal on both sides. I think it is a proper case to exercise my discretion. In support of the view I have expressed and of the course I have adopted I may refer to the case of Kailash Chandra Haldar v. Biswanath Pramania (1896) 1 C.W.N. 67.

3. The result is that this Rule is made absolute the order of the Court below set aside and the case sent back to the Court of appeal below for rehearing of the appeal and the determination of the matter in dispute according to law. The cost will abide the result. I assess the hearing fee at two gold mohurs.