
(1967) 05 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : S.A.O. No. 31 of 1966

Gurdial Kaur and Others

APPELLANT

Vs

Mihan Singh and Others

RESPONDENT

Date of Decision : 09-05-1967

Acts Referred:

Citation : (1968) 1 ILR (P&H) 201

Hon'ble Judges : Daya Krishan Mahajan, J

Bench : Single Bench

Advocate : Tirath Singh Munjral, for the Appellant; Kedar Nath Tewari, for the Respondent

Final Decision : Dismissed

Judgement

Daya Krishan Mahajan, J.—This appeal is against the order of remand passed by the learned Additional District Judge, Faridkot.

2. The contention of the learned Counsel for the Appellant is that the remand is not justified because:

(1) The objections to the sale raised by the Respondent were barred by time and hence not maintainable. The sale in pursuance of the award under the Co-operative Societies Registration Act was effected on the 19th of February, 1960 and was confirmed on the 23rd of March, 1960. The objections were filed on the 20th of June, 1960/18th of August, 1961. The same are barred by limitation. In support of this contention, reliance is placed on a Full Bench decision of the Lahore High Court in AIR 1942 153 (Lahore) and particularly on the observations-

that the judgment-debtor cannot ignore the auction sale on the ground that the Court had no jurisdiction to sell the property because the Court would have jurisdiction to sell unless and until the facts showing that the property is exempt from attachment or sale are alleged and proved by the judgment-debtor.

and

(2) that the sale was to the decree holder, who, in turn, sold it to the third party, who are the present Appellants; and, therefore, the sale is immune from attack on the principle enunciated by their Lordships of the Supreme Court in Janak Raj Vs. Gurdial Singh and Another, .

3. These contentions lose sight of the fact that the only objection raised and pressed by Mr. Tewari, who represents the judgment-debtor, is that the award, which is tantamount to a decree, was a nullity. Mr. Tewari maintains that if there is no decree at all in law, no sale can take place. He can simply ignore such a decree and recover the property at any time if it has gone out of his possession, of course within the statutory period of twelve years.

4. After hearing the learned Counsel for the parties, I am of the view that the contention of Mr. Tewari is sound. The first contention of Mr. Munjral, learned Counsel for the auction-purchaser, that the objections to the sale are barred by time, cannot be accepted because of the allegation that the decree, in pursuance of which the sale was made, is a nullity. The remand is directed to determine the question whether the decree is a nullity. I fail to see how, in case the Court finds, that the decree in pursuance of which the sale took place is a nullity, the sale can stay. The Full Bench decision in Gauri's case has no relevance in this situation. The Full Bench decision in Gauri's case does not lay down that the sale will be a good sale even if it has taken place in pursuance of a decree which is a nullity. In Gauri's case, the decree that was passed, was a valid decree. The only objection raised to the sale held in its pursuance was as to the sale ability of the property in execution of that decree. Thus the decision in Gauri's case has no parallel so far as the present case is concerned.

5. The second contention of Mr. Munjral based on the Supreme Court decision in Janak Raj's case is also without any substance. Their Lordships of the Supreme Court were not dealing with a case where the decree itself was without jurisdiction. What happened in that case was that there was a valid decree, in pursuance of which the sale took place. On appeal, that decree was vacated. On these facts, it was observed by their Lordships of the Supreme Court that the sale which was made at a time when there was a valid and subsisting decree would not lose its force because the decree was later on, vacated in appeal. This case again has no parallel with the facts of the present case. It was not urged before their Lordships that the decree, which was vacated, was without jurisdiction or a nullity. As a matter of fact, has been repeatedly held by their Lordships of the Supreme Court that a decree or an order, which is a nullity, need not be vacated; and it can be ignored.

6. In this view of the matter, I see no ground to interfere with the order of the lower appellate Court. The appeal accordingly fails and is dismissed. The parties are directed to appear in the trial Court on the 29th of May, 1967. The costs will be costs in the cause.