
(1982) 11 KL CK 0014
In the High Court Of Kerala
Case No : A.S. No. 273 of 1977

H. Bhavarlal

APPELLANT

Vs

Vasudeva Moothan and Another

RESPONDENT

Date of Decision : 10-11-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 63, 64, 65

Citation : AIR 1983 Ker 125 : (1983) 2 ILR (Ker) 321

Hon'ble Judges : P.C. Balakrishna Menon, J;K. Bhaskaran, J

Bench : Division Bench

Advocate : T.C.N. Menon and T.D. Rajalakshmy, for the Appellant; T.L. Viswanatha Iyer, K.S. Menon, S. Ramachandran and S.R.D. Prabhu, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishna Menon, J.—The 1st defendant is the appellant. The suit is for declaration of the plaintiff's title to the suit property under a court sale held in E. P. No. 158 of 1965 in Small Cause Suit No. 390 of 1962 on the file of the Munsiff's Court, Palghat and for an injunction to restrain the 1st defendant from taking delivery of the property from the plaintiff, in pursuance of the order in E. A. No. 743 of 1968 in the aforesaid E, P.

2. The 1st defendant had filed O. S. No. 54 of 1956 on the file of the Sub Court, Bangalore and had obtained an order for attachment before judgment of the property involved in the suit. The plaintiff obtained a decree against the 2nd defendant in Small Cause Suit number 390 of 1962 on the file of the Munsiff's Court, Palghat. The suit property was brought to sale in E. P. No. 158 of 1965 in execution of the small cause decree and the decree-holder-plaintiff purchased the property in the Court-auction sale held on 20-12-1965. Ext. A1 dated 14-10-1966 is the sale certificate issued to the plaintiff, on confirmation of the sale in his favour. As per Ext. A2 delivery account, the plaintiff took delivery of the property on 4-7-1968 The 1st defendant who had attached the property

before judgment in O. S. No. 54 of 1956 obtained a decree in the suit against the 2nd defendant and in execution of the said decree the suit property was brought to sale and purchased by the 1st defendant on 5-12-1966. Ext. B2 dated 25-11-1967 is the sale certificate issued to the 1st defendant. He had taken delivery of the property as per Ext. B3 dated 19-1-1968. It was thereafter that the plaintiff took delivery of the property under Ext. A2. On the plaintiff taking delivery of the property, the 2nd defendant filed E. A. No. 743 of 1968 in E. P. No. 158 of 1965 of the Munsiff's Court, Palghat for re-delivery of the property to him on the ground that he had obtained title to the property as per Ext. B2 sale certificate, and had also obtained delivery of possession of the same through Court as per Ext. B3 delivery account. The execution Court dismissed E. A. No. 743 of 1968 as per Ext. A4 order dated 3-9-1974.

3. This Court in C. R. P. No. 305 of 1975, allowed re-delivery of the property to the 2nd defendant subject to the plaintiff's right to establish his title and right to possession by a separate suit. Ext. A5 dated 8-9-1975 is the order of this Court in C. R. P. No. 805 of 1975. It is thereafter that the plaintiff filed the present suit for declaration of his title and for injunction restraining the 2nd defendant from taking delivery of the property in pursuance of Ext. B2 sale certificate obtained by him in O. S. No. 54 of 1956. The Court below has decreed the suit declaring the plaintiff's title and granting an injunction against the 2nd defendant from taking delivery of the property from the plaintiff in pursuance to Ext. A5 order in C. R. P. No. 805 of 1975. It is against this that the 1st defendant has come up in appeal.

4. The facts of the case are not in dispute. The Court-sale and purchase by the plaintiff was on 20-12-1965 and Ext. A1 is the sale certificate issued to him on confirmation of the sale in his favour. The Court-sale and purchase by the 1st defendant in execution of the decree in O. S. No. 54 of 1956 was on 5-12-1966, and Ext. B2 is the sale certificate issued to him. The sale in favour of the plaintiff was earlier in point of time, and the plaintiff obtained an indefeasible title to the suit property, under Ext. A1 sale certificate after confirmation of the sale in his favour, held on 20-12-1965. The judgment debtor, the 2nd defendant, had no more any saleable interest in the property after the same was sold in Court-auction and purchased by the plaintiff on 20-12-1965. The subsequent sale in execution of the decree in O. S. No. 54 of 1956 does not convey any title to the 1st defendant purchaser, as the judgment-debtor had by that time lost his title to the suit property.

5. In Mulla's C. P. C., Fourteenth Edition, Vol. 1, it is stated thus at page 439:

"4. Successive purchasers at sales in execution of money decrees. -- Under the Code of 1882, Section 316, the property sold vested in the purchaser from the date of the certificate of sale, and not before. This gave rise to some difficulty when the question arose as to which of two successive auction-purchasers should have priority in cases where the later purchaser had the certificate of sale issued to him first. Had the question been determined with exclusive reference to the

terms of that section the priority would have rested with the purchaser who first procured the certificate of sale. But this inequitable result was avoided, and the difficulty was got over by holding that the first purchaser had by his prior purchase obtained an equitable interest in the property, and that the subsequent purchaser must be deemed to have purchased the property subject to such interest. No such difficulty can arise under this Code, for it is provided by the present section that the property is to be deemed to have vested in the purchaser from the date of sale, and not from the date of the certificate of sale."

6. The fact that there was an attachment before judgment in O. S. No. 54 of 1956 of the Sub Court, Bangalore, subsisting on the date on which the suit property was sold in execution of the decree obtained by the plaintiff, does not in any way affect the plaintiff's title to the property sold in execution. This is clear from Sub-section (2) of Section 63 of the Civil P. C. Mulla at page 421 of the same volume after discussing the case law on the point has summarised the law as follows :

"The result, therefore, is that, where property is under attachment by two Courts of different grades and the property is sold by the court of lower grade in contravention of the provisions of Sub-section (1), the sale is not thereby rendered invalid, though the Court selling the property and the purchaser at the Court sale may be aware of the irregularity. The course to be adopted by the Court of higher grade in such a case is to accept the sale made by the lower Court, and to call for the proceeds of the sale to distribute them rateably amongst as the decree-holders."

7. A Division Bench of the Andhra Pradesh High Court in Parachuri Veerayya Vs. Yalavarti Veeraraghavayya and Others, stated the law thus:

"12. Section 64 C. P. C., does not enact an absolute prohibition of the sale of the property on which the attachment was subsisting. It only says that a private alienation of such property does not bind the attaching creditor or persons claiming under him. It recites:

"Where an attachment has been made, any private transfer or delivery of the property attached or any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment".

A private sale of property subject to attachment could be avoided by the attaching creditor or his representatives-in-interest. This does not preclude the same property from being brought to sale in execution of another decree. 13. That this is permissible could be easily gathered from Section 63 CPC which is as under :--

"1. Where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, the Court which shall receive or realise such property and shall determine any claim thereto and any objection to

the attachment thereof shall be the court of highest grade, or, where there is no difference in grade between such courts, the court under whose decree the property was first attached.

2. Nothing in this Section shall be deemed to invalidate any proceeding taken by a court executing one of such decrees".

14. Sub-section (2) clearly implies that the attachment of the property does not operate to oust the jurisdiction of another court to bring that property to sale. This section provides the machinery for adjudicating claims and objections to the attachment of the same property in two or three courts. Sub-section (2) lays down that even if a sale is held contrary to the procedure indicated in Sub-section (1), it is not invalidated for that reason. That being the position, the sale in question was properly held and title passed to the auction-purchaser. In other words, the title of the judgment-debtor was extinguished."

8. For the aforesaid reasons we do not see any valid ground for interference in appeal. The appeal fails and is dismissed; in the circumstances, without any order as to costs.