

(1956) 07 AHC CK 0010

In the Allahabad High Court

Case No : Supreme Court Appeal No. 43 of 1955

Janki Prasad and Others

APPELLANT

Vs

Kailash and Another

RESPONDENT

Date of Decision : 17-07-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90, 110
Constitution of India, 1950 — Article 133, 133(1)

Citation : AIR 1956 All 735 : (1956) 26 AWR 569

Hon'ble Judges : Randhir Singh, J; Hari Shankar, J

Bench : Division Bench

Advocate : Niamat-Ullah, D.P. Khare and G.B. Lal, for the Appellant; R.B. Chaudhri, for Opposit Party 1, Iqbal Ahmad, for Opposite Party 2 and K.H. Rizvi, for Opposite Parties 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

Randhir Singh, J.—This is an application for leave to appeal to the Supreme Court against the judgment of this Court, dated 12-8-1955.

2. It appears that in execution of a money decree for Rs. 9,716/11/- a house known as "Maiku Lal Bhawan" was attached and sold at auction. The house was purchased by Janki Prasad, applicant 1, in execution of the decree which stood in favour of Sm. Tara Devi who is dead and is now represented by applicants 2 and 3. An objection was raised by Ham Narain, father of opposite party 1, and by opposite party 2 who had purchased the property from the judgment-debtor Ram Narain before the auction sale.

The learned Civil Judge dismissed the objection and upheld the auction sale. The opposite party then instituted an appeal against the order of the Civil Judge and this Court set aside the order passed by the lower Court and also the auction sale made in favour of applicant 1. The applicants now wish to go in appeal to the Supreme Court and it is contended that they have a right of appeal under the law inasmuch as the property which was the subject-matter of the proceedings under

Order 21, Rule 90, Civil P. C. in the execution Court as also in the appeal sought to be instituted was valued at Rs. 50,000 /-.

3. The application has been opposed on the ground that the suit which has given rise to the execution proceedings was valued at less than Rs. 10,000/- and as such the applicants have no right of appeal to the Supreme Court. Article 133(1) (a) of the Constitution is as follows :

"An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies:

(a) that the amount or value of the subject matter of the dispute in the Court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law."

4. The main point of contention raised on behalf of the opposite parties is that the proceedings instituted under Order 21, Rule 90, Civil P. C. should not be taken to be original proceedings so as to attract the application of Article 133(1) (a) and that the valuation of the suit out of which the execution proceedings arise should be taken to be the valuation for the purposes of the appeal to the Supreme Court. I

We are unable to accept this contention. Proceedings under Order 21, Rule 90 Civil P. C. have nothing to do with the subject-matter of the suit in which the decree was passed. They are in respect of the sale of property which was not the subject-matter of the suit and as such are, in their nature, original proceedings.

It is not disputed that the house which was the subject of sale was worth more than Rs. 20,000/-. The judgment of the original Court has been set aside in appeal by this Court. The applicants have, therefore, a right of appeal against this final order of this Court by means of which the order passed by the original Court was set aside.

5. A somewhat similar point arose in a case cited by the learned counsel for the applicants, viz. *Tekait Krishna Prasad Singh v. Moti Chand* 40 Ind App 140 (A). In this reported case also the decree was a money-decree for less than Rs. 10,000/- but the property attached in execution was worth about two lacs. The auction sale was in dispute and their Lordships of the Privy Council held that a right of appeal existed.

6. The applicants have therefore a right of appeal under the provisions of the Constitution and the CPC and the case is therefore certified to be fit for appeal to the Supreme Court as the valuation of the property is well over Rs. 20,000/-.