

(2004) 01 GAU CK 0021
In the Gauhati High Court
Case No : C.R.P. No. 319 of 2001

Joginder Kaur and Others

APPELLANT

Vs

Satya Ranjan Roy

RESPONDENT

Date of Decision : 27-01-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58, 151

Citation : (2004) 3 GLR 129

Hon'ble Judges : P.P. Naolekar, J

Bench : Single Bench

Advocate : P.K. Kalita and M. Kataki, for the Appellant; A.K. Purakayashtha and S.K. Sinha, for the Respondent

Final Decision : Allowed

Judgement

P.P. Naolekar, J.—Heard Mr. P.K. Kalita, learned counsel for the petitioner and Mr. A. K. Purkayastha, learned counsel for the respondent.

2. Facts in brief a decree was passed for an amount of Rs. 7,499.25P against one Amardas Chawla, the predecessor of petitioner, in Misc. (J) Case No. 92/63. Later on the decree was put for execution and the property under Dag No. 473 was attached. However, in the sale proclamation the Dag number was wrongly given as Dag No. 476 which was later on corrected by the Court's order. The property was sold in execution of the decree on 7.5.1978 and was purchased by the decree-holder Satya Ranjan Roy and a sale certificate was also issued. Thereafter, Smti Joginder Kaur, who is the daughter-in-law of the original judgment debtor/challenging the attachment and sale of Dag No. 473 land, filed an objection on the ground that the property in question was gifted to her by a registered deed by her father-in-law and, therefore, she is the owner of the property, which could not have been put on sale in execution of the decree against her father. Parties have lead evidence before the executing court. By order dated 26.8.1991 the executing Court has accepted the case of the objector that the gift has been executed in her favour by her father-in-law and therefore

the property could not have been put to auction for the execution of the decree against her father. The executing court, however, gave a direction to the objector to deposit the decretal amount of Rs. 8,056.54P with interest at the rate of 6% per annum with effect from 1.1.1976. Accordingly, the amount has also been deposited on 17.9.1991. However, while passing the order directing deposit of the decretal amount in Execution Case No. 4/66(MJ Case No. 12/83) no specific directions have been issued for setting aside the sale deed.

3. To me, when the executing court has given direction for deposit of the decretal amount for payment to the decree holder, after the decree has been executed by sale of certain property, it would only be after setting aside the sale, which was held in execution of the money decree passed in favour of the decree holder. Aggrieved by this order, the decree holder had preferred a revision petition in this Court which was registered as Civil Revision No. 410/91. The High Court without going into the merit of the case has given a literal construction to the judgment passed by the executing court, and said that as the sale has not been set aside, the decree holder's right in the property has not been affected which he had acquired by the purchase of the property in the execution of the decree. The High Court gave liberty to the objector to file an application or a suit in law to set aside the execution sale. In pursuance of the directions, given, the objector again moved an application for setting aside the sale. The application was termed as an application u/s 151 CPC. The executing Court rejected the application filed by the objector u/s 151 CPC on the ground that, on the face of there being specific provision in the CPC for setting aside the sale, the application u/s 151 CPC is not maintainable, the application for setting aside the execution sale can be moved only once and not repeatedly and also on the ground that the application is barred by limitation.

4. In my opinion, in the peculiar facts and circumstances of the case, the executing court should have entertained the application u/s 151 CPC. In the present case, on the objection raised previously by the objector on the basis of the title to the suit property, the executing court allowed the objection of the objector holding that she acquired the right, title and interest in the property by virtue of the gift deed executed in her favour by her father-in-law before the property in question was attached and sold in execution proceedings. Not only that the executing court has given further direction for deposit of the decretal amount with interest, which is indicative of the fact that the amount was directed to be deposited for payment to the decree holder for satisfaction of the decree. The executing court gave direction for deposit of the decretal amount for satisfaction of the decree after holding the title in the suit property to be that of the objector, which would necessarily implies that the sale made in favour of the decree holder has been set aside. However, as there being no specific direction issued in that regard, the High Court gave direction to the petitioner, in earlier revision petition, to move an application for setting aside the sale. In these circumstances, if the objector-petitioners moved application u/s 151 CPC for setting aside the sale, in the factual situation arisen in the case it cannot be said

that objector's application is covered or was within the scope of the provisions of Order 21 Rule 58 CPC and thus the application u/s 151 is not maintainable. It cannot be said that the application is covered by other provisions, which permits the objector to move application for setting aside the sale, and, therefore, application does not lie, there being an implied order passed in objector's favour in the previous proceedings. The provision of Section 151 of the Code is made exactly, to meet similar nature of cases, like the one in hand, to meet the ends of justice and to prevent abuse of process of the court.

5. Under the circumstances, the revision is allowed and the order of the executing court dated 25.7.2001 is set aside. The executing Court is directed to consider the application filed by the objector-petitioners in accordance with law on merits without being bound by any observations made hereinabove.