
(2015) 01 GAU CK 0009
In the Gauhati High Court
Case No : CRP No. 257/2006

Joginder Kaur

APPELLANT

Vs

Legal heirs of Satya Ranjan Roy

RESPONDENT

Date of Decision : 22-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 72, Order 21 Rule 89, 151

Citation : (2015) 2 GLD 423

Hon'ble Judges : Hrishikesh Roy, J.

Bench : Single Bench

Advocate : P.K. Kalita and N. Das, for the Appellant

Judgement

Hrishikesh Roy, J.—Heard P.K. Kalita, the learned Counsel for the petitioners. There is no representation from the O.Ps. whose predecessor's Money Suit No. 32/1963 for realization of Rs. 8056.54 was decreed on 25.5.1965.

2. The decree was put to execution in the Money Execution No. 4/1966 by the decree-holder Satya Ranjan Roy where the judgment-debtor Amar Das Chawla applied for time to pay the decretal amount. But when time was refused, the judgment-debtor filed the M.A.F. 4/1967 and this Court directed to pay the adjournment cost within 3 weeks. But the execution case records wasn't traceable for about 5 years and accordingly the decree-holder filed a fresh execution case i.e. Money Execution Case No. 1/76. However in the meantime, the original Money Execution Case No. 4/1966 was traced out but this was pursued without any notice to the judgment-debtor (J.D.).

3. In the execution proceeding, the decree-holder (D.H.) attached 1 Katha of land in Dag No. 473 but proclamation of sale was made for the adjacent land covered under Dag No. 476. The public auction of the attached land took place on 8.7.1998 and conspicuously the D.H. himself purchased the land and Sale Certificate was issued to him. Subsequently the D.H. got the Dag Number of the purchased land altered to Dag No. 473, although the land attached by the Court

was under Dag No. 476.

4. At this stage, one Amiya Rani Dey claimed herself to be a tenant of the land sold in auction filed objection in the execution case which was registered as Misc.(J) 130/1982. Separate application was filed by the present petitioner objecting to the execution which was registered as Misc.(J) 12/1983. In her objection, the petitioner No. 1 Joginder Kaur claimed that she is the owner of the land under Dag No. 473 which was received in Gift from the J.D. Amar Das Chawla and her land can't be attached to satisfy the decree passed against the J.D. Initially both Misc.(J) 130/1982 and Misc.(J) 12/1983 were dismissed for default on 25.1.1986 and thereafter the aggrieved objectors filed the Civil Revision(s) 124 and 107 of 1986. In the meantime, the J.D. filed the Petition No. 81 on 8.6.1990 under Order 21 Rule 89 of CPC to accept the decretal amount to satisfy the decree and to set aside the auction sale.

5. After the two Revision petitions were allowed, the Executing Court took up the applications filed by the objector and the J.D. for analogous disposal. Thereafter through the order dated 26.8.1991 (Annexure-B) in the Misc.(J) No. 4/1966 and Misc.(J) No. 12/1983, the learned Asstt. District Judge Nagaon directed the petitioner (judgment-debtor) to pay the decretal amount of Rs. 8065.54 with interest @6% w.e.f. 1.1.1976 within 3 months to the decree-holder Satya Ranjan Dey. But consequential direction for setting aside the auction sale prayed for by the objector wasn't inadvertently issued by the Executing Court.

6. Thereafter the J.D. tendered the decretal amount with interest amounting to Rs. 15,629.68 and upon direction of the learned Court, the amount was accepted by the Civil Nazir, Nagaon on 20.9.1991.

7. Being aggrieved with the acceptance of the decretal amount, the D.H. Satya Ranjan Dey filed the Civil Revision NO.410/1991 to assail the Executing Court's order. But this Revision petition was dismissed on 3.8.1995 (Annexure-E) by granting liberty to the affected land owner Joginder Kaur to apply for setting aside the auction sale.

8. The petitioner No. 1 then filed the Petition No. 22 on 18.1.1999 (Annexure-F) before the Civil Judge (Senior Division), Nagaon to set aside the auction sale dated 8.5.1978 on the ground that the decree put in execution was fully satisfied on payment of all dues by the J.D. to the D.H. But this application registered as Misc.(J) No. 6/1999 was rejected on 25.7.2001 (Annexure-G) by the learned Civil Judge (Sr. Division) Nagaon. The aggrieved land owner then filed the CRP No. 319/2001 which was allowed on 27.1.2004 (Annexure-H) by quashing the Execution Court's order dated 25.7.2001 and that Court was directed to consider the petition filed by Joginder Kaur. However through the impugned order dated 6.7.2006, the learned Civil Judge (Sr. Division), Nagaon again dismissed the petition for setting aside the auction sale dated 9.5.1978 by declaring that the Petition No. 22 dated 18.1.1999 has no merit.

9. Mr. P.K. Kalita, the learned Counsel submits that when the Court's decree was

satisfied in full by the J.D. Amar Das Chawla in pursuant to the order passed on 26.8.1991 in the Money Execution Case No. 4/1966, the auction sale of valuable land of the petitioner Joginder Kaur who was a stranger to the suit and wasn't legally obliged to satisfy the decree, should have been set aside by the Executing Court. The petitioners contend that the D.H. unfairly arranged to attach property unconnected with the J.D. without his knowledge or the land owner's and accordingly it is argued that a stranger's attached land was unjustly sold to satisfy the decree which was the burden of the J.D. Amar Das Chawla only and not of any 3rd party.

10. The Counsel refers to the elaborate order passed by this Court in CRP No. 319/2001 to project that a clear direction was issued to the Executing Court to entertain the application filed under Section 151 of CPC to set aside the auction sale. But ignoring the spirit of the direction, the land owner's application was rejected by the Executing Court.

11. In this case, the decree in the Money Suit No. 32/1963 was satisfied by payment of the decretal amount + interest in pursuant to the order of the Executing Court. Thus the D.H. wasn't to be paid anything more to satisfy the money decree. Yet the valuable property of the petitioner No. 1 Joginder Kaur under Dag No. 473 was attached and sold to satisfy the decree although she had no legal obligation to satisfy the decree as she was a stranger to the suit. Thereafter this attached land was purchased surreptitiously by the decree-holder although he never sought the Court's permission to purchase the attached property as is mandated by Order 21 Rule 72 of the CPC.

12. When the Executing Court allowed realization of the decretal amount with interest and the accrued amount was deposited in full on 20.9.1991, there can be no legal basis to allow continuation of the fraudulent auction by which the D.H. purchased the valuable property of a stranger to the suit. Additionally the purchaser as the D.H. failed to take Court's permission under Order 21 Rule 72 and this was certainly illegal. Moreover although the auction sale took place, the land owner continued to retain possession of the land and at no stage the auction purchaser took possession of the land in question.

13. Having considered the projection from the petitioners' side and the legal position discussed above, I am of the considered view that it will be travesty of justice if the auction sale is not set aside when purchase was made in violation of the legal provision by D.H. Moreover the sale was intended to honour the money decree and the decree is satisfied in full by depositing the amount with the Civil Nazir, Nagaon on 20.9.1991. Therefore the impugned order dated 6.7.2006 in Misc.(J) 6/1999 is set aside and quashed. Considering the prolonged litigation, without remanding the case to the Executing Court whose orders have caused injustice to the land owner, the petitioners' petition No. 22 i.e. Money Execution Case No. 4/1966 filed under Section 151 of CPC for setting aside the auction sale dated 9.5.1978 is allowed. It is ordered accordingly

14. With the above order, the case is disposed of without any order on cost.