

(1930) 08 CAL CK 0038
In the Calcutta High Court

Krishnabandhu Ghatak and Others

APPELLANT

Vs

Panchkari Saha and Others

RESPONDENT

Date of Decision : 12-08-1930

Acts Referred:

Citation : AIR 1931 Cal 166

Hon'ble Judges : Mukerji, J;Mitter, J

Bench : Full Bench

Judgement

Mukerji, J.—The defendants who unsuccessfully resisted an application for a decree for the balance under Order 34, Rule 6, Civil P.C., have preferred this appeal. They took four objections, which were all over ruled, and two of them have been pressed before us as of any substance.

2. The final decree for sale was passed on 18th June 1921. The sale was held on 28th October 1922, and was confirmed on 26th June 1925. The application for a decree for the balance was made on 27th May 1926. It is conceded, and indeed, cannot be disputed, that the application is governed by Article 181, Schedule 1, Lira. Act: Francis Higgins Pell Vs. Minnie Gregory, . This is the article which the Subordinate Judge has applied. He has however observed:

I think that the time from which limitation would run is the date of confirmation of the-sale, inasmuch as, unless and until the sale was confirmed by the Court after disposing of all objections against it, the deficiency in the amount could not be ascertained for the purpose ? of Order 34, Rule 6, and, until this could be ascertained, the plaintiff's right to apply could not accrue.

3. It is said on behalf of the appellants: that the right to accrue arose on the sale having taken place, that with some foresight deficiency could be ascertained, and that if the decree-holders are permitted to wait till the objections are decided they might as well urge with propriety that they are entitled to wait until an appeal or even a second appeal is disposed of, which would prevent their right to apply from accruing for an indefinite time. Such a view, it is said, would militate

against the view of Article 181, taken in the case of Hari Mohan Dalal and Another Vs. Parameshwar Shau and Others, . The question that arises upon a plain reading of the article is, when did the right to apply accrue for an application for the balance; or, in other words, what was the earliest point of time at which it could be said that it had arisen. That point of time can in no event be earlier than when, in the words of Order 31, Rule 6,:

the net proceeds of any sale held under the last preceding rule are found insufficient to pay the amount due to the plaintiff.

4. Now, on a sale taking place and the bid being accepted by the Court, the person declared to be the purchaser has to deposit forthwith 25 per cent of the purchase money, and on failure thereof the property has to be resold (Order 21, Rule 84). The full amount of purchase money has to be paid by the 15th day from the sale (Order 21, Rule 85), and in default thereof a resale takes place (Order 21, Rule 86). The sale may be set aside on deposit, within 30 days of sale, of 5 per cent of the purchase money for payment to the purchaser and of the dues of the decree-holder for payment to him (Order 21, Rule 89). This provision has been held as applying to a sale in execution of a mortgage decree and has now been expressly included by the legislature in the amendment of Order 34, Rule 5, introduced in 1929. It may also be set aside on an application, made within 30 days of it, on the ground of irregularity or fraud. So many contingencies intervening, it is impossible to hold that the plaintiff is in a position to ascertain what the net proceeds of the sale amount to or to find out whether, and if so to what extent, they are insufficient to pay the amount due to him. It is therefore only reasonable to hold that the right to apply does not accrue until the Court has put a seal of finality to the proceedings by confirming it under O. 21, Rule 92. Once the right accrues, time begins to run and the uncertainty, caused by an appeal or other proceedings taken, need not itself be held sufficient to suspend the operation of the statute or to entitle the plaintiff to get a deduction. "We are of opinion that the view taken by the Subordinate Judge is entirely correct. Nothing that has been said in Hari Mohan Dalal and Another Vs. Parameshwar Shau and Others, in our opinion, militates against this view.

5. The next point urged is that the right to a decree for the balance is barred, because "the suit itself was instituted beyond time. This contention has no substance because there were at least two payments made within three years of the suit. They were, it is true, made by defendant 2 alone; but the evidence satisfies us, as it did the learned Subordinate Judge, that they were made with the hand of defendant 2, from the joint family funds and presumably under the directions of defendant 1 who was the karta of the family consisting of all defendants. The appeal is dismissed with costs; hearing-fee three gold mohurs.

Mitter, J.

6. I agree.