
(1923) 01 PAT CK 0029
In the Patna High Court

Lal Pasi and Others

APPELLANT

Vs

Ramsaran Lal Chowdhry and Others

RESPONDENT

Date of Decision : 17-01-1923

Acts Referred:

Limitation Act, 1963 — Section 15

Citation : AIR 1925 Patna 298

Hon'ble Judges : Ross, J; Das, J

Bench : Full Bench

Judgement

Ross, J.—This appeal raises a question of limitation. The relevant dates are these: On 9th June, 1916 a final decree for sale of a house was passed in favour of the mortgagee-respondent. On 7th July 1917, execution was taken out (Execution case No. 203 of 1917.) On 6th August, 1917, sale proclamation was issued and 17th September, 1917, was the date fixed for sale. On 3rd September, 1917, a third party instituted a suit claiming title to one half of the house and an injunction restraining the respondent from selling it. On 12th September, 1917, an injunction was granted. On 19th November, 1917, the other half of the house was sold and the sale was confirmed on 22nd December, 1917. On 8th November, 1918, the suit of the third party was dismissed for default and the injunction was thus dissolved. There was an application for re-hearing which was dismissed and an appeal against the dismissal was rejected on 25th February 1919. The present application for execution was made on 10th January, 1922, and the question is, whether it is within time, or, in other words, within three years of the last application to the Court to take some step-in-aid of execution. Now, the last application to the Court to take some step-in-aid of execution was on the 19th November, 1917. Three years from that date expired on 19th November, 1920. To this must be added, u/s 15 of the Limitation Act, the time of the continuance of the injunction staying the execution. Between 19th November, 1917, and 19th November, 1920, the injunction was in force for 11 months and 20 days, (viz., from 19th November, 1917, to 8th November, 1918). If this period be added, the respondent was entitled to apply, for execution up till

8th November 1921. The learned District Judge has allowed the decree-holder to calculate the period of limitation from 19th November, 1917, and also to deduct the period from 12th September, 1917, till 8th November, 1918. But it is impossible to deduct time which had already elapsed before limitation began to run.

2. It is argued for the respondent that the present application should be treated as a continuation of the previous application. I doubt whether this argument has any relevancy since Section 15 of the Limitation Act was amended so as to include execution proceedings. But, in any view, there must be some limitation to the continuation of execution proceedings and the limitation would appear to be imposed by Article 181. The result, therefore, is the same. The right to apply accrued when the injunction was dissolved and three years from this date expired on 8th November 1921.

3. The result is that the present application must be held to be out of time. The appeal is allowed with costs and the order of the Court below is set aside and the execution is dismissed.

Das, J.

4. I agree.