(1930) 04 AHC CK 0002

In the Allahabad High Court

(Maharaja) Deo Das and Others APPELLANT

Vs

Mahesh Ram Gond and Others RESPONDENT

Date of Decision : 11-04-1930

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 65

Citation : AIR 1931 All 25 : (1930) ILR (All) 921

Hon'ble Judges : Bennet, J

Bench : Division Bench

Judgement

Bennet, J.—This is a Letters Patent Appeal by the plaintiffs whose suit was decreed by both the lower Courts, but the judgment of the learned single Judge of this Court is against the plaintiffs. The plaintiffs are certain idols who own the site of house No. 51/8 in Benares and the tenants of this house were the predecessors of defendants 2 to 5. On 16th July 1920 defendant 1 who had a decree against defendants 2 to 5 had this house auctioned by a sale of Court and purchased it himself for the sum of Rs. 1,050. This sale was confirmed on 18th August 1920. The present suit was brought on 17th August 1926 that is within six years from the date of confirmation, but more than six years from the date of auction sale. The suit is for one-fourth of the purchase price, that is Us. 262-8-0 and interest, on the ground of a custom by which in the case of a public sale the decree-holder, the judgment-debtor and the purchaser are jointly and severally liable for the payment of this " zarichaharum " to the owner of the site. Various grounds of defence were taken, but the only question which concerns this Court is the question of whether the suit was brought within the period of limitation allowed by Article 120. That period of six years dates from the time when the right to sue accrues. The plaintiffs alleged that the right to sue accrued on the date of confirmation of the sale, and the defendants allege that the right to sue accrued from the date of the auction sale. The learned single Judge of this Court has followed the ruling reported in Bindeshri v. Somnath [1916] 14 ALJ 382 in which it was held that the period of limitation in a similar claim of haq chaharum should run from the date of execution of a sale deed and not from the date of registration of that sale deed. But we consider that the parallel is inaccurate. In the case of a sale deed the deed is complete on the date of execution, and registration is effected subsequently as a formality by the legislature in the special case of deeds of sale, etc., relating to immovable property. In the case of an auction sale the sale is a sale by a Court, and the orders of the Court confirming the sale are a vital and necessary part of the transaction. The actual auction sale is merely carried out by a ministerial officer as a matter of convenience, and it is not until the sale is confirmed that orders are passed by the Court in the matter. It is true that Section 65, Civil P. C, lays down as follows:

Where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

2. The fact that a special provision of the CPC was necessary indicates that without such a provision the result would not have been attained. Therefore as regards the immovable property passed at the sale it is only because of this provision that the property vests from the date of the auction sale. There is no such provision in the CPC or in the orders under it in regard to the purchase price. Now the provisions in regard to purchase price are contained in O.21, and Rule 84 states that on every sale of immovable property the person declared to be the purchaser shall pay immediately a deposit of 25 per cent. Rule 85 directs that the purchaser should pay the full amount of the purchase money into Court within 15 days. The owners of the site, that is the plaintiffs in this case, could not have obtained their haq chaharum at the date of the auction-sale for two reasons. For one thing it was not then known whether the sale to defendant 1 would or would not be confirmed. For another reason defendant 1 was under the obligation, unless he was excused by the execution Court, of paying one-fourth of the purchase money down at the time of the auction sale, and the remaining three-fourths into Court within 15 days. It would not have been possible for an auction-purchaser to retain 25 per cent of the purchase price and pay it to the plaintiffs instead of making the payment of the full amount into Court. The plaintiffs only got the right to obtain their 25 per cent after the full amount of the purchase money had been paid into Court,, and they would have obtained that money by an application to the Court on which the Court would have ordered withdrawal of the amount by the plaintiffs. For these reasons we consider that it cannot be said that the right of the plaintiffs to sue accrued on the date of the auction sale. They did not have the right to obtain the money on that date. Some argument was made as to whether the payment of the 25 per cent should be in addition to the deposit by the auction-purchaser of the amount of Rs. 1,050 in Court. If however the amount was in addition to that amount, the custom would not be of one-fourth but of one-fifth. We consider therefore that the right to sue accrued to the plaintiffs on the confirmation of the sale and therefore the present suit is within time. Accordingly we allow this Letters Patent Appeal and we restore the decree of the lower appellate Court with costs at both hearings in this

Court.

