

(1924) 02 BOM CK 0035
In the Bombay High Court
Case No : Second Appeal No. 670 of 1922

Malhar Narayan Prabhu

APPELLANT

Vs

Vishnu Sonu Gavada

RESPONDENT

Date of Decision : 13-02-1924

Acts Referred:

Citation : AIR 1924 Bom 351 : (1924) 26 BOMLR 392

Hon'ble Judges : Shah, J; Norman Macleod, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Norman Macleod, C.J.—The facts in this second appeal are as follows. The second defendant obtained a decree in the, Kudal Court in Sawantwadi against five persons, the plaintiff, his two brothers Gopal and Govind, and his two sisters-in-law Ramabai and Baibai. It would appear from the Roznama in that suit that the plaintiff was not served with the summons Gopal and Govind alone defended the suit, in which a decree was passed awarding a certain sum of money against. the five defendants The appeal against that decision was unsuccessful. Thereafter the decree was transferred to the Malvan Court in British territory for execution. The decree was sent to the Collector, who attached the properties in suit and put them up for sale. The first defendant purchased the property at the auction. The sale was confirmed and possession was given on December 20, 1916.

2. The plaintiff filed this suit in 1918 for a declaration that the decree was void and unenforceable against him and that, therefore, the sale of his interest was void. In the plaint the plaintiff put his share as one-fifth, and that of his brothers and sisters-in-law four-fifths. He claimed that he had purchased the interests of his brothers and his sisters-in-law, but that has been found as a fact to be incorrect by the Subordinate Judge of Malvan, who awarded the plaintiff possession and injunction with regard to one third of the property sold by the Collector. The auction-purchaser, defendant No. 1, appealed, but the appeal was dismissed on the ground that the original decree was void as against the plaintiff

and that the auction-purchaser should have known the law with regard to the nullity of a decree passed by a foreign Court against a person in absentem.

3. Now undoubtedly the decree as it stood of the Sawantwadi Court was not binding on the plaintiff, and as far as he was concerned, he could treat it as a nullity. When the decree was transferred to the Malvan Court for execution, and in execution it was sought to sell his property, he could have contended that there was no decree which could be executed against him, and that undoubtedly would have prevented his property being sold in execution. But it has been found as a fact that the plaintiff accepted the notice of the Collector with regard to the sale in execution of his property. He appeared before the Mamlatdar and made a statement and said he was ready to pay what was due from him under the decree. Therefore to all appearances he submitted to the decree of the foreign Court, and that was perfectly competent for him to do. There was no necessity for him, if he wished to accept the decree, to raise an objection to its execution.

4. It has been argued before us that the Sawantwadi Court had no jurisdiction and, consequently, the plaintiff could not consent to its having jurisdiction to pass a decree against him. But that is not as a matter of fact the proper aspect of the case. The Sawantwadi Court had jurisdiction to pass a decree against the plaintiff, and it is only the circumstance that he did not submit to its jurisdiction that would prevent the decree from being executed against him. But if he took no steps when that decree was being executed against him in British territory to assert his rights against the executing creditor, then it seems to us he cannot now seek to set aside the sale which took place in the execution proceedings. It would seem very strange either in law or in equity that a party, who submitted to a decree and allowed his property to be sold in execution, should then be allowed to file a suit in order to set aside the sale to the prejudice of the rights of the auction-purchaser on the ground that the whole proceeding with regard to him was null and void. In our opinion, therefore, the decision of the Court below was wrong. The appeal is allowed and the plaintiff's suit dismissed with costs throughout.