
(1940) 10 PAT CK 0006

In the Patna High Court

Mundrika Singh and Others

APPELLANT

Vs

Nand Lal Singh and Others

RESPONDENT

Date of Decision : 02-10-1940

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 64

Citation : AIR 1941 Patna 204

Hon'ble Judges : Manohar Lall, J

Bench : Division Bench

Judgement

Manohar Lall, J.—This is an application on behalf of Mundrika Singh and others who, on the strength of a certain contract for sale executed in their favour by the judgment-debtor on 20th March 1940, attempted to deposit the decretal amount together with compensation under the provisions of Order 21, Rule 89, Civil P.C. but their application was refused by the learned Munsif on the ground that they had no locus standi.

2. In these circumstances he refused to set aside the sale. Hence the application in revision to this Court. It need only be stated that the sale was held and completed in favour of Nand Lal Singh, son of Raj Narain Singh, for a sum of Rs. 196 on 23rd February 1940. Within thirty days of the date of the sale, namely on. 21st March 1940, the petitioners filed a petition supported by an affidavit that they are bai bainadars of the property on the strength of the agreement for sale already referred to and they prayed that the chalan might be issued in their favour allowing them to deposit the decretal amount. The learned Munsif by order No. 30 observed that there was no evidence of sale and the property was under attachment and therefore this petition by a third party who has no interest in the property must be rejected.

3. The learned Munsif was moved again on 26th March 1940, in which it was stated that in spite of the utmost endeavour made by the applicants the judgment-debtor was not coming forward to make the application either deliberately or on account of his being unable to find the money this is not clear.

The learned Munsif recorded an order No. 31 rejecting that application also because he thought that Section 64, Civil P.C. avoided any such transaction as was relied upon by the applicants before him ; but the learned Munsif overlooked the provision in the concluding part of that section which provides that any private transfer of the property after it has been attached shall be void against all claims enforceable under the attachment. The applicants are not seeking to enforce any claim against the auction-purchaser to his detriment. All that they desire is that they having acquired an interest in the property by virtue of the contract for sale should be allowed to deposit the money so that the sale of that property may be set aside and they may then proceed to enforce that contract by taking possession of that property as purchasers.

4. In these circumstances it seems to me that the learned Munsif failed to exercise the jurisdiction vested in him by law and on the facts which have been proved, and which were proved before him, he should have received the deposit provided it complied with the requirements of the amended Rule 89 as to its amount.

5. The result is that this application must succeed. The order of the Munsif is set aside and he is directed to receive the amount which was sought to be tendered by the applicants; and if the amount so deposited is sufficient, he will set aside the sale in due course. If the amount is not sufficient he will deal with the application in accordance with law. In these circumstances there will be no order for costs. Each party will bear its own costs of these proceedings.