

(1924) 02 AHC CK 0043
In the Allahabad High Court

P. Chiraunji Lal

APPELLANT

Vs

Ganga Sahai and Others

RESPONDENT

Date of Decision : 22-02-1924

Acts Referred:

Citation : AIR 1924 All 811 : 78 Ind. Cas. 631

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This is a second appeal in an execution case. The appellant is the decree holder. A petition to execute the decree was filed by him on the 1st of June 1918. That was an application asking the Court to transfer the decree to the Collector as the property was ancestral property. The last application was filed on the 12th August 1921 and it was objected to on the ground that it was, on the face of it, clearly barred by limitation. It is sought by the decree-holder to bring it within limitation on two grounds: (1) It is said that on the 24th September 1918 the decree-holder filed an affidavit in the Court of the Collector to the effect that there were no incumbrances on the property; (2) The next circumstance is that on the 13th November 1918 the Court after considering the Tahsildar's report and perhaps the affidavit, directed that the property should be sold in one lot. It appears from the order-sheet of the Collector's Court that on the 9th August 1918 the decree-holder was directed to file an affidavit to show whether there were any incumbrances or not on the property and the Tahsildar was asked to report if persons were willing to take the property on lease. It is argued that, on the 24th September 1918, when the affidavit was filed, there must have been an application made by the decree-holder to have the property sold. There was no written application; that is admitted; but we are asked to infer that there must have been an oral application to this effect. We find in the order-sheet that the 24th September was the date fixed for disposing of the matter and that on that date it was recorded that the decree-holder was not present. On the back of the

affidavit, however, there is an endorsement of the Court directing that it should be filed. This is dated the 24th September 1918. It, therefore, seems clear that after the order had been written in the order-sheet this document was filed some time later on that date. It seems to us impossible to hold that there must have been an oral application made when that affidavit was filed asking for the sale. The affidavit did nothing more than state that there was no incumbrance on the property and it was in answer to the usual direction of the Court before the final sale of the property whether it was possible to dispose of it otherwise. Stress has been laid on the case of Culsari Lal v. Bam Bhajan 52 Ind. Cas. 116 : 22 A.C. 75 but the facts there are different. In that case there was an entry in the order-sheet showing that the decree-holder requested that the sale might proceed and it was held that this was evidence of an oral application.- In this case there is no such entry and we are unable to hold that any application was made on behalf of the decree-holder. The result is that we dismiss this appeal with costs including in this Court fees on the higher scale.