

(1968) 04 MP CK 0017

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 9 of 1965

Piarelal Khuman

APPELLANT

Vs

Bhagwati Prasad Kanhayalal and Others

RESPONDENT

Date of Decision : 02-04-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 11, 47
Transfer of Property Act, 1882 — Section 60

Citation : AIR 1969 MP 35 : (1969) 14 MPLJ 17

Hon'ble Judges : T.C. Shrivastava, J;G.P. Singh, J

Bench : Division Bench

Advocate : R.S. Dabir and J.N. Nagrath, for the Appellant; Y.S. Dharmadhikari, for the Respondent

Final Decision : Dismissed

Judgement

Shrivastava, J.

This judgment governs the disposal of twelve Letters Patent Appeals Nos. 8, 9, 11,12, 13, 14, 15, 17, 19, 20, 21 and 22 of 1963 which have all been filed against the order of Sheodayal, J. allowing the several appeals filed by the respondents.

In order to appreciate the points raised in support of the appeals, it is necessary to state the facts in some detail. Chaturbhuj and Sewaram executed two simple mortgage deeds on 4-9-1924 and 30-6-1927 in favour of Pyarelal, Ramlal and Motilal mortgaging their proprietary rights in village Jerwans along with the homefarm (sir and khudkasht) lands. In the second mortgage bond, they had agreed to the condition that they would not lease out the homefarm lands. In spite of this agreement, they leased out the khudkasht lands to several persons. The mortgagors and mortgagees have been succeeded by their legal representatives but it is not necessary to give details. We shall refer to the mortgagees as creditors, the mortgagors as principal judgment debtors and the lessees as lessee-judgment-debtors.

The creditors instituted Civil Suit No. 5-A of 1943 in the Court of Additional District Judge, Sagar, on the basis of the two mortgage deeds impleading the debtors and the lessees of khudkasht lands. On 9-4-1946, a preliminary decree was passed for sale of the properties including the khudkasht lands; but it was stated in the decree that the lessees had no right to redeem and were discharged. One of the lessees went up in appeal on the ground that the lands could be validly leased out by the proprietors in the course of village management but this contention was negated on account of the express covenant to the contrary in the second mortgage deed. Another contention that the lands were protected u/s 43 of the M. P. Abolition of Proprietary Rights Act (hereinafter referred to as "the Abolition Act") was also rejected.

On 25-1-1950, a final decree was passed for sale of the village and the lands. On 21-4-1950, the mortgagees applied for execution and steps were taken to sell the lands. In the meantime, the Abolition Act had come in force on 31-3-1951. The debtors and the creditors applied for settling the debt u/s 19 of the Abolition Act. The Claims Officer reduced the debt from Rs. 48,891-00 to Rs. 39,615-00 and declared that the balance of the debt remaining after adjusting Rs. 6954-00 paid as compensation to the creditors shall be recoverable from the sale of the lands in the hands of the lessees.

On 4-12-1952, the decree-holders applied for continuing the execution sale only against the lands held by the lessees for the reduced amount of the debt. Objections to the execution were filed by some of the judgment-debtors u/s 47, Civil Procedure Code, that the executions could not be proceeded with according to the provisions of the Abolition Act. These objections were by the principal debtors Sunderlal and Sewaram (Misc. Judicial Case No. 26 of 1953), lessee judgment-debtor Kishan-chandra Sharma (Misc. Judicial Case No. 35 of 1953) and other lessee judgment-debtors, Udaisingh, Ramdin, Gorelal, Rewa, Randhire, Parma and Pyarelal (Misc. Judicial Case No. 38 of 1953). All these objections were rejected by the executing Court. The execution was proceeded with and the lands were sold to several auction purchasers. The sales were confirmed.

Appeals were filed in the High Court by the judgment-debtors, Sunderlal and Sewaram (Misc. Appeal No. 49 of 1954), Kishanchand Sharma (Misc. Appeal No. 59 of 1954), and Pyarelal (M. A. No. 127 of 1954) against the order of the executing Court rejecting their objections. Other judgment-debtors did not appeal. All these appeals were decided by Tare J. who held (i) that the sir lands could not be sold; and (ii) that the execution could proceed so far as the sale of Khudkasht lands in the hands of the lessees were concerned. Against the decision of the learned single Judge, only Kishanchandra Sharma went up in Letters Patent Appeal; Kishan Chand Sharma v. Mst. Rani Bahu, LPA No. 80 of 1958, D/- 30-7-1960 (Madh Pra) which was allowed. It was held that it was necessary for the creditors to obtain a fresh preliminary decree u/s 28 of the Abolition Act, and they could not proceed with the execution of the earlier final decree.

This led to several applications by the judgment-debtors for restitution of the properties sold in execution of the decree. These applications were based on the contention that the execution was a nullity and the auction sales were hence void. The applicants also claimed mesne profits. The executing Court allowed restitution of the lands but rejected the prayer for mesne profits. The auction-purchasers came up in appeal in the High Court and the several appeals were allowed by Sheodayal J. holding that the auction-purchasers were entitled to retain the lands and there could be no restitution. Against these decisions, the present Letters Patent Appeals have been filed by the judgment-debtors. The details about the appeals are as below :

L. P. A.

Appellant

No.

17/63

Sunderlal and Sewaram ? principal judgment-debtors

For restitution of the lands.

19/63

Kishorilal ? lessee-judgment-debtor

"

9/63

Pyarelal ? principal judgment-debtor

For restitution of the lands.

15/63

Pyarelal ? principal judgment-debtor

For mesne profits.

8/63

Kunj Bihari ? lessee-judgment-debtor

For restitution of the lands.

11/63

Kunj Bihari ? lessee-judgment-debtor

For mesne profits.

22/63

Kailash ? lessee-judgment-debtor

For restitution of the lands.

12/63

Kailash and Smt. Gajrani ? lessee-judgment-debtors

For mesne profits.

20/63

Mahendra Kumar Sharma ? lessee-judgment-debtor

For restitution of the lands.

14/63

Mahendra Kumar Sharma ? lessee-judgment-debtor

For mesne profits .

21/63

Kashiprasad ? lessee-judgment-debtor

For restitution of the lands.

13-63

Kashiprasad ? lessee-judgment-debtor

For mesne profits.

At this stage, it would be convenient to refer to the provisions of the Abolition Act which are relevant to the controversy between the parties. Section 17 defines "secured debt" as a debt secured by the mortgage of the proprietary rights divested u/s 3. Section 19 gives the right to the proprietor and the creditor to apply to the Claims Officer for determination of the debt. Section 20 provides for stay of proceedings for recovery of such debt pending determination by the Claims Officer. Under Sections 24 and 27, the Claims Officer passes an order declaring the amount due and the property remaining encumbered for the debt.

Then follows Section 28, which provides for recovery of the amount as follows:

"Any creditor in whose favour an order u/s 27 has been passed may within one year apply to the Civil Court for passing a preliminary decree for sale of the encumbered property and the Civil Court shall accordingly pass a preliminary decree for sale fixing such time for payment as it may deem fit".

The only other Section to which reference is necessary is section 33 which states:

"The jurisdiction of the Civil Court shall, except as otherwise provided in this Act, be barred in respect of -

(a).....

(b).....

(c) the recovery of any secured debt or claim determined u/s 24 except In the manner provided for in Section 28".

In the instant case, the debt was determined by the Claims Officer and he had further declared that the lands remaining encumbered for the determined amount were the lands held by the lessee-judgment-debtors.

The learned single Judge did not consider it necessary to enter into the merits of the case as he was of the view that the applications for restitution were barred by the rule of res judicata and also by limitation. The question of res judicata arose because it was held by the executing Court that the execution proceedings could continue and it was not open to the judgment-debtors to raise the point again. It was held that the proceedings which continued till the decision of the Letters Patent Appeal were binding on the judgment-debtors; but the auction-purchasers could not be prejudiced because the view of the executing Court was not upheld in appeal. One reason for holding that the auction-purchasers were not bound by the decision in Letters Patent Appeal was that the auction-purchasers were not made parties to the appeal. On the question of limitation, the learned Judge held that Article 181 of the Limitation Act applied and the applications were barred by time as they were filed more than three years from the date on which the judgment-debtors lost possession.

On the question of res judicata, the learned counsel for the appellants did not dispute the position that the doctrine of res judicata applies to execution proceedings also and a finding given at one stage of the proceedings cannot be challenged at any later stage of the same proceedings. It was, however, contended that Section 30 of the Abolition Act created an absolute bar to the execution of the decree and all proceedings of, the execution Court including the auction sales were, therefore, void. As the finding of executing Court was without jurisdiction, it did not operate as res judicata. It was further contended that those judgment-debtors, who did not file any objection before the executing Court, were not bound by the decision and the doctrine of constructive res judicata could not be applied to their case. The learned counsel pressed the contention of want of jurisdiction to the extreme contending that all decisions including the one in the Letters Patent Appeal in which the order of the executing Court was set aside were without jurisdiction and bind no one. They wanted the point to be decided afresh urging that the decision of that Letters Patent Appeal be treated as a precedent only.

The crucial point which has to be decided in the case is whether the executing Court was competent to decide the question of jurisdiction to proceed with the execution. If there was lack of inherent jurisdiction to do so, all further proceedings would be void. However, if it could decide the matter, a wrong decision by the Court would not matter. The parties would still be bound by it until it was set aside by the superior Courts. In that event, the auction sales will

be with jurisdiction in spite of the contrary decision in the Letters Patent Appeal and cannot be set aside. Before we take up this point for decision on the facts of the case it will be helpful to refer to the several decisions cited at the Bar in support of the rival contentions.

The following cases were cited on behalf of the appellants:

(i) In *Kiran Singh and Others Vs. Chaman Paswan and Others*, , this is what was said about the effect of a judgment suffering from want of jurisdiction:

" . . . It is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings, . . ."

(ii) In *Karashiddayya Shiddayya v. Shree Gajanan Urban Co-operative Bank Ltd.*, AIR 1943 Bom 400, it was held that once a decree has been found to be a nullity, all proceedings taken in execution of it are also null and void. In that case, the award of the Registrar, Co-operative Societies was held to be without jurisdiction and the sale held in execution of such an award was held to be void.

(iii) In *Surajbai v. Sadashiv Jugal Kishore*, AIR 1958 Madh Pra 100, it was held that the decision of civil Courts deciding the question of validity of an adoption was not binding as the matter was excluded from the jurisdiction of civil Courts u/s 99 of the Jagirdar Manual of the former Holkar State. Any decision by the civil Court could not operate as *res judicata* as it Was not a decision of a court of competent jurisdiction.

(iv) In *Laxmichand Nanhulal v. Mt. Sunderabai*. AIR 1952 Nag 275, the difference between want of jurisdiction and a wrong decision given when Court has jurisdiction was explained. It was observed that the question whether the Court has jurisdiction or not has to be decided with reference to the initial assumption of jurisdiction. It was stated that if the Court has no jurisdiction, all its orders are nullities. In that case, decision of the executing Court on the application of a stranger u/s 144, Civil Procedure Code, was held to be without jurisdiction as no notice was given to the decree-holder who was affected by the order,

The following decisions were relied on on behalf of the respondents.

(i) In *Malkarjun v. Narhari*, ILR 25 Bom 337 (PC), notice was served on a wrong representative of the deceased judgment debtor and in spite of the statement of the legal representative that there were preferential heirs, the executing Court held that he could represent the estate and execution was proceeded with. Their Lordships observed:

" . . . In doing so, the Court was exercising its jurisdiction. It made a sad mistake, it is true; but a Court has jurisdiction to decide wrong as well as right, [f it decides wrong, the wronged party can only take the course prescribed by law for setting the matters right and if that course is not taken the decision,

however wrong, cannot be disturbed...". Ultimately, the sale held was not disturbed.

(ii) Mohanlal Goenka Vs. Benoy Krishna Mukherjee and Others, . In this case, the following observations in para 25 are pertinent:

"There is ample authority for the proposition that even an erroneous decision on a question of law operates as "res judicata" between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as "res judicata". A decision in the previous execution case between the parties that the matter was not within the competence of the executing Court even though erroneous is binding on the parties." The view taken by the Patna High Court in Mahadeo Prasad Bhagat Vs. Bhagwat Narain Singh, that the principle of constructive res judicata is applicable to execution proceedings was cited with approval. In this case, the question of the validity of execution proceedings was objected to by the judgment-debtor on the ground of want of sanction of the Collector under a special Act. The objection was not expressly decided but the execution was proceeded with. It was held that as the point was raised, and although it was not decided. It was res judicata by reason of Explanation 4 to Section 11.

(iii) S. Venkateseshayya v. Virayya, AIR 1958 Andh Pra 1 (FB). In this case, service inam lands were sold in execution without an objection by the judgment-debtor; although sale of such lands was prohibited under a special law. It was held that the judgment-debtor was precluded from challenging the auction sale as it was a defence which he might and ought to have raised in execution proceedings. We may refer to the following observations particularly.

". . . . The principle that where a statute confers on a Tribunal jurisdiction subject to a condition, it cannot clutch at jurisdiction by deciding wrongly the existence of that condition, has no application to the decision of a court in regard to questions that legitimately arise for decision in the course of a suit maintainable therein. If so much is conceded, I do not see any reason why the principle of constructive res judicata cannot be invoked in regard to the decision of a Court in such a suit. Explanation IV to Section 11 does not impose any such limitation. . . ."

(iv) Baijnath Prasad Sah Vs. Ramphal Sahni and Another, . In this case, lands which could not be sold in execution on account of provisions in a special Act were sold. The judgment-debtor did not raise any objection to the sale. It was held that the executing Court impliedly decided the point against him and he was debarred from challenging the validity of the sale. This is what was said:

". . . . Though a transaction is void if a certain provision of law applies, it is for the Court to decide whether that provision is applicable. Once a competent Court has given a decision, holding expressly or by implication, that that provision of law is inapplicable and the transaction is not void, that decision operates as res judicata between the parties. So also if an order of the Court is deemed to have decided

the question, the order is binding upon the parties."

After referring to the several decisions relevant to the question, Sahai J. observed:

"..... It is immaterial whether the sale of the lands in question is void or voidable because we have to consider, at present, the consequences of the judgment-debtor not having raised the objection before the sale when he might and ought to have raised it. In accordance with the views which I have expressed, I hold that the judgment-debtor is barred by the principle of constructive res judicata from raising the objection on the ground of non-saleability of the kasht lands."

Three other Judges concurred with the decision of Sahai J. in this case.

(v) State of West Bengal Vs. Hemant Kumar Bhattacharjee and Others, . Though this decision is given in the context of criminal proceedings, it shows what the law is in the case of an erroneous decision of a Court. This is what was said in para 20 of the judgment:

"...,. The position that emerges therefore is that though the effect of the order of the High Court dated April 4, 1952, was to leave the proceedings against the accused pending before the Chief Presidency Magistrate, so as to attract the ban enacted by Section 12 of the Act, still by the decision of the High Court dated December 19, 1956 which is binding as between the parties, the Special Court had been held to have jurisdiction over the case, Section 12 being held not to be in the way. There is thus no escape from the position that effect has to be given to this state of affairs and that the respondent can derive no advantage by canvassing before us the correct result of the order of the High Court, dated April 4, 1952 unhampered by the subsequent decisions which are binding on him. We, therefore, reach the conclusion that the Special Court must be deemed to have jurisdiction over the case and that the learned Judges whose judgment is now under appeal were in error in reversing the order of the Special Judge."

It may be observed that the jurisdiction to try the case was with the Chief Presidency Magistrate according to the correct interpretation of the provision of law; but it was held that the erroneous interpretation of the High Court upholding the jurisdiction of the Special Judge was binding on the parties and the Special Judge could, therefore, proceed with the case.

The following propositions emerge from these decisions:

(a) that where there is inherent lack of jurisdiction from the initial stage, subsequent proceedings taken by such a Court are void and the decisions of such a Court do not operate as res judicata;

(b) that where the Court has jurisdiction, a wrong decision by the Court on a point of law or fact is binding on the parties;

(c) that the doctrine of res judicata operates in respect of a decision of an executing Court in other proceedings as well as in the subsequent stages of the

same proceedings;

(d) that the principle of constructive res judicata also applies to execution proceedings and a judgment-debtor, who might and ought to have raised a defence at the appropriate stage, fails to do so, is precluded from urging such a defence at any subsequent stage of the proceedings; and

(e) that where the Court has power to decide the question of jurisdiction arising from the interpretation or the applicability of a statute, even an erroneous decision is binding on the parties,

With this background of the law as laid down in the decisions referred to above, let us turn to the facts of the instant case. It is not disputed by the appellants that the decree passed in Civil Suit No. 5-A of 1943 was with jurisdiction. The execution proceedings started in 1950 for sale of the lessee-judgment-debtors' lands were also valid and with jurisdiction. We may, however, refer to the unusual decision of the trial Court in Civil Suit No. 5-A of 1943 holding that the lands held by the subsequent lessees of khudkasht lands were liable to be sold in enforcing the mortgage and yet the lessees were not entitled to redeem. They were hence "discharged".

A lessee of a mortgagor has normally a right to redeem the mortgage, if it is sought to be enforced against the leasehold rights. The contrary view in AIR 1947 210 (Nagpur) was taken in view of the special Revenue Law. It was held that a lessee of Khudkasht lands who gets the lease in the ordinary course of village management by the proprietor, is not entitled to redeem as he is not affected by the mortgage. In the instant case, the trial Court concluded that the lessees were not in the ordinary course of village management |but were contrary to the express terms in the mortgage-deed. The lessees, who were affected by the mortgage and whose lands have to be sold in execution of the decree, were undoubtedly entitled to redeem the mortgage. However, that decision has now become final. The names of all the lessee-judgment-debtors were repeated in the preliminary and final decree and thus they are parties to the decree in spite of the orders of discharge. The order must be treated only as debarring them from redeeming the mortgage but their liability in respect of their lands continued. They were thus judgment-debtors under the decree. That apart, any question between a discharged defendant and the decree-holder relating to the execution, discharge and satisfaction of the decree is one which must be decided u/s 47, Civil Procedure Code. This position was not disputed on behalf of the lessee judgment-debtors.

The execution proceedings were valid till the order of the Claims Officer determined the debt under Ss. 24 and 27 of the Abolition Act. After such determination, the creditor was required to enforce his claim according to the provisions of Section 28 of the Act and the jurisdiction of the civil Court to recover the debt in any other manner was barred u/s 33. At that stage, a question arose whether a fresh preliminary decree was necessary u/s 28; or

whether the execution could proceed for recovery of the reduced amount by sale of the properties still remaining encumbered without any such decree. Some of the judgment-debtors applied to the executing Court to determine this point and the question is whether the executing Court had jurisdiction to decide this point.

Questions regarding the executability of a decree are matters which the executing Court must itself decide u/s 47, Civil Procedure Code. In AIR 1936 46 (Privy Council) , the Judicial Committee observed that "truly the third sub-Section of Section 12-A renders void any transaction to which it is applicable, but the question as to whether it applies to a particular transaction entitles the Court to consider the construction of the section and the determination of its applicability rests with the Court". Likewise, in the instant case also, the applicability of Section 28 of the Abolition Act was a matter to be decided by the executing Court.

In this connection, there exists a distinction between Tribunals of limited jurisdiction and a civil Court. A Tribunal cannot give itself jurisdiction by deciding jurisdictional facts wrongly unless power has been given to it to decide such jurisdictional facts. There are no such limitations on the power of a Civil Court and it must decide itself all matters which arise before it, including questions about jurisdiction. The decree-holder and the judgment-debtors held different views about the implications of Section 28 of the Abolition Act and as the matter was raised by them before the executing Court, it became incumbent upon it to decide the question before proceeding further with the execution. The matter fell squarely within the ambit of Section 47, Civil Procedure Code, and the question of executability of the decree could not be left undecided. We hold that the executing Court had jurisdiction to decide the question of the executability of the decree u/s 47, Civil Procedure Code.

The executing Court took the view that in cases where a preliminary decree and a final decree had already been passed, it was not necessary to pass a second preliminary decree again and the Court could give effect to the order of the Claims Officer by executing for the reduced amount against the properties remaining encumbered. That the question was not free from doubt is borne out by the fact that when the matter was taken up in appeal, a Single Judge of this Court upheld the decision. It is true that the correct law has later been laid down by the Division Bench in the Letters Patent Appeal; but that does not affect the validity of the execution so long as the order of the executing Court was not set aside. As there was no inherent lack of jurisdiction, an erroneous decision of the executing Court does not become inoperative as the Court had the right to decide wrong as well as right --Malkarjun's case (1901) ILR 25 Bom 337 (supra). Accordingly we are of opinion that the sale held in execution at the time when the decision of the executing Court to proceed stood was valid and could not be set aside even if the order has been found to be wrong later.

So far as those judgment-debtors who raised an objection before the executing Court are concerned, they were bound by the wrong decision of the executing

Court. Only three out of them went up in first appeal but they all lost the appeal. Thereafter only one of them, K.C. Sharma filed a Letters Patent Appeal. The other judgment-debtors were thus bound by the decision in the first appeal. As regards K.C. Sharma, it must be held that the order in the Letters Patent Appeal replaces the order of the executing Court. Even then, he is not entitled to challenge the execution sale. He did not apply for stay of the execution proceedings which were valid so long as the order of the executing Court was holding the field. As held in *Zain-ul-Abdin Khan V. Muhammad Asghar Ali Khan* (1888) ILR 10 All 166, the title of the stranger auction-purchaser is not affected by the reversal of the decree after the confirmation of sale. Similarly it has been held in *Janak Raj Vs. Gurdial Singh and Another*, that the sale held in the execution of an ex parte decree is not affected when the decree is subsequently set aside. The same reasoning would apply to protect the auction-purchasers in the present case where the decision of the executing Court that the decree could be executed was reversed.

Turning now to the case of those judgment-debtors who did not object to the proceedings in execution, the contention is that they are not bound by the decision of the executing Court. It is clear from the cases cited earlier that the rule of constructive res judicata applies to execution proceedings also and a plea on which the judgment-debtors could have objected to the execution cannot later be raised if there is omission to raise it at the proper occasion. We may only refer to *Mohanlal Goenka Vs. Benoy Krishna Mukherjee and Others*, in which an objection was raised but was not decided by the executing Court and yet it was held that it was res judicata by reason of Explanation 4 to Section 11. Civil Procedure Code. In the case of *Bajinath Prasad Sah Vs. Ramphal Sahni and Another*, , no objection was raised by the judgment-debtor but it was held that as the Court proceeded with execution, the point was impliedly decided and the judgment-debtor could not raise it later.

We find from the record of the proceedings in the executing Court that the case was never adjourned sine die but the date for the following hearing was always fixed. Notices of the proceedings were issued to all the judgment-debtors including the lessee-judgment-debtors. The judgment-debtors will thus be deemed to have knowledge of the dates in the proceedings. They should, therefore, have filed objections to the proceedings on the grounds now taken. As they failed to do so, they are debarred from raising the objections at least against the auction-purchasers who purchased the lands bona fide.

Shri Y.S. Dharmadhikari arguing for some of the auction-purchasers raised a new point. He said that the definition of "secured debt" in S, 17 of the Abolition Act confines that expression to debts secured by a mortgage of the proprietary rights divested u/s 3 and as homefarm lands were not divested, the debts secured on these lands were not secured debts. The contention is correct. However, we are unable to accept the further contention that that Chapter of the Abolition Act did not apply to such debts at all. Section 24 provides that the Claims Officer shall

record the lands which remain still encumbered. These would certainly be lands which were not divested and remained with the proprietor. It is obvious that the mortgages covering properties vesting in the State and other properties not so vesting are to be governed by the provisions in the Chapter. The provisions in Section 28 thus apply to the properties remaining encumbered which have not vested in the State. The homefarm lands fell in this category.

To sum up, we hold that the auction sales held in execution are binding on all the judgment-debtors and cannot be set aside.

The learned Single Judge has also come to the conclusion that the applications were barred by time. The appellants contended that although the applications were filed u/s 144, Civil Procedure Code, that section did not apply in terms and therefore they should be treated as being u/s 151, Civil Procedure Code, for which there is no limitation for such an application. There is no substance in this contention in view of the decision in *Merla Ramanna Vs. Nallaparaju and Others*, . In that case, it has been held that an application by a party to the suit to recover possession of properties which had been taken delivery of under a void execution sale falls u/s 47 and would be governed by Article 181 of the Limitation Act. It would be in time if filed within 3 years of dispossession. Thus, there is no scope for holding that the application is one u/s 151, Civil Procedure Code. In view of the pronouncement of the law by the Supreme Court in this case, it is clear that Article 181 applies and the application should have been filed within three years from the date of dispossession. It was admitted by the appellants that in all cases possession was lost in 1954 except the case of Mahendra Kumar Sharma who lost possession in 1958, These applications were filed in 1961 and thus they were long time barred. In the case of Mahendra Kumar Sharma, the respondents challenged the date of delivery of possession but we need not go into that question. Even if that application is in time, no relief can be given to him as the auction sale binds him in any case.

The learned Single Judge has also held that the auction-purchasers were necessary parties to the Letters Patent Appeal and are not bound by it as they were not impleaded. Several decisions have been cited in support of this conclusion. We do not consider it necessary to decide this question in view of what we have held about the binding nature of the auction sale.

The appellants are not entitled to get back possession of the lands from the auction-purchasers. The claim for recovery of mesne profits must, therefore, necessarily fail.

In the result, all the appeals are dismissed with costs. Counsel's fee in this Court as per the prescribed schedule of rates, if certified.