

(1922) 12 AHC CK 0047
In the Allahabad High Court

Raj Narain Mal and Another

APPELLANT

Vs

Santi Lal and Another

RESPONDENT

Date of Decision : 04-12-1922

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 6
Limitation Act, 1908 — Article 181
Civil Procedure Code, 1908 (CPC) — Order 34 Rule 6
Limitation Act, 1908 — Article 181
Civil Procedure Code, 1908 (CPC) — Order 34 Rule 6
Limitation Act, 1908 — Article 181

Citation : AIR 1923 All 203 : 79 Ind. Cas. 85

Hon'ble Judges : Walsh, J;Piggot, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. This is an appeal in an execution matter. The difficulty which the Court below has felt is due to the fact that a procedure perfectly legal, but somewhat unusual, and in respect of which this Court has not seen fit to lay down any definite rules, was followed in connection with the execution of a mortgage-decree. Instead of patting up the mortgaged property for sale by auction in the usual way, the Court appointed a Receiver whom it authorised, by an order of the 17th of July 1915, to take all the properties covered by the decree into his possession and to make arrangements for selling the same for the highest price which he could obtain in respect of each of them. It was specially provided that before parting with an item of property he must report to the Court, stating the price offered, and obtain the sanction of the Court before he actually sold it. For some reason or other the Receiver's proceedings were much protracted and it was not until the 22nd of October 1917 that he entered into an arrangement with the decree-holders by which the latter were to purchase the property themselves upon certain terms. The Receiver reported this matter to the Court and, on the 23rd of February 1918, the Court proceeded, by two separate orders, to deal with this matter. In the first place, it overruled an objection filed by the

judgement debtors protesting against the terms which the Receiver had settled. In the second place, it took into consideration the Receiver's report, approved of the arrangements which he had made, and directed him to proceed as soon as possible with the preparation of sale-deeds. Subsequently to the date of this order, a number of sale-deeds were executed, between the 9th of March and the 31st of August 1918, by which different items of property were formally conveyed to the decree-holders. We gather from the record that this delay was largely, if not entirely, due to the fact that draft sale-deeds were submitted for the approval of the Court before the transaction was engrossed upon paper bearing the requisite stamp and the conveyance formally executed by the Receiver.

2. The appeal now before us arises out of an application made by the decree-holders on the 29th of March 1921, asking the Court to pass, under Order XXXIV, Rule 6 of the Code of Civil Procedure, a decree for the balance of the amount still due, on the ground that the proceeds of the various sales held in the year 1918 had proved insufficient to satisfy the amount of the decree. The Court below has held that this application is barred under Article 181 of the first Schedule to the Indian Limitation Act, because it was made more than three years after the 22nd of February 1918. In appeal it is contended on behalf of the decree-holders that it was not until the last of the series of sale-deeds had been executed, on the 31st of August 1918, that it could be said that the net proceeds of the sales held in execution of the preliminary decree, had proved insufficient, and that their right to apply accrued to them on that date and not before. The proper Article of the Indian Limitation Act is 181 of the first Schedule; but this throws no light on the question in dispute, inasmuch as it merely gives the decree-holder three years from the date on which the right accrued to him to make this application. We have come to the conclusion that the conveyance of the mortgaged property by way of sale was not legally completed until the sale-deeds had been executed, and that the decree-holders are, therefore, entitled to claim limitation for a period of three years from the 31st of August 1918. We, therefore, set aside the order of the Court below and remand the case to that Court with orders to re-admit the decree-holder's application on to its pending file and to dispose of it according to law. The appellants decree-holders will get the costs of this appeal including fees on the higher scale.