

(2013) 05 RAJ CK 0005
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2270 of 2012

Ramesh Kumar

APPELLANT

Vs

The Chief Judicial Magistrate, Bikaner (Raj.)

RESPONDENT

Date of Decision : 08-05-2013

Acts Referred:

Citation : (2013) 4 WLN 157

Hon'ble Judges : P.K. Lohra, J

Bench : Single Bench

Advocate : Vineet Jain, for the Appellant;

Judgement

P.K. Lohra, J.—Heard. By the instant writ petition under Articles 226 & 227 of the Constitution of India, the petitioner has prayed for appropriate writ, order or direction for quashing order dt. 31st January, 2012 (Annex. 2) passed by learned Civil Judge (Sr. Division)-cum-Chief Judicial Magistrate, Bikaner, and has further sought a direction for issuance of requisite sale certificate in his favour.

2. The facts, as depicted in the petition, are that the civil suit bearing No. 81/1968 (Bulakichand V/s. M/s. Askaran) was decreed on 30th August, 1968 and the said decree was put to execution. During execution proceedings, property of judgment-debtor, M/s. Askaran, was auctioned and the same was purchased by one Mr. Champalal after payment of consideration amount of Rs. 5,500/- only. On deposition of the said amount by the auction-purchaser in the Court it was paid to the decree-holder for the satisfaction of the decree. After finalization of the auction, nothing remained pending in the execution proceedings and the decree as such stand satisfied. The auction-purchaser, Champalal, subsequently sold the said property to the petitioner by a registered sale-deed dt. 5th May, 1982 which has been produced on record by the petitioner with additional affidavit. As per version of the petitioner, since execution of the sale-deed, he is in possession of the property in question. The petitioner has further averred in the writ petition that for the purpose of securing loan from the financial institutions, the said sale-deed was submitted by him, but the application for

loan was not processed by the financial institutions for want of requisite sale certificate which was required to be issued by the executing Court under Order 21 Rule 94 CPC. Faced with the situation, the petitioner made endeavour for issuance of sale certificate by submitting application (Annex. 1) dt. 4th January, 2102. After considering the application, the learned executing Court i.e., Civil Judge (Sr. Division) has observed that in fact it was the duty of the Court to have issued sale certificate in favour of auction-purchaser after deposition of the consideration amount. However, the learned Court below has declined the prayer of the petitioner for issuance of the sale certificate by citing reasons that the auction was finalized about four decades back and now at such a belated stage the application cannot be entertained.

3. Learned counsel, Mr. Jain, has urged that for issuance of sale certificate, no period of limitation is prescribed under Order 21 Rule 94 CPC and as a matter of fact after the sale of immovable property becomes absolute, it is obligatory for the executing Court to issue sale certificate in favour of auction purchaser.

4. On a close scrutiny of the impugned order, in my considered opinion, the learned Court below has not examined the matter in right perspective and, in fact, misconstrued the provisions of Order 21 Rule 94 CPC. That apart, having observed in the impugned order that it was the duty of the Court to have issued sale certificate, declining the prayer of the petitioner is per-se unjust and improper. Section 151 CPC confers inherent powers on a civil Court including the executing Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. Thus, taking into account the rigor of Section 151 CPC, in my considered opinion, the learned Court below by not invoking inherent powers under the provisions of Section 151 CPC and by misconstruing the provisions contained in Order 21 Rule 94 CPC has committed grave error of law and facts. In this view of the matter, the impugned order passed by the Court below is not sustainable and the same is hereby quashed and set aside. Learned executing Court is directed to decide the application (Annex. 1) of the petitioner afresh for issuance of sale certificate in his favour as expeditiously as possible, preferably within a period of four weeks from the date of receipt of copy of this order in accordance with law.