
(1968) 05 MP CK 0008

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 7 of 1967

Rikhilal Pannalal and Others

APPELLANT

Vs

Smt. Bittibai and Others

RESPONDENT

Date of Decision : 02-05-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 89, Order 21 Rule 90

Citation : AIR 1968 MP 254 : (1971) ILR (MP) 497 : (1968) JLJ 784 : (1968) 13 MPLJ 616 : (1968) MPLJ 616

Hon'ble Judges : P.V. Dixit, C.J.;G.P. Singh, J

Bench : Division Bench

Advocate : R.K. Pandey and V.S. Dabir, for the Appellant; C.P. Sen, P.C. Naik, (for Nos. 2) and P. Susia, (for No. 3), for the Respondent

Final Decision : Allowed

Judgement

Dixit, C.J.

This is a Letters Patent appeal from a decision of Shiv Dayal J. dismissing an appeal preferred by the appellants against an order of the District Judge, Sagar by which the learned District Judge rejected an application preferred by the appellants under Order 21 Rule 89 C.P.C.

The material facts are that in execution of a money decree held by the respondent No. 1 Bittibai against Babulal, Rikhilal, Rani Bahu, Rameshwar Prasad. Maharani, Bhagwandas and three others, a house belonging to the judgment-debtors was sold on 8th January 1966 and purchased by the respondent No 2 Himmatbhai. On 17th January 1966, the respondent Babulal made an application under Order 21, Rule 90, C.P.C. for setting aside the sale. On 7th February 1966 an application under Order 21, Rule 89, signed by Babulal, was made and on the same day the requisite deposit under Order 21, Rule 89 was made by Babulal on behalf of himself and on behalf of Rikhilal, Bhagwandas and Rameshwar Prasad. The learned Single Judge has held that the application

under Order 21, Rule 89, C.P.C., signed by Babulal, was not only on his own behalf but also on behalf of Rameshwar Prasad, Rikhilal and Bhagwandas. He, however, rejected the application made by Babulal on his own behalf and on behalf of other judgment-debtors under Order 21, Rule 89, C.P.C., taking the view that Babulal's application dated 17th January 1966 under Rule 90 was a bar to the making of an application dated 7th February 1966 under Rule 89. The learned Single Judge rejected the contention advanced on behalf of Bhagwandas and Rameshwar Prasad, two of the judgment-debtor appellants here, that as they had not filed any application under Order 21, Rule 90, C.P.C. and had made an application under Order 21, Rule 89, C.P.C. jointly with Babulal making the requisite deposit, they were entitled to have the sale set aside under Order 21, Rule 89 in their own right. While rejecting this contention, the learned Single Judge expressed himself thus-

"But where two persons make a joint deposit and apply under Order 21, Rule 89, and one of them insists on the sale being set aside under Order 21, Rule 90, C.P.C., the other cannot claim relief under Order 21, Rule 89 by reason of his being one of the joint, applicants and depositors. This is plain enough for a co-depositor cannot be deprived of his rights to get the sale set aside under Order 21, Rule 90, C.P.C. Therefore if Bhagwandas or Rameshwar Prasad had made the requisite deposit but not jointly with Babulal the former would have been entitled to relief under Order 21, Rule 89 and the sale was bound to be set aside, irrespective of Babulal's pending application under Order 21, Rule 90. But the difficulty is that the deposit made on 7th February 1966 was made jointly by Babulal, whose application dated 17th January 1966 under Order 21, Rule 90 was pending and which he not only did not withdraw, but also subsequently reiterated. Then Bhagwandas or Rameshwar Prasad could not ask the Court to ignore as joint depositor Babulal's claim for relief under Rule 90. And since the deposit was not independently made by Bhagwandas or Rameshwar Prasad or either of them they had necessarily depended on Babulal's attitude. In this view of the matter Shri Pandey's contention must be rejected that Bhagwandas and Rameshwar Prasad were in their own right entitled to relief under Rule 89."

Having heard learned counsel for the parties, we have reached the conclusion that this appeal must be allowed, in reaching the conclusion that he did. the learned Single Judge did not notice the local amendment made in Order 21, Rule 39 C.P.C. Paragraph 1 of sub-rule (1) of rule 89, as amended in the State, read thus-

""Where immovable property has been sold in execution of a decree, any person claiming any interest in the property sold at the time of the sale or at the time of the petition, or "acting for, or in the interest of, such person", may apply to have the sale set aside on his depositing is court. . . ."

(Underlined by us) (here denoted by" " marks -- Ed).

It is plain from this amended rule, and in particular from the words "acting for, or

in the interest of, such person" occurring therein that where there are several judgment-debtors, one judgment-debtor can apply to have the sale set aside not only on his own behalf but on behalf of other judgment-debtors and also make the requisite deposit on his own behalf and on behalf of other judgment-debtors. A separate and independent deposit by each of the judgment-debtors on whose behalf the application under Order 21, Rule 89, C.P.C. has been made, is not necessary. Now, in the present case it has been found by the learned Single Judge himself that the application under Order 21, Rule 90 filed on 17th January 1966 was by Babulal alone. The subsequent application under Rule 89 presented on 7th February 1966, as the learned Single Judge has held, was signed by Babulal but it was on behalf of Babulal himself and on behalf of Rikhilal, Bhagwandas and Rameshwar Prasad and the requisite deposit was also made on behalf of the four judgment-debtors. The learned Single Judge has also held that Bhagwandas and Rameshwar Prasad had at no time applied under Order 21, Rule 90, C.P.C. was made by Rikhilal's counsel pressing for setting aside the sale under Order 21. But in execution proceedings a statement Rule 90, C.P.C. It is thus manifest that there was a valid application under Order 21, Rule 89 as also a valid deposit by Bhagwandas and Rameshwar Prasad for setting aside the sale. This application could not be treated as incompetent merely because Babulal had earlier made an application under Order 21, Rule 90 and had not withdrawn it or because Rameshwar Prasad and Bhagwandas had not each made a separate and independent deposit of the requisite amount under Rule 89. The learned Single Judge seemed to be of the view that the application made and signed by Babulal on his own behalf and on behalf of Bhagwandas, Rameshwar Prasad and Rikhilal would have been a good and valid application if each of the two judgment-debtors, namely, Bhagwandas and Rameshwar Prasad, had made separate deposits under Rule 89. In view of the local amendment, this view cannot be accepted.

In our judgment, the application made on 7th February, 1966 under Rule 89 and the deposit made on that day were both valid so far as Bhagwandas and Rameshwar Prasad were concerned and on the basis of that application and deposit Bhagwandas and Rameshwar Prasad were entitled to have the sale set aside under Order 21 Rule 89, C, P. C. The application made by Babulal under Order 21, Rule 90 or the stand taken by Rikhilal in execution proceedings did not in any manner stand in the way of Bhagwandas and Rameshwar Prasad in setting the relief under Rule 89.

For these reasons, this appeal is allowed, the decisions of the learned Single Judge and the District Judge. Sagar, are set aside, and the learned District Judge is directed, to deal with the application under Order 21, Rule 89, C.P.C, filed on 7th February, 1966 in accordance with law on the footing that it is a valid, good, and competent application so far as Bhagwandas and Rameshwar Prasad are concerned. The appellants shall have costs throughout from the respondent No 2, Himmatbhai. Counsel's fee is fixed at Rs 100/-.