
(1933) 08 CAL CK 0019
In the Calcutta High Court

Sachai Gopinath Harish Chandra Bhagaban Chandra Saha	APPELLANT
Vs	
Firm Kukari Protab Chandra Saha and Others	RESPONDENT

Date of Decision : 25-08-1933

Acts Referred:

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

Citation : AIR 1934 Cal 477 : 152 Ind. Cas. 219

Hon'ble Judges : Nag, J; Jack, J

Bench : Full Bench

Judgement

Jack, J.—This Rule has been issued on the decree-holder opposite party, a firm to show cause why an order of the Subordinate Judge, First Court, Tipperah, holding that the petitioner-firm had no locus standi under Order 21, Rule 90, Civil P. C., to apply for setting aside a sale inasmuch as they were not persons affected by the sale, should not be set aside.

2. The petitioner-firm attached before judgment, the property in question on 20th December 1930. The sale took place on 24th March 1931. Subsequently the petitioners obtained a decree on 29th September 1931, and made the application under Order 21, Rule 90 for setting aside the sale on 10th February 1932. The only question to be decided in this Rule is whether in the circumstances the petitioners are "persons affected by the sale" so as to be entitled to apply under Order 21, Rule 90. The petitioners rely on the widest interpretation of the words of Rule 90 pointing out that the wording of the old section has been changed. The corresponding words in Section 311 of the old Code are as follows: "any person whose immovable property has been sold." As compared with the words of the old Section 311 the words of Rule 90 "any person whose interests are affected by the sale" are very wide. The petitioners rely on the decision in the case of Dharendra Nath Roy Vs. Kamini Kumar Pal, in which it was held that "persons whose interests are affected by the sale" is an expression which is not limited to persons whose proprietary or possessory title is affected by the sale. There it was held that a person who made an attachment before judgment and

who had already obtained a decree was a person whose interests were affected by the sale. The only distinction between that case and the present one is that in the present case the decree was obtained after the sale whereas in that case the decree was obtained before the sale.

3. The narrow interpretation appears to have been adopted in the case of *Jogendra Nath Chatterjee v. Manmatha Nath Ghosh* (1912) 15 IC 668 in which it was held

a person who has attached immovable property before judgment has no present interest in such property and is not entitled to apply under Order 21, Rule 90 to set aside a sale of the property in execution of a decree.

4. That case is however distinguishable from the present case, inasmuch as in the present case the decree had already been obtained at the time of the application under Order 21, Rule 90. It is urged on the other hand, on behalf of the opposite party that the attachment before judgment creates no interest in the property; it only prevents the judgment-debtor from dealing with the property but it does not confer any right in the property. But on the view taken in the case of *Dhirendra Nath Roy Vs. Kamini Kumar Pal*, it is clear that there need not be any right in the property. It is claimed for the opposite party that reading the previous portion of the rule, it appears, that it was intended to refer only to rights in the property; but had that been the intention of the legislature there seems no reason why it should not have been so expressed. It cannot be said that a person who has attached property before judgment has no interest in the sale. If he had no interest in the property why should he take any steps with regard to the property whatever. It is quite clear that any body who attaches the property, must ordinarily have some interest in the property, not necessarily a right or title but some interest in the sale of the property, in other words his rights are affected by the sale.

5. The case of *Badiar Rahaman Vs. Sarada Kanta Datta and Others*, has been referred to, but that case merely follows the decision in *Jogendra's* case (1912) 15 IC 668. It is a decision of a single Judge and no reasons are given in the report. This rule is accordingly made absolute. The order of the Court below dismissing the application is set aside. The case is: sent back to the trial Court for decision on the merits.

Nag, J.

6. I agree.