
(1914) 07 CAL CK 0023
In the Calcutta High Court

Satis Chandra Ghose

APPELLANT

Vs

Rameswari Dasi and Others

RESPONDENT

Date of Decision : 07-07-1914

Acts Referred:

Citation : AIR 1919 Cal 863 : 31 Ind. Cas. 894

Hon'ble Judges : Lawrence Jenkins, C.J.; N.R. Chatterjee, J

Bench : Division Bench

Judgement

1. The decision of this appeal admittedly turns on a point of law, and there is no contest as to the facts. Moreover, it has been agreed before us that the dispute should be decided by us notwithstanding any defects in procedure.

2. The question is whether the title of a purchaser from one who has bought at a sale in execution of his own decree is liable to be defeated where the decree has been subsequently set aside.

3. It was decided in *Sheik Ismal Rowther v. Rajab Rowther* 30 M. 295 : 17 M.L.J. 165 : 2 M.L.T. 186 that where property sold in execution of a voidable decree is purchased by the decree-holder and by him sold for value to a third person, who has no notice of any defect in the decree, the equitable right to set aside such a decree cannot prevail against the rights of a subsequent purchaser for value without notice. If this decision be correct, then the present appeal must succeed.

4. But I find it difficult to reconcile this decision with what was said by the Privy Council in *Zain-ul-Abdin Khan v. Muhammad Asghar Ali Khan* 10 A. 166 (P.C.) : 15 I.A. 12 : 5 Sar. P.C.J. 129. There sales were attacked which were effected under decrees that were subsequently set aside. Of the purchasers some had bought in execution of a decree to which they were strangers. Some were decree-holders who had purchased at a sale in execution of their own decree, and some were subsequently purchasers from such decree-holders. Those in the 3rd of these categories were in precisely the same position as the appellant in this case.

5. In delivering the opinion of the Privy Council Sir Barnes Peacock said: "Some

of the defendants were decree-holders and some were persons who came in under them; but all the defendants who are in that position may for the purpose of this judgment be classed under the head of the decree-holders. Others of the defendants were not decree-holders, but merely purchasers under the execution and strangers to the decree upon which the execution issued." This passage is important and the rest of the opinion must be read in the light of the extended meaning it gives to the word decree-holders." And when it is said that a great distinction has been made between the case of bona fide purchasers who are no parties to a decree at a sale under execution and the decree-holders themselves," it has to be remembered who are included in the term decree-holders. It is on the strength of this distinction between those who are and those who are not decree-holders that the decision went in favour of the latter.

6. This appears to me to be the result of the language employed by their Lordships, and I am unable to accede to the argument that the result is so opposed to legal principles that we ought not to give complete effect to the language used.

7. The Court as a matter of policy has a tender regard for honest purchasers at sales" held in execution of its decrees though the sales may be subsequently set aside, where those purchasers are not parties to the suit and the decree has not been passed without jurisdiction.

8. But the same measure of protection is not extended to purchasers who are themselves the decree-holders; nor can the purchasers from such decree-holders claim that the Court owes them any duty, or to be within the policy which prompts the extension of protection to strangers. They have bought from one whose title is liable to be defeated, and if the decision in Zain-ul-Abdin Khan's case 10 a. 166 (P.C.) : 15 I.A. 12 : 5 Sar. P.C.J. 129 bears the meaning I have attributed to it, the title acquired by the purchaser from the decree-holder is similarly defensible. And the defeasibility of a decree-holder's title where the decree is ex parte is of such common occurrence that the plea of a purchaser for value without notice hardly applies.

9. The appeal, which has been limited to this bare point of law, therefore, fails, as does the cross-objection, and the result is that we decline at this stage to interfere with the decree of the Subordinate Judge. But before we can finally dispose of the case, it is necessary that it should be determined whether the sale should be set aside as against the appellants, for it is their case that the decree and the sale to the decree-holder were not set aside in their presence. The parties agree that this should be determined on an issue in the suit.

10. We accordingly send down the following issue for determination:

Ought the ex parte decree and the sale to the decree-holder to be set aside to the prejudice of the appellants?

11. The parties will be at liberty to adduce, evidence on this and it will be open

to the respondents to show that the appellants are bound by the orders that have been made. The return should be made in two months.