

(1923) 01 AHC CK 0031
In the Allahabad High Court

Sheo Ram Koeri and Others

APPELLANT

Vs

Musammat Ikramunnissa Bibi and Others

RESPONDENT

Date of Decision : 11-01-1923

Acts Referred:

Limitation Act, 1963 — Section 18

Citation : 71 Ind. Cas. 631

Hon'ble Judges : Grimwood Mears, C.J;P.C. Benerji, J

Bench : Division Bench

Judgement

1. This is an application in revision which raises a question whether Section 18 of the limitation Act applies when a sale in execution proceedings has already been confirmed. On the 20th August 1912 Sheo Ram obtained a final decree in a suit upon a mortgage for Rs. 685. On the 21st of January 1913, he took steps in execution. The property in question was advertised for sale and on the 21st of April 1913 was sold. The decree-holder had obtained permission to bid and in fact he bought the property on that day. On the 23rd of May 1913 the sale was confirmed. On the 23rd of June 1913, the guardian of the judgment-debtor, who throughout all the proceedings was a lunatic, asked that the sale might be set aside, and he alleged a series of acts and calculated omissions by the decree-holder, and other conduct of the decree-holder and third parties, which pointed to fraud on the part of the decree-holder. It is said that before the Execution Court had time to consider that application on its merits, a suit was filed to set aside the decree on the ground of fraud. That suit was, in fact filed some eighteen months after the filing of the application, namely, in December 1914. In June 1915 that suit was dismissed by the First Court, in May of 1916 by the lower Appellate Court, and in July of 1918 was dismissed by this High Court. Thereupon the application filed on the 23rd of June 1913 was taken up by the Munsif on the 11th of January 1919, and he passed an order setting aside the sale. From that order there was an appeal. The matter was remanded on two occasions for certain findings, but, ultimately, on the 3rd of April 1922, Mr. Ali Ausat confirmed the order of the Munsif and set aside the sale of the 21st of April

1913. The learned Subordinate Judge set out various charges of fraud which he held had been established against the decree-holder. We are sitting here in revision, and even if we disagreed with him, we should nevertheless be bound to accept his findings. The point taken by the decree-holder is this, that the sale having been confirmed on the 23rd of May 1913 from that day the Execution Court had no power to make any order varying that confirmation, or setting aside, or in any way dealing with it, it being plainly stated by Dr. Katju that the right view to take of that order of the 23rd of May 1913 is that when it was passed the Execution Court became wholly functus officio. On the other side, it is said that whilst in a case in which no fraud was alleged, the 21st of May 1913 would have been the last date upon which the judgment-debtor could have raised objection, nevertheless in a case of fraud an application can be made even after the thirty days provided the judgment-debtor can show circumstances which bring him within the words of Section 18 of the Limitation Act of 1908. Omitting the words which are not relevant to this matter, Section 18 is as follows:

Where, any person having a right to make an application has by means of fraud been kept from the knowledge of such right, the time limited for making an application against the person guilty of the fraud shall be computed from the time when the fraud first became known to the person injuriously affected thereby". The question as to whether in fact the judgment debtor had been kept from the knowledge of his right to make an application by means of fraud was one of the matters into which the Subordinate Judge enquired, and he was satisfied that the circumstances which would have entitled the guardian of the judgment-debtor. to make an application, did not come to the knowledge of the guardian until the 3rd of June 1913, and that, therefore, an application by him could have been made at any time between the 3rd of June and for 30 days thereafter. He did, in fact, make an application on the 23rd of June. The question which we have to decide is whether that application made as it was on the 23rd of June was not, in every way, as legally efficacious as if it had been made within 30 days of the date of the sale. We are of opinion that this is an enabling section which does extend the time, and which when, the person aggrieved shows facts. On the establish a fraud, and shows that by means of that fraud he has been kept from his knowledge of his right to make an application, he can, on the establishment of those matters, if he makes his application within 30 days; he in all respects is in the same position as if he were making it within the 30 days of the sale, and the fact that the sale has been confirmed by the Court in ignorance of the fraud is no bar to his application, and need not stand as a bar in any further order which the Court may make. This matter was considered in the case of Mohendro Narain Chaturaj v. Gopal Mondul 17 C. 769 : 8 Ind. Dec. 1056 in the year 1890. There the very same point was taken that the sale having been confirmed, Section 18 was inapplicable. Mr. Justice Pigot at page 776 Page of 17 C.--[Ed.] dissented from the expression of opinion in the case of Gobind Chandra Majumdar v. Uma Charan Sen 14 C. 679 : 7 Ind. Dec. 450 and said as follows: "I think that u/s 18 of the Limitation Act, where irregularities affecting the validity

of the sale have been, by the fraud of the judgment-creditor or other parties to the sale, been kept concealed from the judgment-debtor, he is entitled, whether the sale has been confirmed or not, to make, as against the person guilty of the fraud or accessory thereto, such application, if any, u/s 311 as he may be entitled to make, his time for making it being computed from the time when the fraud first became known to him. The confirmation of the sale ought not to be used as a shield for the fraud by which the Court has been induced to make the sale itself." As we are in complete agreement with that expression of opinion by the learned Judge, it follows that this application in revision must fail. We accordingly reject it with costs and fees on the higher scale.