
(1925) 04 CAL CK 0051
In the Calcutta High Court

Shyamballav Saha alias Shyamlal Saha	APPELLANT
Vs	
Brojendra Lal Poddar	RESPONDENT

Date of Decision : 06-04-1925

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1925 Cal 1250

Judgement

1. In this case the sale of the property in dispute was confirmed on the 26th March 1918 and the application for delivery of possession was made on the 20th December 1922. Possession was delivered on the 27th January 1923 and on the 20th February 1923 the Court received the dakhalnama and dismissed the execution case presumably on satisfaction. On the 26th February 1923 the judgment-debtors filed an application in which they prayed that the present application for execution of decree on the ground of limitation and illegality be rejected and possession be not "confirmed." The Court, finding that the application for delivery of possession was made three years after the sale became absolute, held that the application for delivery of possession was barred under Article 180 of the Limitation Act and made the following order. "The order of delivery of possession is set aside." The decree-holder who is the auction-purchaser has appealed and the first ground taken by him is that the application made by the respondent was incompetent inasmuch as the Court had no longer any seisin of the execution case and it could not interfere with the order confirming delivery of possession, because it was not an order in execution within the meaning of Section 47, C.P.C. We think that this contention ought to prevail. The proceeding relating to delivery of possession to the auction-purchaser whether he be a stranger or the decree-holder is not a proceeding in execution of a decree and any question arising in such a proceeding is not a question relating to execution, satisfaction or discharge of the decree within the meaning of Section 47, C.P.C. Sasibhusan Mookerjee v. Radhanath Bose [1914] 20 C.L.J. 433. The respondent has not appeared before us and we have not the advantage of having the case argued by him. But it appears from the authorities

that there can be no doubt that Section 47 is inapplicable to the present case. It may be suggested that the order confirming deliverer of possession may be reviewed by means of an application under Order 47, Civil P.C. But the present application is not one under O.47 and we cannot consider it as such.

2. The result is that the appeal is allowed and the order passed by the Court below is set aside. The appellant is entitled to the costs of this appeal. We assess the hearing fee at two gold mohurs.