

(1916) 01 CAL CK 0018
In the Calcutta High Court

Tikait Krishna Prosad Singh

APPELLANT

Vs

Babu Mati Chand

RESPONDENT

Date of Decision : 05-01-1916

Acts Referred:

Citation : 32 Ind. Cas. 699

Hon'ble Judges : Mallick, J;Chapman, J

Bench : Division Bench

Judgement

1. This appeal is against an order, overruling an objection on the ground of limitation, made by a judgment-debtor to the execution of a portion of a decree. The decree was obtained in the Court of the Subordinate Judge of Benares on the 27th November 1900 for Rs. 6,599-9-6. The decree was transmitted for execution to the Court of the Subordinate Judge of Hazaribagh. An application was made to the latter Court for the attachment and sale of a certain property, named Gadi Gandey, in execution of the decree. This application was made on the 19th of May 1903. The property was accordingly attached and brought to sale on the 2nd of January 1904. It was purchased by the decree-holder for Rs. 2,020. The judgment debtor then applied to have the sale set aside and, upon his application, the sale was set aside on the 16th February 1906. The decree-holder appealed to this Court. The order setting aside the sale was reversed and the sale confirmed, on the 18th May 1905. The judgment-debtor thereupon appealed to the Privy Council and, on the 6th March 1913, their Lordships of the Privy Council reversed the judgment of this Court and set aside the sale. Upon the sale being set aside, the decree-holder had the right to apply to the Subordinate Judge of Hazaribagh for a re-sale of the property. He accordingly applied on the 1st December 1913 that the property, namely, the estate Gadi Gandey, which had been already attached and sold in the execution proceedings commenced by the decree-holder in May 1903, should be re-sold. To this application the judgment-debtor objected that the decree-holder was not entitled to realise more than the sum of Rs. 2,020, which was the price obtained at the sale which was set aside by the Privy Council. The contention was that having

realised that sum by the sale in January 1904 there had been nothing to prevent the decree-holder from proceeding to realize the balance of his decree, and that the subsequent proceedings leading to the setting aside of the sale did not in any way prevent the decree-holder from realising the said balance, and that more than three years having expired his right to realise the balance was barred by limitation. We note that the judgment-debtor conceded that the property might be re-sold if, on taking an account upon the basis that only Rs. 2,020 was due to the decree-holder, and after giving credit to the judgment-debtor for any sum due to him, it was found that any balance was due to the decree-holder.

2. The judgment-debtor, therefore, admitted that the application of the decree-holder, that the property might be re-sold, was an application for the revival of the previous proceeding. We have, therefore, not to consider that point. What we have to consider is whether, having regard to the fact that it was open to the decree-holder to proceed to execute his decree for the balance of the money due to him after realising Rs. 2,020 by the sale of the 2nd January 1904, he is now, the period of limitation having expired, debarred from realising the whole of the decretal amount including the balance. The learned Subordinate Judge overruled the objection of the judgment-debtor holding that assuming, as was probable, that the decree-holder was satisfied with the property that he had purchased at the sale in execution, there was no reason in equity why the decree-holder should not now, that the sale had been set aside, realize the whole of the amount of his decree. The judgment debtor appeals to this Court.

3. We can find no authority for saying that the execution of the decree can be barred by limitation in part. The learned Vakil for the appellant has relied upon the case of *Raghunandan Pershad v. Bhugoo Lal* 17 C. 268 in support of his contention; but in that case, it was not held that the execution of a portion only of the decree was barred. What was held was this that, upon the facts of that case, the application for execution, under consideration was a fresh application and not a continuation of the previous application for execution, and was entirely barred for that reason. In the present case, it was conceded by the form of the objection made by the judgment-debtor that the application was, in fact, a continuation of the previous application. In the case referred to an entire property had been attached and subsequently, as the result of a separate suit, 2/3rd of the property was released from attachment. The decree-holder thereupon applied for the attachment of the remaining 1/3rd and it was held that the application for the attachment of the remaining 1/3rd was not a continuation of the previous application for the attachment of the entire property. In the present case there can be no doubt that the application that the property might be re-sold was not a fresh application. It was an application in continuation or for the revival of the previous application for the sale of the identical property. We are satisfied that the objection of the judgment-debtor has been properly overruled. The appeal is accordingly dismissed with costs. We assess the hearing fee at three gold mohurs.