
(1925) 04 BOM CK 0004
In the Bombay High Court
Case No : Second Appeal No. 232 of 1924

Vishnu Shankar Joshi

APPELLANT

Vs

Yusuff Nurmahamad

RESPONDENT

Date of Decision : 09-04-1925

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 63

Citation : AIR 1925 Bom 488 : (1925) 27 BOMLR 963

Hon'ble Judges : Norman Macleod, J;Coyajee, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Norman Macleod, Kt., C.J.—One Merwanji had several money decrees standing against him. In execution of one of them, the Thana First Class Court attached a certain land belonging to him on May 25, 1916. About the same time in execution of another decree the Panvel Second Class Court also attached the same property. The fact that the Thana Court had attached the property had not been brought to the notice of the Panvel Court.

2. u/s 63 of the Civil Procedure Code, where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, the Court which shall receive or realize such property, and shall determine any claim thereto, and any objection to the attachment thereof, shall be the Court of highest grade. Sub-section (2) says that nothing in this section shall be deemed to invalidate any proceeding by a Court executing one of such decrees.

3. The Thana Court sold the property on February 28, 1917, and the Panvel Court sold the same property on March 3, 1917. u/s 65 of the Code " where Immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute." But until the sale becomes absolute, the property cannot be said to be

vested in the purchaser, who has only an inchoate right, which becomes permanent when the sale is made absolute. The sale by the Thana Court was never confirmed. The judgment-debtor applied to set it aside under Order XXI, Rule 89, and ultimately it was decided by compromise that if the judgment-debtor deposited a certain amount by a certain time the sale should be set aside. The deposit was accordingly made by the judgment-debtor on September 11, 1920, and the sale was set aside, and the proceedings in the Thana Court thus terminated. The sale of the Panvel Court was duly confirmed and the pre. sent plaintiff is the purchaser. The judgment debtor had obtained from defendants Nos. 2 to 4 the necessary money to set aside the sale by the Thana Court, In consideration thereof he sold the property to them on September 21, 1920, with certain other properties, and put the purchaser in possession thereof.

4. The plaintiff had then to bring this suit to recover possession. The Subordinate Judge decreed the plaintiffs claim, and that decree was confirmed in appeal by the Assistant Judge.

5. It was argued before the Assistant Judge, and the argument has been repeated in this Court, that when the Thana Court sold the property on February 28, 1917, the judgment-debtor's interest in the land ceased, and further that the attachment proceedings in the Panvel Court also came to an end, as there was no property on which it could take effect, or which could be conveyed to the purchaser. The Judge said :-

The fallacy of this argument lies, as pointed out by the trial Judge, in assuming that the title of the judgment-debtor is transferred to the Court-purchaser immediately on the acceptance of his bid. But that is not the law.

6. It seems to me that when the Thana Court sold the property, the purchaser merely obtained a right to get the sale confirmed, and it would not be until he obtained the sale certificate, that the vesting of the property would date back to the date of the sale. When the Panvel Court sold the same property, the purchaser also obtained an inchoate right which would fail to materialize if the previous sale in the Thana Court was confirmed. When the Thana sale was set aside then the right of the purchaser from the Panvel Court, which had been in the meanwhile in suspense, revived, and if the sale was confirmed, then his title would date back to the date of the sale. There was nothing to prevent the judgment-debtor objecting to the sale in the Panvel Court before the certificate was issued. He did not do this. So we think the plaintiff is entitled to succeed.

7. We dismiss the appeal with costs.