Balodev Sarma Khanud Vs. Sonti Bordoloi and anr.

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Court : Kolkata

Decided On : Jul-17-1923

Reported in : 84Ind.Cas.983

Judge : Rankin and ;B.B. Ghose, JJ.

Appellant : Balodev Sarma Khanud

Respondent : Sonti Bordoloi and anr.

Judgement :

1. In this case, the appellant is a plaintiff decree-holder who obtained a decree on the 20th June, 1914, against two persons. On the 15th May 1916 an execution sale of the properties of one of the debtors was held at which the decree-holder himself was the purchaser and this sale was confirmed on the 15th June 1916. On that day, final satisfaction of the decree was entered up and the execution case was struck off. The position is that the execution case was struck off because the decree was taken to be satisfied. The decree-holder chose to pay a certain sum of money for his judgment-debtor's right, title and interest. He did not make any application under the Code within the lime limited by law nor did he bring a suit within a year for the purpose of having it ascertained that nothing had passed to him by the sale or for a declaration that the sale aves void or voidable and should be set aside. The case is not one of execution proceedings being obstructed or delayed by suits being brought to elucidate the rights of the objector or for other matters. The case was not struck off merely because the decree-holder was not by reason of litigation in a position to proceed at once but on the footing that his claim had been satisfied. The present application was for execution against other properties and the decree-holder maintains that he is entitled to proceed now on the footing that the decree is wholly unsatisfied. The case he makes as regards that is that he went into possession of the property which he had bought and that, after some considerable time, he was fined for criminal trespass on the 21st November, 1917, Now, a fine for criminal trespass is very good evidence that the person had wrongly entered upon property in the possession of another with a view to cause him annoyance or with some similar view. But such a decision is not in the contemplation of the law in any sense of the word equivalent to a declaration by the Civil Court that nothing has been obtained at the execution sale. In the present case, there is no case of fraud because, although such a case was attempted, the judgments of the lower Courts show that there is nothing in this at all. Moreover, there is no satisfactory ^evidence establishing the date on which the present appellant came to know of his position. We have been asked to apply to this case the principle of many cases in which it has been held that Article 182 of the Limitation Act does not apply where the application may be regarded as one for the revival of previous execution proceedings and, therefore, within the wider limits of Article 181. In our opinion, we should be extending those decisions very

widely if we were to hold that in this appeal and we shall be going contrary to a considerable body of authorities; for example, the case of Khairunnissa v. Gauri Shankar 3 A. 484 : A.W.N. (1881) 1 : 2 Ind. Dec. (N.S.), and the cases, Krishanji Raghunath v. Anandrav 7 B. 293 : 4 Ind. Dec. (N.S.) 198 and Virasami v. Athi 7 M. 595 : 8 Ind. Jur. 613 : 2 Ind. Dec. (N.S.) 998. In these circumstances, it is not necessary to consider the preliminary objection. In our opinion, on the merits the appeal should be dismissed with costs, hearing fee one gold mohur.