

APPELLATE CIVIL.

Before B. B. Ghose and Panton, JJ.

ASHUTOSH NANDI

v.

KUNDALKAMINI DASI.*

1929
Mar. 15.

Restitution—Code of Civil Procedure (Act I of 1908), s. 144—Whether applies to variation or reversal of decree otherwise than by appeal, review or revision—Result of decree in different suit affecting decree in previous suit.

The object of section 144 of the Code of the Civil Procedure, 1908, is to provide a speedy and simple remedy for any party who has suffered by reason of an erroneous decree made by a court of first instance. It does not apply to a case where the court has to decide questions of conflicting rights under different decrees which may be very complicated.

A decree can only be said to be varied or reversed within the meaning of section 144 of the Code of Civil Procedure, 1908, by an appeal, review or revision. It may be possible that the result of a subsequent suit may affect the right of a person under a decree in a previous suit, but it would be straining the meaning of words to say that the previous decree is reversed or varied by the subsequent decree.

Bommadevara Naganna Naidu v. Ravi Venkatappayya (1) relied on.

Jogesh Chunder Dutt v. Kali Churn Dutt (2) per Garth C. J. approved.

Shama Purshad Roy Chowdery v. Hurro Purshad Roy Chowdery (3) explained.

Chintaman Singh v. Chuni Sahu (4) referred to.

Tangatur Subbarayudu v. Yerram Setti Seshasani (5) doubted.

SECOND APPEAL, by the auction-purchaser.

The facts will fully appear from the judgment of Mr. Justice B. B. Ghose. The question in this proceeding was whether the respondents Nos. 1 and 2, the daughter and the widow respectively of one Akshay Datta, the holder of the *jote* in question, who had succeeded in their title suit under Order

*Appeal from Appellate Order, No. 301 of 1928, against the order of A.L. Blank, District Judge of Birbhum, dated April 19, 1928, affirming the order of A. K. Chakravarty, Munsif of Dubrajpur, dated Sept. 24, 1927.

(1) (1923) I. L. R. 46 Mad. 895; (3) (1865) 10 M. I. A. 203.

L. R. 50 I. A. 301.

(4) (1916) 1 Pat. L. J. 43.

(2) (1877) I. L. R. 3 Calc. 30.

(5) (1916) I. L. R. 40 Mad. 299.

XXI, rule 63, in consequence of their claim cases against the attachment of the said *jote* in a decree for arrears of rent obtained by respondent No. 3, the landlord, against respondent No. 4 (husband of respondent No. 1), the recorded tenant, having failed, could obtain restitution by an application under section 144, or whether they should bring a regular suit. The appellant had purchased the said *jote* in auction sale, in execution of a rent decree *other than* the decree, in the execution of which the title suit had arisen, and had obtained possession, the said sale having taken place during the pendency of the title suit. Both the courts below held in favour of the applicability of section 144. The auction-purchaser preferred the present Second Appeal.

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Mr. Bankimchandra Mukherji (with him *Mr. Banbehari Mukherji*), for the appellant. The courts below are in error in holding that section 144, Civil Procedure Code, applied to the facts of the present case. The appellant purchased the property in execution of a decree for arrears of rent obtained by the landlord against the recorded tenant. This rent decree was not reversed or modified on appeal, review or revision. The decision in the other suit, to which the appellant was not a party, cannot affect the rights of the appellant under his purchase.

Mr. Jyotishchandra Sarkar, for the respondents, relied on *Tangatur Subbarayudu v. Yerram Setti Seshasani* (1).

B. B. GHOSE J. This is an appeal by a purchaser of a holding in execution of a rent decree. It appears that there was a litigation between respondents Nos. 1 and 2 and Nos. 3 and 4 as to the title to the property in question. When they were litigating with regard to the property, the landlord, respondent No. 3, brought a suit for rent and obtained a decree against respondent No. 4, who was said to be his recorded tenant. In execution of that decree,

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the holding was sold and purchased by the appellant. The title suit between the respondents was decreed in favour of respondent No. 2 and dismissed as regards respondent No. 1 in the trial court. There were two appeals against that decree and ultimately the title to the property was found in favour of both respondents Nos. 1 and 2. The proceeding, out of which this appeal arises, was instituted by respondents Nos. 1 and 2 under section 144 of the Code of Civil Procedure, for recovery of possession of the property, which was purchased by the appellant in execution of the rent decree. It was said that the result of the litigation between respondents Nos. 1 and 2 on the one hand and respondents Nos. 3 and 4 on the other was that the rent decree obtained by respondent No. 3 against respondent No. 4 was reversed and, therefore, the applicants were entitled to restitution by way of recovery of possession from the auction-purchaser at the rent sale by the present proceedings. The trial court held that section 144 applied to the case and this opinion was affirmed by the learned District Judge on appeal by the auction-purchaser. Against that order, the auction-purchaser, who was the opposite party in the trial court, has preferred this appeal. His contention is that it is not a matter which falls within the provisions of section 144 of the Code, that this section only applies where the decree of a court of first instance is varied or reversed on appeal and it does not apply to a case where, as the result of a different suit, the title of a person derived by purchase under quite a different proceeding in execution of a decree which stands unreversed is questioned. In my opinion, this contention is sound and must be accepted. A decree can only be said to be varied or reversed by an appeal, review or revision.

It may be possible that the result of a subsequent suit may affect the right of a person under a decree obtained in a previous suit, but it seems to me that it would be straining the meaning of words to say

that the previous decree is reversed or varied by the subsequent decree. Apart from authorities, which I shall presently discuss, it seems to me that the provision that the court which is to make restitution is the court of first instance implies a court, the decree of which is reversed by a court of appeal. Take, for instance, this case, where the decree for rent might have been passed by one court, and affirmed on appeal, in execution of which the appellant purchased the property. The suit for title between the respondents might have been tried by another court, which ultimately succeeded on appeal. Which court of first instance is to make restitution? The legislature would not have left the matter unprovided for, if it was contemplated that a decree might be reversed by a separate suit. Reference may be made to section 583 of the Code of 1882, which has been replaced by section 144 of the present Code, if there is any doubt about the matter. That section provided that any party entitled to any benefit (by way of restitution or otherwise) under a decree passed in an appeal was to apply to the court which passed the decree against which the appeal was preferred. In my opinion, reference to an appeal was omitted in section 144, because it was not necessary, having regard to the expression 'court of first instance,' the decree of which is varied or reversed. The learned advocate for the respondents however relies upon the case of *Tangatur Subbarayudu v. Yerram Setti Seshasani* (1), in support of his contention that section 144 applies to cases where a decree may be held to have been reversed otherwise than in first or Second Appeal. There the learned Judges came to their conclusion "not without some hesitation." They referred to the case of *Shama Purshad Roy Chowdery v. Hurro Purshad Roy Chowdery* (2) as supporting their view. In that case their Lordships laid down the general principle of law about which there can be no question. The facts, however, might

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(1) (1916) I. L. R. 40 Mad. 299.

(2) (1865) 10 M. L. A. 203, 211, 212.

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probably be considered as lending support to the view of the Madras court. But that case has been explained by the Privy Council in the case of *Bommadevara Naganna Naidu v. Ravi Venkatappayya* (1). Referring to *Shama Purshad's Case* (2), their Lordships say: "In that case the Judicial Committee, in applying the test already quoted, namely, "whether the decree or judgment under which the " 'money was originally recovered had been reversed " 'or superseded,' were of opinion that it was plainly intended by the Order in Council in that case that " all the rights and liabilities of the parties should be " dealt with under it, and it would be in contravention of the order to permit the decrees obtained " pending the appeal on which it was made to interfere with this purpose. It was pointed out..... "that such decrees were mere subordinate and " dependent decrees, which could no longer be held to " have remained in force when the decree on which " they were dependent had been reversed." Their Lordships further said that they preferred the reasonings and conclusions set forth in the dissentient judgment of Garth C. J., in the case of *Jogesh Chunder Dutt v. Kali Churn Dutt* (3). The learned Chief Justice said: "I have searched in vain to find any " other instance in which the decree of an appellate " court in one suit has been held to have the legal " effect of annulling or altering *ipso facto* a decree " made by a subordinate court in another suit." I respectfully agree with the observation and hold that section 144 refers only to cases where a decree of the court of first instance is reversed on appeal or revision. This view of section 144 has been taken by the Patna High Court in the case of *Chintaman Singh v. Chuni Sahu* (4).

It seems to me that the object of section 144 is to provide a speedy and simple remedy for a party who has suffered by reason of an erroneous decree

(1) (1923) I. L. R. 46 Mad. 895, 901; (3) (1877) I. L. R. 3 Calc. 30.

L. R. 50 I. A. 301, 305. (4) (1916) 1 Pat. L. J. 43.

(2) (1865) 10 M. I. A. 203, 211, 212.

made by a court of first instance and it does not apply to a case where the court has to decide questions of conflicting rights under different decrees which may be very complicated.

I, therefore, hold that the decision of the court below is not correct.

The result is that this appeal is allowed and the application of the respondents dismissed with costs in both the courts.

We fix the hearing-fee in this Court at three gold *mohurs*.

PANTON J. I agree.

Appeal allowed.

R. K. C.

ORIGINAL CIVIL.

Before Costello J.

BIMALACHARAN BATABYAL

v.

TRUSTEES FOR THE INDIAN MUSEUM.*

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Government servants—Servants of the Trustees of the Indian Museum, if Government servants—Liability to be dismissed—Government of India Acts (5 & 6 Geo. V. c. 61 ; 6 & 7 Geo. V. c. 37 ; 9 & 10 Geo. V. c. 101), s. 96B—Indian Museum Act (X of 1910), ss. 9, 13.

Section 96B of the Government of India Acts, 1919, does not abrogate the right of the Crown to dismiss its civil servants at its pleasure, but reiterates that right and enacts that the same is only limited in so far as there are definite and special or particular rules laying down the method by which or the circumstances in which that right is to be exercised.

Satis Chandra Das v. Secretary of State for India (1) distinguished.

Ram Das Hazra v. Secretary of State for India in Council (2) referred to.

The tenure of employment of servants appointed by the Trustees of the Indian Museum has all the incidence of employment by private employers, and, in the absence of any special agreement and also of any regulations or conditions prescribed by the Trustees under section 9 of the the Indian Museums Act, 1910, their services can be terminated by the Trustees by any reasonable notice.

*Original Civil Suit, No. 1068 of 1928.

(1) (1926) I. L. R. 54 Calc. 44.

(2) (1912) 18 C. W. N. 106.