

1937
April, 12

Before Mr. Justice Niamat-ullah and Mr. Justice Bennet

KADHEY MAL (AUCTION-PURCHASER) v. MURTAZA ALI
(JUDGMENT-DEBTOR)*

Civil Procedure Code, sections 68, 70—Rules framed under section 70(1), rule 3—Decree transferred to Collector for execution—Sale held by Collector—Order of court staying confirmation and virtually recalling decree—U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 5—Confirmation by Collector thereafter—Jurisdiction.

A decree for sale on a mortgage was transferred to the Collector for execution under section 68 of the Civil Procedure Code. Sale was held by the Collector, but before it could be confirmed the judgment-debtor made an application to the court under section 5 of the U. P. Agriculturists' Relief Act, and prayed that execution proceedings might be recalled from the Collector. The court entertained the application and sent an order to the Collector staying further proceedings for confirmation of the sale. The Collector, however, confirmed the sale and a sale certificate was issued to the auction purchaser, who thereafter applied to the court for delivery of possession:

Held that after the order of the court staying further proceedings, which was in substance an order under rule 3 of the Rules framed by the Government under section 70 of the Civil Procedure Code in respect of sales by the Collector, the Collector had no jurisdiction left to confirm the sale. Accordingly, such confirmation of sale or the issue of the sale certificate could not confer any valid title on the auction purchaser. The civil court, in passing the order recalling the decree under rule 3, did not pass an order which was within the exclusive jurisdiction of the Collector, but exercised a power which was expressly reserved to it by rule 3; there was no clash of jurisdiction, therefore, between the Collector and the civil court.

Mr. E. V. David, for the applicant.

Messrs. M. A. Aziz and Ihsanul Haq, for the opposite parties.

NIAMAT-ULLAH and BENNET, JJ.:—This is an application for revision by an auction purchaser against an order passed by the Civil Judge of Bareilly refusing to deliver possession to him of the property which he

purchased at an auction sale held in execution of a decree.

The decree in the execution of which the applicant was declared to be the auction purchaser was a decree for sale. On an application for execution being made by the mortgagee the court which had passed it sent it to the Collector for execution, the property sought to be sold being such as could be sold only by the Collector under section 68 of the Civil Procedure Code. The auction sale was held by the Assistant Collector to whom the Collector had delegated his power of sale. The applicant was declared to be the purchaser on the 21st of September, 1935. Before the sale could be confirmed by the Collector, who alone could do it, the judgment-debtor made an application to the court which had passed the decree for action being taken under section 5 of the Agriculturists' Relief Act which was passed in the meantime. He prayed that interest be reduced and the decretal amount be made payable by instalments. He also prayed that the proceedings of execution of decree which had been sent to the Collector be recalled. The court entertained the application under section 5 of the Act, as it was bound to do, and sent an order to the Collector staying further proceedings for confirmation of the sale. The Collector did not comply with the order of the court, either in disregard or ignorance of that order, and confirmed the sale on the 18th of February, 1936. The judgment-debtor's application under section 5 of the Agriculturists' Relief Act was taken up by the civil court in due course and it was converted into an instalment decree. The Collector eventually re-transmitted the record of the case to the civil court, where alone possession could be given to the auction purchaser. The latter made an application to the court under order XXI, rule 95 or 96, of the Civil Procedure Code for delivery of possession. The court rejected this application. He has come to this Court in revision.

1937

KADREY
MAL
v.
MURTAZA
ALI

1937

ADHEY
MAL
v.
MURTAZA
ALI

It is contended on his behalf that the civil court had no jurisdiction to order stay of the proceedings before the Collector, that the Collector had every jurisdiction to confirm the sale, and that the sale having been confirmed and a certificate having been issued to the auction purchaser, the court has no option but to deliver possession under order XXI, rule 95 or 96. This argument proceeds on the assumption that it was open to the Collector, in the circumstances already stated, to proceed to confirm the sale and issue the usual sale certificate. Having carefully considered the relevant provisions of the law bearing on this subject, we are clearly of opinion that the Collector had no jurisdiction left to confirm the sale after the court's order of stay. Though the order was called an order of stay, in substance it was an order under rule 3 of the Government Notification in respect of sales of agricultural land by the Collector under section 68. That rule provides: "If, after the decree has been transmitted, any claim to the property ordered to be sold, or any objection to the sale, be preferred to the court that ordered sale, the court may, if it sees fit, recall the decree and proceed to dispose of the claim or objection. When, notwithstanding such claim or objection, the order for sale of the property is maintained by the court, the decree shall be re-transmitted to the Collector. If such claim or objection be preferred to the Collector, the claimant or objector shall be referred by him to the court that ordered sale." It is perfectly clear that the judgment-debtor could not move the Collector to take action under section 5 of the Agriculturists' Relief Act, and if he had made an application to the Collector he would have been referred to the court which passed the decree. The judgment-debtor rightly applied to the court passing the decree and under section 5 of the Agriculturists' Relief Act the court was bound to entertain the application and it did entertain it. The application clearly implied an objection to the execution

proceedings being continued, because if the decree was to be converted into an instalment decree, the original decree which was being executed by the Collector would stand superseded. The judgment-debtor expressly asked for the decree being recalled by the court. The order of the court asking the Collector to stay further proceedings, read with the application on which it was passed, can only mean an order of recall under rule 3. Where the court directs the Collector, in circumstances like these, to stay further proceedings the order is in substance one of recalling the decree. It is termed as an order of stay because the court contemplates the possibility of re-transmission of the proceedings to the Collector.

The next question is whether the confirmation of sale is in the circumstances of the case valid and binding. We think that the Collector ceases to have jurisdiction to sell, or to confirm the sale if one has already taken place, after the court passing the decree recalls it under rule 3. Anything done by the Collector during the time that the order of recall subsisted is without jurisdiction. It follows that the order confirming the sale passed by the Collector in this case conferred no right on the auction purchaser. The subsequent issue of a sale certificate cannot improve the position of the auction purchaser. Unless an auction sale is validly confirmed no sale certificate can operate to create a title in the auction purchaser.

Another ground on which the title of the applicant can be questioned is that the decree in execution of which he was declared to be the auction purchaser was superseded by another decree under section 5 of the Agriculturists' Relief Act. The delivery of possession to an auction purchaser is part of the execution proceedings, and if before delivery of possession is made under order XXI, rule 95 or 96, the decree itself is, for some reason or other, nullified, the auction purchaser cannot take possession. The lower court in this case

1937

 KADHEY
MAL
v.
MURTAZA
ALI

1937

KADHEX
MAL
v.
MURTAZA
ALI

rightly refused to deliver possession but declared the auction purchaser to be entitled to a refund of the purchase money paid by him.

Learned counsel for the applicant referred to *Shahzad Singh v. Hanuman Rai* (1) and *Krishna Das v. Ram Gopal Singh* (2) in support of his contention that the civil court had no jurisdiction to interfere with the proceedings which the Collector could take in the execution of the decree transmitted to him. As a general proposition no exception can be taken to it. But section 70(2) of the Civil Procedure Code is clear on the point. It provides: "A power conferred by rules made under sub-section (1) upon the Collector or any gazetted subordinate of the Collector, or upon any appellate or revisional authority, shall not be exercisable by the court or by any court in exercise of any appellate or revisional jurisdiction which it has with respect to decrees or orders of the court." Where exclusive power has been given to the Collector in executing the decree sent to him, the court cannot pass any order which may come in conflict with that of the Collector. The nature of the orders which were in question in the two cases referred to above was such that the order of the civil court would have come in conflict with the order of the Collector who had exclusive jurisdiction in the matter. In the present case the civil court did not pass any order which was within the exclusive jurisdiction of the Collector. It merely exercised a power which is expressly reserved to it by rule 3 already discussed in detail. Accordingly we hold that neither of the two cases referred to above supports the contention of the applicant.

For the reasons stated above we dismiss this application for revision with costs.

(1) (1924) I.L.R., 46 All., 562.

(2) (1928) I.L.R., 50 All., 827.