

APPELLATE CIVIL.

Before Fazl Ali and Manbhar Lall, JJ.

KHIROD CHANDRA GHOSH

v.

PANCHU GOPAL SADHUKHAN.*

1939.

March, 22,
24.

May, 10.

Execution—sale by executing Court of property outside its territorial jurisdiction, whether is a nullity—no objection to confirmation of sale—judgment-debtor, whether estopped from impugning the sale—Code of Civil Procedure, 1908 (Act V of 1908), section 21—estoppel, whether extends to another execution creditor purchasing the same property.

A sale by an executing Court of a property which is outside its territorial jurisdiction is a nullity.

Prem Chand Dey v. Mohkoda Debi(1), *Haridas Basu v. National Insurance Company, Limited*(2), *Veerappa Chetty v. Ramasami Chetty*(3), *Begg Dunlop and Company v. Jagannath Marwari*(4), *Sheikh Abdul Hadi v. Musammat Kabultunnissa*(5) and *Bank of Bengal v. Sarat Ch. Mitra*(6), followed.

Though a judgment-debtor, who does not object to the confirmation of sale by a Court having no territorial jurisdiction to sell a property, may be estopped (by reason of the principles underlying section 21 of the Code of Civil Procedure, 1908) from raising the question that the sale was a nullity, such estoppel does not operate to prevent another execution creditor who purchases the same property in execution of his decree, from proving that as between himself and the previous purchaser his title ought to prevail.

* Appeal from Appellate Decree no. 557 of 1938, from a decision of Rai Bahadur Shyam Narayan Singh, C.B.E., District Judge of the Santal Parganas, dated the 4th March, 1938, reversing a decision of Babu Rabintra Nath Banerji, Subordinate Judge at Deoghar, dated the 30th June, 1937.

(1) (1890) I. L. R. 17 Cal. 699, F. B.

(2) (1931) I. L. R. 59 Cal. 199.

(3) (1919) I. L. R. 43 Mad. 135.

(4) (1911) I. L. R. 39 Cal. 104.

(5) (1924) 6 Pat. L. T. 71.

(6) (1918) 4 Pat. L. J. 141.

Veerappa Chetty v. Ramasami Chetty(1), followed.

Raghubir Saran v. Hori Lal(2), *Ayisa Beevi Ammal v. Nagaratna Mudaliar*(3) and *K. C. Manavikraman v. N. C. Ananthanarayana Ayyan*(4), referred to.

Appeal by the defendant.

The facts of the case material to this report are set out in the judgment of Fazl Ali, J.

Shiva Narayan Bose, for the appellant.

S. M. Mullick and *N. N. Sen*, for the respondents.

FAZL ALI, J.—This is an appeal from an appellate decree passed by the District Judge of the Santal Parganas reversing the judgment and decree of the Subordinate Judge of Deoghar in a suit brought by the respondent no. 1 for a declaration of his title to a house in Deoghar which has been attached by the appellant in execution of his decree. The facts of the case are briefly as follows :—

Upendra Nath Dutt and Nirtyagopal Khan had obtained a decree against the pro forma defendants second party which they assigned to the respondent no. 1. The respondent no. 1 applied for the execution of this decree which being transferred to the Subordinate Judge at Alipur, three properties including the house in suit were advertised for sale in three lots. Thereupon the appellant who also had a decree against the pro forma defendants applied for rateable distribution and also objected to the jurisdiction of the Subordinate Judge at Alipur to sell the properties. At that time the appellant was interested only in one of the three properties, namely, Howrah Dragon Iron Works, and ultimately a compromise being arrived at between him and the respondent no. 1, his objection to the sale was dismissed and he got a sum of

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(1) (1919) I. L. R. 43 Mad. 135.

(2) (1931) I. L. R. 53 All. 560.

(3) (1934) A. I. R. (Mad.) 573.

(4) (1924) A. I. R. (Mad.) 457.

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Rs. 445 out of the sale proceeds of the Howrah Dragon Iron Works in the Alipur Court. Some time later the appellant executed his decree against the defendants 2nd party at Deoghar and attached the two-fifths share in the disputed house which had in the meantime been purchased by the respondent no. 1 at a sale held at Alipur. The respondent no. 1 thereupon preferred a claim under Order XXI, rule 58, but his claim being summarily rejected he brought the present suit under Order XXI, rule 63, to obtain a declaration that by virtue of the sale held at Alipur he had obtained an absolute title to the disputed property and that as it no longer belonged to the defendants second party, it could not be attached in the execution of the decree against them. The appellant resisted the suit on several grounds, one of which was that the Alipur Court had no jurisdiction to sell the house in question. The trial Court upheld the objection and dismissed the suit and also held that the plaintiff was not the real purchaser of the decree obtained by Upendranath Dutt and Nirtvagopal Khan against the defendants second party but was merely a benamidar on behalf of the latter. On appeal, however, the learned District Judge of the Santal Parganas found, first, that the plaintiff was not a benamidar and, secondly, that the sale of the disputed house at Alipur was not *ab initio* void and inasmuch as the order of the Alipur Court as to its sale had not been questioned before a higher tribunal, the appellant was not competent to avoid it in a collateral proceeding. Thus, the learned District Judge reversed the decision of the learned Subordinate Judge and decreed the plaintiff's suit. The defendant no. 1 has now preferred this second appeal.

It appears that the decree in execution of which the plaintiff purchased the property in dispute had been passed by the Subordinate Judge at Howrah and it was subsequently transferred for execution to Alipur on the application of the decree-holder. In the

course of the execution the Subordinate Judge of Alipur sold three properties one of which was situated within his own jurisdiction and of the remaining two one was situated at Howrah and the other at Deoghar. So far as property at Howrah is concerned there was a compromise between the parties and the sale of that property is no longer in question. The dispute between the parties is now centred round the property at Deoghar and the question to be decided in this appeal is whether the appellant can impugn the sale of that property to the respondent no. 1. Section 38 of the Code of Civil Procedure provides that "a decree may be executed either by a Court which passed it, or by the Court to which it is sent for execution". Section 39 provides that the Court which passed the decree may, on the application of the decree-holder, send it for execution to another Court, if the person against whom the decree is passed has no property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such Court, or if the decree directs the sale or delivery of immoveable property situate outside the local limits of the jurisdiction of the Court which passed it. These two provisions have been construed in a large number of cases and it is now well settled that an executing Court cannot sell a property which is situated outside his jurisdiction: see *Prem Chand Dey v. Mokhoda Debi*⁽¹⁾, *Haridas Basu v. National Insurance Company, Limited*⁽²⁾, *Veerappa Chetty v. Ramasami Chetty*⁽³⁾, *Begg Dunlop and Company v. Jagannath Marwari*⁽⁴⁾, *Sheikh Abdul Hadi v. Musammatt Kobultunnissa*⁽⁵⁾ and *Bank of Bengal v. Sarat Ch. Mittra*⁽⁶⁾. In the last case, which is the

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(1) (1890) I. L. R. 17 Cal. 699, F. B.

(2) (1931) I. L. R. 59 Cal. 199.

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leading case on the point so far as this Court is concerned, the legal position, was explained by Atkinson, J. in these words:—

“ Speaking generally, it is an accepted principle of international jurisprudence that the jurisdiction of a Court in enforcing execution of its decrees is restricted by its territorial limitations. That is to say, the jurisdiction of Courts is circumscribed by and co-extensive with its territorial limits. Thus a Court desiring to seize or attach the property of a judgment-debtor outside its jurisdiction, and where such property is in the hands of, or custody of another, also outside the jurisdiction, such property sought to be attached in aid of the executing Court can only be reached by a regular method of procedure which has been prescribed by the Rules of the Civil Procedure Code, and similar Codes which prevail in all countries, viz., the decree of the executing Court must be transferred to the local limits of the jurisdiction of the external Court within which the property sought to be attached is for the time being.”

There can, therefore, be no doubt that the Court at Alipur had no jurisdiction to sell the disputed property.

The point, however, which is raised on behalf of the respondent no. 1 is that even though it be assumed that the Court at Alipur had no jurisdiction to sell the disputed property, yet inasmuch as the attachment, sale and confirmation of it were effected without objection by the judgment-debtor, not only he but also the appellant is now precluded from attacking the title acquired by the respondent no. 1 under the sale. Up to a point this argument is supported by several decisions which have laid down that if the judgment-debtor does not object to the jurisdiction of a Court to sell the property before the sale is confirmed, he

cannot question the sale after it has been confirmed : see *Ayisa Beevi Ammal v. Nagaratna Mudaliar*(¹) and *K. C. Manavikraman v. N. C. Ananthanarayana Ayyan*(²). In fact these cases merely extend the principle underlying section 21 of the Civil Procedure Code to execution proceedings. Section 21 provides that

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"no objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice."

In some cases, however, it has been held that section 21 must be strictly construed and it would not be legitimate to extend the bar of that section beyond the limit expressly provided for it, namely, appellate or revisional stages of the original suit: [see for instance, *Raghbir Saran v. Hori Lal*(³)]. But the authority which has a direct bearing on this case is *Veerappa Chetty v. Ramasami Chetty*(⁴) in which it has been held that though a judgment-debtor, who does not object to a confirmation of sale by a Court having no territorial jurisdiction to sell a property, may be estopped from raising the question that the sale was a nullity, such estoppel does not operate to prevent an execution creditor from proceeding against the same judgment-debtor. With the view expressed in this case I fully agree. If a Court which has no jurisdiction to sell a property sells it, it is clear that the purchaser acquires no title to it. It may be that the judgment-debtor himself may have made it impossible for himself owing to his conduct to

(1) (1934) A. I. R. (Mad.) 573.

(2) (1924) A. I. R. (Mad.) 457.

(3) (1931) I. L. R. 53 All. 560.

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assert that such a person has no title to the property, but the fact remains that the property continues to be the property of the judgment-debtor and I do not see why another execution creditor who purchases it in execution of the decree should be debarred from proving that as between himself and the previous purchaser his title ought to prevail. In my opinion it was open to the appellant to show in the present suit that the sale held at Alipur was a nullity and that he was entitled to proceed against the disputed house in execution of his decree.

I would, therefore, allow this appeal, set aside the judgment and decree of the Court below and restore the decree of the trial Court. There will be no order as to costs so far as this Court and the lower appellate Court are concerned, but the appellant will be entitled to the costs awarded to him by the trial Court.

MANOHAR LALL, J.—I agree.

S.A.K.

Appeal allowed.

FULL BENCH.

Before Fazl Ali, Agarwala and Varma, JJ.

MAHADEV MAHARAJ

v.

JAGDEV SINGH.*

Bihar Tenancy Act, 1885 (Act VIII of 1885), sections 65 and 167—mortgagee of a part of holding, rights of.

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* Appeal from Appellate Decree no. 967 of 1936, from a decision of Babu Manindra Nath Mitra, Subordinate Judge of Monghyr, dated the 13th of February, 1936, affirming a decision of Maulavi Muhammad Shamsuddin, Munsif of Monghyr, dated the 13th of May, 1935.