

LETTERS PATENT APPEAL.

*Before Addison and Ram Lall JJ.*SARDAR MAL *alias* SARDARA (DEFENDANT)

Appellant,

versus

KARTAR SINGH (PLAINTIFF) Respondent.

Letters Patent Appeal No. 137 of 1938.

1938

Dec. 5.

Civil Procedure Code (Act V of 1908), S. 47 — Decree-holder as auction-purchaser — Suit for possession of property so purchased — Whether barred by S. 47 of the Code of Civil Procedure.

Held, that where a decree-holder, who is himself the auction-purchaser at a Court sale held in execution of his decree, as in the present case, seeks to get possession of the purchased property, he does not do so in execution of his decree but by virtue of the title acquired as purchaser and his claim based on such title does not relate to the execution, discharge or satisfaction of the decree within the meaning of s. 47 of the Code of Civil Procedure, and therefore a suit for recovery of possession is not barred by s. 47.

Sabhajit v. Sri Gopal (1), *Bhagwati v. Banwari Lal* (2), *Kedar Nath v. Arun Chandra Sinha* (3), *Tribeni Prasad Singh v. Ramasray Prasad Chaudhri* (4), *Hargovind Fulchand v. Bhudar Raoji* (5), *J. A. Martin v. S. M. Hashim* (6), and *Chotha Ram v. Mst. Karmon Bai* (7), relied upon.

Gurdit Singh v. Kanshi Ram (8), and *Kinad Dev v. Partap Singh* (9), dissented from.

Kailash Chandra Tarapdar v. Gopal Chandra Poddar (10) and *Veyindramuthu Pillai v. Maya Nadan* (11), not followed.

Prosunno Kumar Sanyal v. Kali Das Sanyal (12) and *Ganapathy Mudaliar v. Krishnamachariar* (13), distinguished.

Other case-law referred to.

(1) I. L. R. (1895) 17 All. 222 (F. B.). (7) 8 P. R. 1918.

(2) I. L. R. (1909) 31 All. 82 (F. B.). (8) 1935 A. I. R. (Lah.) 144.

(3) I. L. R. [1937] All. 921 (F. B.). (9) 1937 A. I. R. (Lah.) 145.

4) I. L. R. (1931) 10 Pat. 670 (F. B.). (10) I. L. R. (1926) 53 Cal. 781 (F. B.)

(5) I. L. R. (1924) 48 Bom. 550 (F. B.). (11) I. L. R. (1920) 41 Mad. 107 (F. B.).

(6) I. L. R. (1930) 8 Rang. 162. (12) I. L. R. (1892) 19 Cal. 683 (P. C.).

(13) I. L. R. (1918) 41 Mad. 403 (P. C.).

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Letters Patent Appeal from the decree of Din Mohammad J., dated 1st July, 1938, passed in Regular Second Appeal No.296 of 1938, affirming that of Lala Ram Narayan, Senior Subordinate Judge, with enhanced appellate powers, Gujrat, dated 30th November, 1937, which affirmed that of Mr. A. Lazarus, Subordinate Judge, 1st Class, Mandi Baha-ud-Din, District Gujrat, dated 12th July, 1937, awarding the plaintiff possession of the house purchased by him in the Court sale, etc.

CHUNI LAL SAWHNEY, for Appellant.

AMAR NATH CHONA, for Respondent.

The judgment of the Court was delivered by—

ADDISON J.—The plaintiff, who was the decree-holder auction-purchaser of a house, sold in execution of his decree, sued to obtain possession. One of the pleas taken was that the suit was barred by reason of the provisions of section 47 of the Civil Procedure Code. This plea was rejected by the trial Court and the lower appellate Court and the suit was decreed. The defendant was allowed to remove his *malba* within three months from the date of the decision in the trial Court, that is, from the 12th July, 1937.

A second appeal was preferred to this Court and it was dismissed. Against the decision of the learned Judge this appeal under the Letters Patent has been preferred. The subject is discussed at length at pages 179 *et seq.*, of the 10th edition of Mulla's Civil Procedure Code. The preponderance of authority, however, is in favour of the view that, where a decree-holder, who is himself the auction-purchaser at a Court sale held in execution of his decree, seeks to get possession of the purchased property, he does not do so in execution of his decree but by virtue of the title acquired as purchaser, his claim based on such title

not relating to the execution, discharge or satisfaction of the decree and the provisions of section 47, Civil Procedure Code, therefore, not preventing his instituting a suit for possession.

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The Calcutta High Court is, however, not in favour of this view, this being so decided in *Kailash Chandra Tarapdar v. Gopal Chandra Poddar* (1), Cuming J. dissenting. The same view appears to have been taken in *Veyindramuthu Pillai v. Maya Nadan* (2) and *Hukam Chand v. Mir Hassan* (3) which is a Division Bench authority. These rulings rely to a certain extent on two Privy Council decisions, *viz.*, *Prosunno Kumar Sanyal v. Kali Das Sanyal* (4) and *Ganapathy Mudaliar v. Krishnamachariar* (5). These authorities, however, are not directly in point and do not clearly lay down this proposition and they have been distinguished in the judgments of the learned Judges of other High Courts who have also considered this question.

On the other hand it has been consistently held by the Allahabad High Court that a separate suit does lie in a case like the present and that section 47, Civil Procedure Code, is not a bar. It will be sufficient to quote three Full Bench decisions of that Court, namely, *Sabhajit v. Sri Gopal* (6), *Bhagwati v. Banwarilal* (7) and *Kedar Nath v. Arun Chandra Sinha* (8). The Patna High Court also takes the same view. A Full Bench considered the question in *Tribeni Prasad Singh v. Ramasray Prasad Chaudhri* (9), in which *Askaran Baid v. Raghunath Prasad* (10)

(1) I. L. R. (1926) 53 Cal. 731 (F. B.). (6) I. L. R. (1895) 17 All. 222 (F. B.).
 (2) I. L. R. (1920) 43 Mad. 107 (F. B.). (7) I. L. R. (1909) 31 All. 32 (F. B.).
 (3) 1936 A. I. R. (Peshawar) 85. (8) I. L. R. [1937] All. 921 (F. B.).
 (4) I. L. R. (1892) 19 Cal. 683 (P. C.). (9) I. L. R. (1931) 10 Pat. 670 (F. B.).
 5) I. L. R. (1918) 41 Mad. 403 (P. C.). (10) I. L. R. (1925) 4 Pat. 726.

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was disapproved and *Haji Abdul Gani v. Raja Ram* (1), another Full Bench decision, was approved. The Bombay High Court has also held in *Hargovind Fulchand v. Bhudar Raoji* (2) that section 47 is not a bar to such a suit as the present, this decision having been later followed by a Division Bench in *Hiralal Mohanlal v. Ram Chundra Kundanmal* (3). Similarly, a Full Bench of the Oudh Chief Court has expressed in *Gaya Bakhsh Singh v. Kuar Rajendra Bahadur Singh* (4) the same view. A Division Bench of the Rangoon High Court, namely, *J. A. Martin v. S. M. Hashim* (5) has come to the same conclusion. The preponderance of authority is thus clearly in favour of the view taken by the learned Single Judge of this Court in this case.

It remains to discuss the authorities of this Court. It was held by a Division Bench of the Punjab Chief Court in *Chotha Ram v. Mst. Karmon Bai* (6) that section 47 was not a bar and that a separate suit for possession lay, this decision being followed by a Single Bench in *Nusrat Ali v. Skina Begum* (7). A Division Bench of this Court in *Brij Lal v. Durga* (8) appears to have expressed its agreement with the Allahabad view. There are, however, two Single Bench decisions of this Court *Gurdit Singh v. Kanshi Ram* (9) and *Kinad Dev v. Partap Singh* (10) which have followed *Kailash Chandra Tarapdar v. Gopal Chandra Poddar* (11) without discussion and without referring to the other decisions of this Court

(1) (1913) 1 Pat. L. J. 232 (F. B.).

(6) 8 P. R. 1918.

(2) I. L. R. (1924) 48 (Bom.) 550 (F. B.).

(7) 121 P. R. 1919.

(3) I. L. R. (1930) 54 Bom. 479.

(8) I. L. R. (1920) 1 Lah. 134.

(4) I. L. R. (1928) 3 Luck. 182 (F. B.).

(9) 1935 A. I. R. (Lah.) 144.

(5) I. L. R. (1930) 8 Rang. 182.

(10) 1937 A. I. R. (Lah.) 145.

(11) J.L. R. (1926) 53 Cal. 781 (F. B.).

It seems to us unnecessary to discuss this subject at length. It is sufficient to say that the preponderance of authority is in favour of the Allahabad view and that this Court has on the whole followed that view, the two later Single Bench decisions not being important for the reason already given. In our judgment, this is the correct decision.

We, therefore, dismiss this appeal but make no order as to costs. Counsel for the appellant requested that we should extend the time allowed by the trial Court for removing his *malba*. As it is not known whether the *malba* has or has not been removed, we can only direct that he should be given two months from to-day to do so, provided that it has not already been removed by either party.

A. N. K.

Appeal dismissed.

ORIGINAL CIVIL.

Before Young C. J. and Monroe J.

**IN THE MATTER OF THE MUSLIM BANK
OF INDIA, LTD. (IN LIQUIDATION)
LAHORE.**

Original Civil No. 256 of 1938.

Indian Companies Act (VII of 1913), S. 184 — Settlement of the list of contributories — Father applying for a share for his minor son — signing the application on his behalf — opening the Saving Bank Account in his name — Dividend credited to that account — Father whether liable to be placed on the list of contributories.

T. applied for a share in a Company for his son, signing the application "on his behalf," opening a Savings Bank Account in his name and paying the purchase money by his cheque out of that account. Dividend was credited to that account and the balance on that account was drawn out by the minor when he became of age.

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