

APPELLATE CIVIL.

Before Bhide J.

DAULAT RAM (JUDGMENT-DEBTOR) Appellant,

versus

PRITAM SINGH (DECREE-HOLDER) Respondent.

Execution First Appeal No. 183 of 1939.

Civil Procedure Code (Act V of 1908), O. XXI, r. 57 — Court consigning the execution proceedings to record room after proper attachment — On decree-holder's application for return of certain documents with a view to putting in fresh application — Order whether tantamount to "dismissal" of application within the meaning of O. XXI, r. 57 — Subsequent sale of property without another attachment — whether valid — Order consigning a case to record room — whether warranted by law.

During the pendency of execution proceedings, after proper attachment, the decree-holder made a statement to the effect that the proceedings may be consigned to the record room for the time being, the attachment being kept intact and that certain documents on the record may be returned to him and that he would present an application again within 2 days. The Court passed an order consigning the proceedings to the record room and directing that the attachment would continue. It was contended on behalf of the judgment-debtor that the order of the executing Court consigning the case to the record room was tantamount to an order of "dismissal" under O. XXI, r. 57, Civil Procedure Code, and, in the circumstances, the attachment came to an end *ipso facto* and, therefore, the subsequent sale, without fresh attachment, was void.

Held, (repelling the contention) that, in the circumstances of the present case, the order of the executing Court was not tantamount to "dismissal" as the decree-holder evidently intended to go on with the execution and had merely asked for the return of certain documents to enable him to put in an application with the necessary amendments and the application was presented the very next day and the Court had merely passed an order consigning the

1939

Oct. 12.

case to the record room and had not *dismissed* the application.

1939

DAULAT RAM
v.

PRITAM SINGH.

Daim Shah v. Vir Bhan (1), distinguished.

Muhammad Mubarak Husain v. Sahu Bimal Prasad (2), *Mulay v. Balgovind* (3), *Mangal Singh v. Sagar* (4) and other case-law, referred to.

The question whether a particular order is or is not to be taken as tantamount to "dismissal" has to be decided on the facts of each case.

That an order merely consigning a case to the record room is not one warranted by law.

The practice by the Courts in passing such orders deprecated.

First appeal from the order of Mian Mohammad Aslam, Senior Subordinate Judge, Gurdaspur, dated 16th December, 1938, dismissing an application of the judgment-debtor for setting aside an execution sale on the ground that it was barred under Article 181 of the Indian Limitation Act.

MEHR CHAND MAHAJAN, for Appellant.

ABDUL AZIZ KHAN, for GHULAM MOHY-UD-DIN KHAN, for Respondent.

BHIDE J.—This is a first appeal from the order of the Senior Subordinate Judge, Gurdaspur, dismissing an application of the judgment-debtor for setting aside an execution sale on the ground that it was barred under Article 181 of the Indian Limitation Act. The sale in question was confirmed on the 12th October, 1934, while the application for setting it aside was presented on the 24th May, 1938. It was urged on behalf of the judgment-debtor that the period of limitation did not begin to run from the date of the sale in this case as the order confirming the sale

BHIDE J.

(1) 1934 A. I. R. (Lah.) 395.

(3) 1925 A. I. R. (All.) 456.

(2) 1922 A. I. R. (All.) 62.

(4) 1936 A. I. R. (Lah.) 873.

1939

DAULAT RAM
v.
PRITAM SINGH.
BHIDE J.

was passed in the absence of the parties and the judgment-debtor did not come to know about it till he was released from jail in 1937. Secondly, it was also urged that the period of limitation could only run from the date of dispossession of the judgment-debtor and this took place within three years before the application.

The sole ground on which the sale was attacked was that the sale was void inasmuch as it was effected without any valid attachment. The learned counsel for the respondent on the other hand has contended that there was a valid attachment in the present case and consequently the sale was binding on the judgment-debtor. It will be convenient to take up this point first as it seems to me that this ground has no force in the circumstances of the case and it is therefore unnecessary to go into the question of limitation.

The property in question was attached in May 1932 but on the 24th November, 1932, the decree-holder made a statement to the effect that the proceedings may be consigned to the record room for the time being, the attachment being kept intact and that certain documents on the record may be returned to him and that he would present an application again within 2 days. The Court accordingly passed an order consigning the proceedings to the record room and directing that the attachment will continue. The learned counsel for the appellant contends that, according to the provisions of Order 21, rule 57, Civil Procedure Code, the order of the executing Court consigning the case to the record room was tantamount to an order of dismissal and, in the circumstances, the attachment came to an end *ipso facto*. It was therefore urged that the subsequent sale which

1939

DAULAT RAM
v.
PRITAM SINGH.
BHIDE J.

took place without any fresh attachment was void. In support of this contention, the learned counsel relied chiefly on a Single Bench ruling of this Court reported as *Daim Shah v. Vir Bhan* (1). The learned counsel for the respondent, on the other hand, has cited *Muhammad Mubarak Husain v. Sahu Bimal Prasad* (2), *Mulay v. Balgorind* (3) and *Mangal Singh v. Sagar* (4) in support of his contention that the order of the executing Court referred to above was not one of dismissal and there was no legal objection to the continuance of the attachment.

After considering the rulings cited it seems to me that, in the circumstances of the present case the order of the executing Court was not tantamount to "dismissal." The decree-holder evidently intended to go on with the execution and had merely asked for the return of certain documents to enable him to put in an application with the necessary amendments and the application was presented again the very next day. The Court had merely passed an order consigning the case to the record room and had not *dismissed* the application. The wording of the order in *Daim Shah v. Vir Bhan* (1) was somewhat different and as costs were awarded the order may appear to be one of dismissal. The question whether a particular order is or is not to be taken as tantamount to dismissal has to be decided on the facts of each case and, in the present instance, it seems to me that the order consigning the case to the record room cannot be looked upon as one of dismissal. According to Order 21, rule 57, Civil Procedure Code, the Court can dismiss an execution application only when there is a

(1) 1934 A. I. R. (Lah.) 395.

(3) 1925 A. I. R. (All.) 456.

(2) 1922 A. I. R. (All.) 62.

(4) 1936 A. I. R. (Lah.) 873.

1939

DAULAT RAM
v.
PRITAM SINGH.
BHIDE J.

default on the part of the decree-holder and the Court is unable to proceed further with the application owing to such default. In the present instance, the decree-holder merely wanted return of certain documents to enable him to present an application with necessary amendments. The Court agreed to this and the application was presented the very next day. In the circumstances, it cannot be held that there was any default on the part of the decree-holder or any justification for dismissing the application. Of course the proper course would have been to adjourn the case. It has been repeatedly pointed out that an order merely consigning a case to the record room is not one warranted by law; but unfortunately the Courts sometimes pass orders in such terms just to enable them to exclude the case from the list of pending cases for statistical purposes. This practice is irregular and must be deprecated. But it seems to me clear that the irregular order passed in the above circumstances cannot be looked upon as an order of dismissal.

It follows from the above that there was no objection to the continuance of the attachment of the property as ordered by the Court. As a result, the only ground on which the appellant sought to attack the sale fails. It may be pointed out further that a Division Bench of this Court has held recently that a sale without attachment is not void [see *Tirkha Ram-Chuni Lal v. Fakhir Ahmad* (1)]. To the same effect is a recent decision of the Bombay High Court in *Namdev Krishna Chaudhari v. Gowardhan Nana-bhai Gujarthi* (2).

I dismiss this appeal with costs.

A. N. K.

Appeal dismissed.

(1) I. L. R. [1938] Lah. 582.

(2) I. L. R. [1939] Bom. 420.