

29 C. 577.

APPELLATE CIVIL.

*Before Mr. Justice Rampini and Mr. Justice Pratt.*1901
DEC. 4.APPELLATE
CIVIL.UTTAM CHANDRA KRITHY v. KHETRA NATH CHATTOPADHYA.*
[4th December, 1901.]

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Estoppel—Equitable estoppel—Compromise petition—How for a party is entitled to contest the validity of a sale, when in a proceeding for setting it aside he asked for time, binding himself not to contest the validity of the sale, and got time.

In a proceeding to set aside a sale on the ground of irregularity and fraud, the judgment-debtor put in a compromise petition to which the decree-holder consented, and it was agreed that the judgment-debtor should have time up to a certain date to pay up the full decretal amount, and that then the sale should be set aside, but that if he failed, the sale should stand good.

On the day fixed for payment, the judgment-debtor paid a portion of the money and obtained further time from the Court to pay the balance. On the judgment-debtor's tendering the balance on the day fixed by the Court for payment, the decree-holder refused to accept the money. The Court tried the case on the merits and set aside the sale.

[578] *Held* that the judgment-debtor was bound by the agreement and that he was estopped from contesting the legality of the sale.

Protap Chunder Dass v. Arathoon (1) referred to.

THE judgment-debtor Uttam Chandra Krithy appealed to the High Court.

This appeal arose out of an application for setting aside a sale on the ground of irregularity and fraud. Certain immoveable property was sold under a mortgage decree, and was purchased by the decree-holder. After the confirmation of the sale, the purchaser took possession on the 16th August, 1899. The judgment-debtor on the 20th August put in a petition to have the sale set aside. The application was contested, and on the 16th of December the judgment-debtor put in a petition, with the decree-holder's assent, and it was agreed therein that the judgment-debtor should have time till the 6th February, 1900, and, if he paid up the full decretal debt by that date, the sale should be set aside; but if he failed to pay up, the sale should stand good. On the 6th February the judgment-debtor paid in a portion of the money and asked for time to pay up the balance, and promised that, if he did not pay within the time allowed, he should forfeit the amount already paid and that the sale should stand good. The decree-holder's pleader did not agree to that; but the Munsif, by an order of the same date, granted the judgment-debtor 15 days time on the condition proposed. On the 21st February the judgment-debtor tendered the balance in Court, but the decree-holder still refused to take the money. The learned Munsif tried the case on its merits on the 10th March, allowed the application and set aside the sale. On appeal, the District Judge of 24-Pergunnahs, Mr. F. E. Pargiter, held that the agreement of the 16th December was a question falling under s. 244, cl. (c) of the Civil Procedure Code, and that it was a valid agreement, which concluded the question of validity or invalidity of the sale, and that the sale must stand good, as the judgment-debtor failed in that agreement.

* Appeal from order No. 448 of 1900, against the order of F. E. Pargiter, Esq., District Judge of 24-Pergunnahs, dated the 25th of July 1900, reversing the decree of Babu Surja Narain Dass, Munsif of Baraset, dated the 10th of March, 1900.

(1) (1882) I. L. R. 8 Cal. 455.

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[579] Babu Saroda Churn Mitter for the appellant.

Dr. Ashutosh Mookerjee and Babu Biraj Mohun Mozumdar for the respondent.

RAMPINI AND PRATT, JJ. This is an appeal from an order of the District Judge of the 24-Parganas, dated the 25th July 1900.

The case, out of which the appeal arises, is an execution case. The respondent in this appeal had obtained a decree and, in execution of his decree, certain property belonging to the appellant was sold. The sale was confirmed. The decree-holder took possession on the 16th of August, 1899. Then the judgment-debtor put in an application for the setting aside of the sale on the ground of irregularity and fraud. The application was contested and, on the 16th of December, 1899, the judgment-debtor put in a compromise petition to which the decree-holder consented, and it was agreed that the judgment-debtor should have time up to 6th of February, 1900, to pay up the full decretal amount, and that then the sale should be set aside; but that if he failed, the sale should stand good. On the 6th February, 1900, the judgment-debtor paid a portion of the money and obtained further time to pay the balance. This balance he tendered on the 21st February, 1900, but the decree-holder refused to accept it. The Munsif, on the 10th March, 1900, tried the case on the merits and set aside the sale.

The decree-holder appealed against that order to the District Judge, who held that the judgment-debtor was bound by his compromise of the 16th of December, 1899, and that it was not open to him to contest the legality of the sale.

The judgment-debtor now appeals to this Court. Two grounds are taken by the learned pleader who appears on his behalf: *first*, that the District Judge was wrong in his interpretation of the order of the 16th of December, 1899, and, *secondly*, that he was wrong in holding that the judgment-debtor was bound by his compromise petition of the 16th December, 1899.

We think, however, that the District Judge is right on both points. The Munsif no doubt passed an order on the 16th of [580] December to the effect that if the money was not paid, the case would be put up on the 16th February for *bichar*, that is say, for disposal. The District Judge has interpreted this to mean that, in accordance with the terms of the agreement, the case should be decided on that date, and the sale should hold good, and that is what the parties agreed to. The pleader for the appellant in this case says that *bichar* meant that the case should be tried on the merits. This, we think, cannot have been meant, and for the reasons given by the District Judge, *viz.*, that this would have been a most one-side arrangement wholly in the judgment-debtor's favour, and one which could and should never have been made, and the judgment-debtor's own conduct shows that he never understood it as meaning this. Then with regard to the District Judge's finding that the judgment-debtor was bound by his agreement of the 16th of December, we can only say that we fully concur in this view. The judgment-debtor, it appears to us, is estopped from contesting the legality of the sale. He asked for time and bound himself not to contest the validity of the sale, provided he got time. He obtained time and the advantages of a postponement, and it is, we think, quite contrary to reason and equity that he should now turn round and say that he is not bound by his agreement.

We think he is estopped on the principle laid down in the case of *Protap Chunder Das v. Arathoon* (1).

The appeal is dismissed with costs.

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Before Mr. Justice Rampini and Mr. Justice Pratt.

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Appeal dismissed.

JAGANNATH KHAN, v. BROJONATH PAL.* [10th December, 1901.]

Limitation Act (XV of 1877) Art. 179, cl. 4—Seal warrant—Application for, in the Presidency Small Cause Court—Whether such an application is an application in accordance with law for execution or to take steps in aid of execution.

[581] An application for a seal warrant to the Calcutta Small Cause Court is an application made in accordance with law for execution or to take steps in aid of execution of a decree.

JAGANNATH KHAN and others, decree-holders, appealed to the High Court.

This appeal arose out of an application for execution of a decree. The petitioners obtained a decree against Prosanna Kumar Pal and others in the Calcutta Small Cause Court on the 16th August, 1891. An application for a seal warrant was made in the said Court on the 4th August, 1894, which was issued on the 6th of that month and was returned unexecuted on the 12th September, 1894. On the 30th July, 1897, a second application for a seal warrant was made, which was issued on the next day and was returned unexecuted on the 31st August, 1897. Jagannath Khan, one of the decree-holders, having died, his representatives were substituted in his place on the 15th January, 1897. On the 24th of January, 1897, the decree was transferred for execution to the district of Faridpur, and application for execution was made to the Subordinate Judge. The objection *inter alia* was that the application for execution was barred by limitation. The Court of First Instance overruled the objection of the judgment-debtors and allowed execution to proceed. On appeal, the Subordinate Judge of Faridpore, Babu Kalidhan Chatterjee, having held that the application was barred by limitation, set aside the decision of the First Court.

Babu Saroda Churn Mitter and Babu Hara Kumar Mitter for the appellants.

Dr. Ashutosh Mookerjee and Babu Biraj Mohun Mazumdar for the respondent.

RAMPINI AND PRATT, JJ.—This is an appeal against the order of the Subordinate Judge of Faridpore passed in an execution case. The Subordinate Judge has refused execution holding that it is barred by limitation. The decree-holder appeals to this Court.

The decree which it is sought to execute was passed by the Calcutta Small Cause Court on the 16th August, 1891. Application for a seal warrant was made to the Court on the 4th August 1894. The seal warrant was afterwards returned unexecuted. [582] Another similar application was made on the 30th July, 1897. The seal warrant then issued was also returned unexecuted. On the 24th January, 1897, the

*Appeal from order No. 13 of 1901, against the order of Babu Kalidhan Chatterjee, Subordinate Judge of Faridpore, dated the 31st of January, 1901, reversing the order of Babu Nirmal Chunder Singha, Munsif of Chikandi, dated the 5th of August, 1900.