

BHANWAR LAL
v.
SMT. PREM LATA & ORS.

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JANUARY 12, 1990

[RANGANATH MISRA, P.B. SAWANT AND
K. RAMASWAMY, JJ.]

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Code of Civil Procedure, 1908: Order 21 Rule 63/Rajasthan Civil Courts Ordinance, 1950: Section 21(1)(a)—Suit to set aside sale—Appellate court decreeing restitution of property—Validity of—Value of decree—Whether value for purpose of suit.

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Under Section 21(1)(a) of the Rajasthan Civil Courts Ordinance, 1950 the District Court is empowered to entertain an appeal from a decree of the value of only upto Rs.10,000. Appeals in other cases lie only to the High Court.

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In the instant case, a joint family house was brought to auction in satisfaction of an ex-parte money decree to recover Rs.5,557.10. The respondent coparceners filed objections under Order 21 Rule 58 CPC, which were rejected. The sale was confirmed in 1958 and the sale certificate issued. They, thereupon, filed a suit under Order 21 Rule 63 CPC to set aside the sale, in which the valuation of the property sold in execution was put at Rs.15,000.

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The trial court dismissed the suit. The District Court, however, allowed the appeal and decreed the suit for restitution of the property since possession had in the meantime been taken. The appellant auction-purchaser raised objections to the execution on the ground that the said decree was a nullity as the District Court lacked pecuniary jurisdiction to entertain the appeal against the decree in the suit valued at Rs.15,000 under Section 21(1)(a) of the Ordinance, and that the decree being a declaratory one was incapable of execution. The executing court dismissed the objection petition but on appeal the order was reversed. On further appeal, the High Court set aside the appellate order.

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Allowing the appeal in part, the Court,

HELD: The value of the amount of decree would be the value for the purpose of the suit under Order 21 Rule 63 CPC. In the instant case, the suit was laid to set aside the sale by declaring the decree of

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A Rs.5,557.10 to be invalid. Merely because the valuation of the property sold in execution had been put at Rs.15,000 the valuation of the suit under Order 21 Rule 63 CPC could not be treated to be that valuation. Accordingly, Section 21(1)(a) of the Ordinance was attracted. It could not, therefore, be said that the decree passed by the District Court for restitution of the property was a nullity. Since, it was not a mere
 B declaratory decree but coupled with a decree for restitution of the property, the plaintiff was entitled to execution. [27G-28A, 28C]

Radha Kunwar v. Reoti Singh, AIR 1916 PC 18 and *Phul Kumar v. Ghanshyam Mishra*, 35 IA 22 PC, referred to.

C However, in view of the fact that litigation was pending for a long period, it would be equitable if the appellant is permitted to pay the proper value of the house. The District Court is directed to assess the prevailing market value of the house and the site as on date. The appellant to pay the value thereof within a time fixed by the District Court. [28D, F]

D CIVIL APPELLATE JURISDICTION: Civil Appeal No. 81 of 1990.

From the Judgment and Order dated 7.3.1989 of the Rajasthan High Court in S.B. Civil (Misc.) Second Appeal No. 2 of 1976.

E Guman Mal Lodha, Sushil K. Jain, B.P. Aggarwal and Sudhanshu Atreya for the Appellant.

C.M. Lodha and Surya Kant for the Respondents.

F The Judgment of the Court was delivered by

K. RAMASWAMY, J. 1. Heard learned counsel for both sides and special leave is granted.

G 2. This appeal by the auction-purchaser is against the judgment of the High Court of Rajasthan, Jaipur Bench, dated March 7, 1989 made in S.B. Civil (Misc.) Second Appeal No. 2/76. The facts, though many, relevant to dispose of the appeal are stated as under:

H 3. S/Shri Gokulchand and Rekhchand, Respondents Nos. 5 and 6 herein, defendants 2 and 3 in O.S. No. 37/59 on the file of the Court of the Civil Judge, Jhalawar, obtained in another suit, an *ex-parte*

money decree to recover Rs.5,557.10 against Bal Mukund and brought to sale the joint family house which is the disputed property in the present litigation. Mohanlal, his minor son and his widow filed objections under Order 21 Rule 58 CPC which were rejected. The sale was confirmed on October 24, 1958, and sale certificate was issued on November 28, 1958. The respondents filed O.S. No. 37/59 under Order 21 Rule 63 CPC to set aside the sale.

4. The Trial Court by its judgment dated December 5, 1961 dismissed the suit, but on appeal, the District Judge at Kotah allowed the appeal and decreed the suit for restitution of the plaint schedule property since possession had in the meantime, been taken. Second Appeal No. 91/65 filed in the High Court was abated as a whole since Mohanlal died on May 1, 1968 and his legal representatives being Respondents Nos. 2 to 4 were not brought on record by substitution. When execution was levied for restitution, though the appellant raised several objections to its executability but challenge was confined to two grounds, namely, the decree passed by the District Judge is a nullity as he lacked pecuniary jurisdiction to entertain the appeal against the decree in the suit admittedly valued at Rs.15,000 under Section 21(1)(a) of the Rajasthan Civil Courts Ordinance 1950, and it was entertainable by the High Court, and secondly, the decree being a declaratory one was incapable of execution, notwithstanding the direction for restitution of the plaint scheduled property. The Executing Court dismissed the objection petition, but on appeal the order of the Executing Court was reversed. On further appeal the High Court allowed the same, set aside the appellate order and directed the appellate court to transfer it to the appropriate Civil Court for execution as per law. As against it the present appeal has been filed.

5. The contention that the decree passed by the District Judge, Kotah, on appeal is a nullity is devoid of substance. It is true that under Section 21(1)(a) of the Rajasthan Civil Courts Ordinance 1950, the District Court is empowered to entertain an appeal against the decree of a Trial Court of the value only upto Rs.10,000 and by operation of sub-section (b) of s. 21(1) the appeal would lie only to the High Court as the value of the suit was admittedly Rs.15,000. But this is a suit laid under Order 21 Rule 63 CPC to set aside the sale by declaring the decree of Rs.5,557.10 to be invalid and does not bind them. In *Radha Kunwar v. Reoti Singh*, AIR 1916 PC 18 and *Phul Kumar v. Ghanshyam Mishra*, 35 IA 22 PC it was held that the value of the amount of decree is the value for the purpose of the suit under Order 21 Rule 63 CPC. Therefore, merely because the valuation of the pro-

A perty sold in execution had been put at Rs. 15,000, the valuation of the suit under Order 21 Rule 63 CPC cannot be treated to be that valuation. Accordingly, we hold that Section 21(1)(a) of the Ordinance is attracted. Therefore, the decree of the Appellate Court in C.A. No. 157/61 on the file of the Court of the District Judge, Kotah, is not a nullity.

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6. The only other question is whether the plaintiff is entitled to restitution of the property. Once the decree which was the subject-matter of execution was declared to be not binding on the plaintiffs, Mohanlal and his mother Bhuli Bai, the execution sale would not bind them and as a result they became entitled to restitution. The decree does admittedly contain a direction for restitution. Therefore, it is not a mere declaratory decree but coupled with a decree for restitution of the plaint scheduled house. Accordingly, the decree is executable.

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7. To a question put by the Court whether in view of the long pendency of the proceedings it could not be equitable that the appellant should pay the proper value of the house or deliver possession thereof, the learned counsel for the appellant fairly stated that whatever amount be fixed by this Court, the appellant is prepared to pay the same. The learned counsel for the respondents on the other hand relying upon the statement made in the objections dated April 28, 1973, filed by the appellant maintained that he had then claimed only a sum of Rs. 1,900 in all, and the appellant would be entitled only for that amount. On the other hand, the appellant having been in possession and enjoyment of the property, the respondents are entitled to the mesne profits. On the facts and in the circumstances and in consideration of the fact that the litigation is pending for a long period, we are of the view that justice and equity would be met if we direct the District Court, Kotah, to assess the prevailing market value of the plaint scheduled house and the site as on date and direct the appellant to pay the value thereof within a time to be fixed by him. If the respondents have not drawn the balance of the sale amount in the original suit filed by S/Shri Gokulchand and Rekhchand and after full satisfaction was recorded, the appellant is entitled to withdraw the said balance amount. In case the amount was already withdrawn, the appellant is entitled to deduct the same from the amount fixed by the District Court. In case the appellant fails to pay the value of the property assessed by the District Court as directed above, there shall be a direction for restitution of the plaint scheduled property as per the decree of the Appellate Court in C.A. No. 157/61. The appeal is accordingly allowed, but, in the circumstances, without costs.

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P.S.S.

Appeal allowed.