

## ALLAHABAD HIGH COURT

B. Bandhu Singh

Vs.

K.T. Bank Ltd

(Sulaiman, J.)

20.11.1930

### JUDGMENT

#### **Sulaiman, J.**

1. This is a judgment-debtor's appeal arising out of an execution proceeding. Notice was served on the respondent, but no one appears on his behalf. A simple money decree was obtained on 9th March 1916 and it was put in execution. Proceedings continued off and on for a considerably long time, and on 21st November 1925 an application for review was granted and the execution proceedings were restored and declared to start from the stage at which they had arrived on 23rd May 1925.

2. Twelve years from the date of the decree expired on 9th March 1928, On 8th May 1928 the decree-holder filed an application for the attachment and sale of shares in two new villages which had never been mentioned in any of the previous applications. So far as the attachment of these villages was concerned, the application was undoubtedly a fresh one.

3. The learned Subordinate Judge has conceded that in the case of *Ram Ratan v. Datar Kuar*<sup>1</sup> and *Khairat Ali v. Wahed Ali*<sup>2</sup>, and *Krishna Dayal Gir v. Mt. Sakina Bibi*<sup>3</sup> it has been laid down that an application for the sale of a new property cannot be acted upon by the execution Court when it has been made after 12 years have elapsed from the date of the decree; but he has, held that in view of the frivolous objections taken by the judgment-debtor from time to time there was fraud or force within the meaning of Section 48, Civil Procedure Code, which extends the period. He has relied on the case of *Lalta Prasad v. Suraj Kumar*<sup>4</sup>, in support of his view.

4. It seems to us that the decree-holder is now seeking to attach fresh property and his application for the attachment of this new property is a fresh application within the meaning of Section 48, Civil Procedure Code, and having been made more than 12 years after the date of the decree, cannot be entertained. The mere fact that the execution proceedings are still pending and have not been struck off would not be sufficient to save limitation.

5. It also seems to us that the mere fact that there has been a prolongation of the execution proceedings due in part to the objections raised by the judgment-debtor from time to time, would not itself amount to fraud or force within Sub-section (2), Sub-clause (a) of that section. The raising of an objection, however frivolous, would not ordinarily amount to

<sup>1</sup> A.I.R. 1928 Lah. 808

<sup>3</sup>[1916] 34 I.C. 27

<sup>2</sup> AIR 1928 Cal 241

<sup>4</sup> AIR 1922 All 145 : 65 Ind. Cas. 877

practicing fraud on the decree-holder, for it can be easily met and disposed of by the Court. Fraud must be of a nature which the decree-holder is not able to discover at the time and which helps the judgment-debtor in deceiving him and gaining time. We do not think that this can be said in this case. The result therefore is that the appeal is allowed, the order of the Court below is set aside and the application for the attachment and sale of the shares in the two new villages dismissed with costs in both Courts, including fees in this Court on the higher scale.

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