

ALLAHABAD HIGH COURT

Rai Indra Narain

Vs

Mohammad Ismail

(Bennet, J.)

25.07.1939

JUDGMENT

Bennet, J.

1. This is an execution second appeal brought by R.B. Rai Indra Narain who objected to the execution of a decree by the decree-holder Mohammad Ismail and the objection was dismissed by the execution Court and that order was confirmed by the lower Appellate Court. The facts are that on 12th June 1913 there was a compromise decree granted to the respondent Mohammad Ismail by which he was to get Rs. 10 per mensem from his relatives and this sum was to be a charge on the property. Mohammad Ismail several times put his decree in execution and recovered his maintenance allowance. On 20th May 1933, the appellant Indra Narain purchased this property at an auction sale on a decree against the owners Irshad Ali and Masum Ali who were apparently the persons liable under the decree of Mohammad-Ismail or their descendants. The objection is that the auction-purchaser had no knowledge of the charge and that he was a bona fide purchaser for value. Learned Counsel for the auction-purchaser appellant claims that his client is protected by the amendment of the Transfer of Property Act, Section 100, which was made by Section 50 of the Amending Act (Act 20 of 1929). This Section deals with charges and the amendment provides: save as otherwise expressly provided by any law for the time being in force no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge. The execution Court wrongly held that this amendment did not have retrospective effect but the amendment in Section 50 of Act 10 of 1929 is in a Section which is not mentioned by Section 63 of that Act as not retrospective and therefore Section 50 is retrospective.

2. The lower Appellate Court pointed out that the execution Court was wrong in this respect but the lower Appellate Court considered that the rule of lis pendens laid down in Section 52, T.P. Act, would apply against the appellant. It is difficult to see exactly what the lower Appellate Court meant as the decree on which Mohammad Ismail relies was of 12th June 1913 and the matter has now arisen long subsequent to that decree, so there is no question of a transfer while

litigation was pending. We cannot therefore justify the order of the lower Court on the ground set forth by that Court. But it seems to us that the appellant is incorrect in relying on Section 100 as amended. The appellant is an auction-purchaser and the amendment is in regard to "any property in the hands of a person to whom such property has been transferred for consideration." Now it appears to us that the word "transfer" must be read as defined in Section 5. Section 5 states : "In the following Sections 'Transfer of Property' means an Act by which a living person conveys property...." This definition cannot include an auction-purchaser as he is not a person to whom the judgment-debtor has conveyed his property. An auction, purchaser is a person who has acquired the right, title and interests of the judgment-debtor by the order of the Court. In Section 2, Sub-Section (d), it is stated: But nothing herein contained shall be deemed to affect (d) save as provided by Section 57 and Ch. IV of this Act any transfer by operation of law or by or in execution of a decree or order of a Court of competent jurisdiction.

3. When we turn to Section 57 we find that there is a definite mention of property sold in execution of a decree and the word "transfer" is not used. In Ch. IV no doubt Section 100 is one of the Sections but it does not refer to auction sales. There were certain Sections, Nos. 85 to 90, in the original Ch. IV which contained provisions for auction sale. Doubtless the reference in Section 2(d), T.P. Act, to Ch. IV is to these particular provisions in Section 85 to Section 90. As Section 2(d) clearly provides that nothing in the Act shall apply to any transfer in execution of a decree other than so provided in Ch. IV it is clear that Section 100 as amended does not refer to auction sales or auction-purchasers. No ruling has been produced by learned Counsel for the appellant to support his claim that his client was protected by Section 100 as amended. The rulings cited are all previous to the amendment of Section 100 and it is not necessary to consider them. For these reasons we dismiss this second appeal. No costs are granted as no one appears for the other side in this appeal.