

which the Tribunal has been specifically constituted. Admittedly the question whether certain allegations of fact, if believed, would amount to a corrupt practice or not was decided on a petition under Article 226 of the Constitution during the pendency of an election petition by Mootham, C. J., and Mukherji, J., in *Mohd. Ibrahim v. Election Tribunal, Lucknow, and others* (1), but, with due respect to the views of the learned Judges in that particular case, I do not think that it is a practice which should generally be followed in the High Court to intervene during the pendency of an election petition and take upon itself the task of deciding matters which lie within the jurisdiction of the Election Tribunal. In the circumstances I think it would be better for us not to say anything at all which could in any way be taken by the Tribunal either as prejudicing its decision in the main election petition or prejudicing its decision on the matters regarding which notice was ordered to be issued to the present petitioners. The result is that I would dismiss both the petitions with costs. Counsel's fee Rs. 100 in each case.

Sardar Partap
Singh Kairon
v.
S. Kartar Singh
Chadha and
others.

Falshaw, J.

DUA, J.—I agree.

Dua, J.

B.R.T.

REVISIONAL CIVIL

Before Grover, J.

ROSHAN LAL AND OTHERS.—*Petitioners*

versus

M/s CHANAN MAL ACHHRU RAM,—*Respondents*

Civil Revision No. 533 of 1957.

*Code of Civil Procedure (Act V of 1908)—Section 66
and Order 21—Sale of Partnership assets by the Receiver*

1958

(1) A.I.R. 1957 All 292

appointed by the Court—Whether sale under section 66 and Order 21—Sale certificate—Whether can be issued under Order 21 Rule 94—Issuance of Sale Certificate—Whether illegal—Such sale certificate—Whether can be set aside in exercise of inherent powers under section 151 C.P.C.

Held, that a sale of partnership assets by the Receiver appointed by the Court does not fall within the provisions of section 66 or Order 21 of the Code of Civil Procedure as it is not a sale in pursuance of an order or in execution of a decree and it is not within the competence of the Court to issue a sale certificate under Order 21 Rule 94 of the Code.

Held, that the act of the Court in issuing the sale certificate which it was not competent to do is clearly illegal and is an abuse of the process of the Court. It must, therefore, be set aside in exercise of the inherent powers under section 151 of the Code of Civil Procedure.

Petition under section 115 C.P.C. for revision of orders of Shri Udham Singh, Sub- Judge Ist Class, Patiala, dated the 11th June, 1957 rejecting the application.

B. R. AGGARWAL and PURAN CHAND, for Petitioner.

F. C. MITTAL and K. N. TIWARI, for Respondent.

JUDGMENT

Grover, J.

GROVER, J.—To decide the points raised in this petition for revision it is necessary to state the facts. One Ram Singh filed a suit for dissolution of partnership and rendition of accounts of the Raja Cold Store, Rajpura. On 28th October, 1954, a preliminary decree was granted. An application was made for the final decree being passed on 12th of May, 1955. While this application was pending, on 12th of July, 1955, another application was made for appointing an official Receiver to auction the assets of the partnership. There was a change of Receivers and ultimately Shri Vas Dev was appointed as a Receiver on 18th of November, 1955. After due proclamation for the sale of

assets, the auction was held on a number of occasions. Finally, at the auction held on 7th September, 1956, Achhru Mal of Chanan Mal Achhru Mal gave a bid of Rs. 16,100 which was accepted. The sale was sanctioned by the Court on 6th of October, 1956. The auction purchaser applied for a sale certificate which was issued on 29th October, 1956, under the signatures and seal of the Court. The auction purchaser took possession of the property and the assets sold in his favour and filed "kabzul wasool" on 31st of October, 1956.

On the 19th of November, 1956, Roshan Lal, Puran Chand and Karam Chand petitioners filed an application claiming to be the owners of the site of the building with regard to which the sale had been made in favour of Achhru Mal of Chanan Mal Achhru Mal. It was alleged that the sale certificate had been procured fraudulently and that the Receiver had also been guilty of fraud and the sale certificate was liable to be cancelled. The main grievance of the petitioners was that according to the sale certificate which had been issued the auction purchaser had been given the right to remain permanently in the buildings which are used for the purposes of the Raja Cold Store and to use the land occupied by the Storage permanently and for an indefinite period. The trial Judge considered that according to the sale certificate the rights of lease and easement which the partners of Raja Cold Store enjoyed over the land in dispute had been sold and not the title of the land. The rights of lease and easement according to the terms of the partnership were part and parcel of the assets of the partnership. As Raja Cold Store had been put to auction its assets included the rights of lease and easement which the partnership firm enjoyed. The title of the land, however, was never conveyed. He further considered that

Roshan Lal
and others.
v.

Messrs
Chanan Mal
Achhru Ram

Grover, J.

Roshan Lal
and others.
v.
Messrs
Chanan Mal
Achhru Ram

Grover, J.

the sale certificate had been issued under Order 21, rule 94 of the Code of Civil Procedure and the petitioners should have moved the Court within 30 days after the confirmation of the sale and before issuing of the sale certificate. The question of cancelling the sale certificate under the inherent powers of the Court was also considered. The learned Judge was, however, of the view that it could not be made applicable and felt handicapped in deciding the point as the relevant authorities had not been cited. It was finally decided that the sale having been confirmed by the court and the sale certificate having been issued in accordance with the terms of the auction sale the same had been issued correctly. The application was consequently dismissed.

The first point that has been raised on behalf of the petitioners is that the trial Judge misconceived the whole position and failed to apply his mind to the real point which had to be decided. It is urged that it was open to the petitioners to move the Court under section 151 as it affected their rights of ownership and that if they were able to satisfy the Court that a clear illegality had been committed and the sale certificate had been granted by the Court where it was not within its jurisdiction to issue the same, the sale certificate should have been cancelled. It is urged that the sale in the present case was of partnership assets by a Receiver who had been appointed after a preliminary decree had been passed and no certificate could have been issued by the Court under the provisions of Order 21, rule 94 which does not apply to such sales. In *Narain Das v. Ram Chander* (1), Kanhaiya Lal and Lindsay, JJ., have held that a sale by a Receiver is not a sale by the

(1) A.I.R. 1926 All. 124

Court but a sale under the Court and in such cases the Court does not grant a sale certificate nor does it confirm the sale. Section 66, Civil Procedure Code, does not apply to such cases. In that case also the sale had been effected by a Receiver appointed for the purposes of realisation of partnership assets after a preliminary decree had been passed in a partnership suit. The learned Allahabad Judges laid down that the provisions of Order 21 could not possibly apply to a sale of that kind. There certainly was no sale in execution of a decree and section 66 of the Code referred only to a case where there had been a sale in execution of a decree. Part II of the Code of Civil Procedure in which section 66 was to be found related to execution and Order 21 also related to the execution of decrees and orders. The argument that such a sale should be treated as having been made in execution of a decree because it was made under directions contained in the preliminary decree was examined and repelled. The following observations of the learned Judges at page 126 are noteworthy:—

Roshan Lal
and others.
v.
Messrs
Chanan Mal
Achhru Ram
Grover, J.

“A preliminary decree is not capable of execution. Further we do not see how it is possible to describe this sale as being a sale in execution either of a decree or order. It is not, as we have said, a sale in execution of a decree nor is it a sale in pursuance of an ‘order’ as defined in section 2(14) of the Civil Procedure Code. ‘Order’ means the formal expression of any decision of a civil court which is not a decree, but when the Subordinate Judge in the course of the proceedings in suit No. 485 of 1911 gave authority to the

Roshan Lal
and others.
v.
Messrs
Chanan Mal
Achhru Ram

Grover, J.

Receiver to sell the property he was not issuing any order in this sense. He was not deciding "anything between the parties to the case. He was simply giving a direction to the Receiver to dispose of the property for the benefit of all the parties to the suit. We are satisfied, therefore, that this sale was not carried out in pursuance of any decree or order as defined above."

I am in respectful agreement with the views expressed by the Allahabad High Court in the above case and I have no doubt that a sale of the kind which was effected by the Receiver in the present case could not fall within the provisions of section 66 or Order 21 of the Code and it was not within the competence of the Court to issue a sale certificate as has been done in the present case. The same view was taken in *Golam Hossein Cassim Arif v. Fatima Begum* (1).

Mr. Faqir Chand Mital, who appears on behalf of the respondent firm, has pressed into service the provisions of section 66 and has argued that the sale was effected by the Receiver in pursuance of an order of the Court and that the provisions of Order 21 were fully applicable. This argument has already been examined and must be repelled. Mr. Mital has not been able to refer to any Indian case which supports his view but he has addressed a general argument based on certain English cases (in particular *Joseph Clayton, Ltd., In re Smith v. The Company* (2). He also referred to the statement of law contained in Halsbury's Laws of England, Volume 29. at pages 270 to 274 (paras 360 to 364) and

(1) 6 I.C. 300—16 C.W.N. 394

(2) (1920) 1 Ch. D 257

urged that in England such sales by the Receiver appointed in partnership suits are treated to be sales effected by the Court. The rules of procedure being different in England it is not possible to apply that law here when it is clear that the sale certificate in the present case, which had been issued under order 21, rule 94, by the Court, could not have been issued under the law as it prevails in this country. On this ground alone, therefore, it should have been held that the Court had no jurisdiction to issue the sale certificate in question.

Mr. Faqir Chand Mital has brought to my notice certain additional matters for the purposes of supporting his contention that the petition for revision should be dismissed because both the parties have filed regular suits for adjudication of their rights relating to the property in dispute which is covered by the sale certificate which was issued by the Court of Sub-Judge, Patiala, on 29th of October, 1956. It is pointed out that the present petitioners filed a suit on 10th July, 1957, at Rajpura in which one of the reliefs that has been claimed is that the sale certificate should be cancelled. That suit has now been transferred to Patiala and the next date of hearing is the 4th of November, 1958. The respondent firm also filed a regular suit on 8th of November, 1956, (No. 276 of 1956) in which an injunction is claimed that the petitioners should not interfere with the rights of the respondent firm in the property in dispute, which is based on the sale certificate in question. Mr. Mital contends that the entire matter will be decided in those suits and there should be no interference at this stage by this Court on the revisional side.

It is true that normally this Court would be reluctant to interfere in revision if the matter

Roshan Lal
and others.
v.

Messrs.
Chanan Mal
Achhru Ram

Grover, J.

Roshan Lal
and others.

v.

Messrs
Chanan Mal
Achhru Ram

Grover, J.

can be, or is being, decided in a suit but in the present case it is pointed out that one of the main defences of the respondent firm to the suit of the petitioners is that the sale certificate which was issued on 29th of October, 1956, is conclusive and is a bar and that the order of the Court which is the subject-matter of the revision operates as *res judicata*. It is strenuously urged on behalf of the petitioners that the sale certificate which was illegally issued by the court, if allowed to stand, would seriously prejudice their rights and the determination of their rights in the other litigation and since it is a case of clear excess of jurisdiction this court should and ought to interfere.

On giving the matter my full consideration, I am of the view that the act of the Court in issuing the sale certificate which it was not competent to do is clearly illegal and is an abuse of the process of the Court. It must, therefore, be set aside in exercise of the inherent powers under section 151 of the Code of Civil Procedure. While doing so I do not express any opinion with regard to the sale which was effected by the Receiver in favour of the respondent firm and the rights that have been created thereby. These matters will be decided, if necessary, in proper proceedings which are already pending or which may be instituted later on. For the time being all that is being decided is that it was beyond the jurisdiction of the learned Sub-Judge to grant the sale certificate, in the present case and the said certificate, therefore, shall stand cancelled. I order accordingly. In the circumstances of the case the parties are left to bear their own costs in this Court.

B.R.T.