

(1929) 12 CAL CK 0015
In the Calcutta High Court

Allauddin Ahmed Chowdhury and Another	APPELLANT
Vs	
Monoranjan Ray and Others	RESPONDENT

Date of Decision : 10-12-1929

Acts Referred:

Citation : AIR 1930 Cal 511

Hon'ble Judges : Mukerji, J;Guha, J

Bench : Full Bench

Judgement

Guha, J.—The questions raised before us in this appeal directed against an order passed by the Subordinate Judge, 4th Court, Dacca, and arising out of an application for setting aside a sale made under the provisions of Order 21, Rule 90, Civil P.C., are whether notice was given to the judgment-debtors for the purpose of supplying details in the fresh sale proclamation issued by the Court on 14th September 1925, and whether there was substantial injury to the judgment-debtors owing to inadequacy of price fetched at the sale. This Court when the case came before it, at a previous stage, by an order passed on 19th August 1925 directed that the Subordinate Judge was to consider whether in the fresh proclamation for sale further details should be given so that the public might be informed more accurately of the nature of the mortgages on the properties to be sold, and so be in a better position to judge of the value of those properties.

2. When the case went back to the Subordinate Judge an order was passed on 14th September 1925 for issue of sale proclamation; and the only information we have as to what actually happened in Court before the sale proclamation was issued, is that the decree-holders prayed for issue of the same, and the judgment-debtors' pleader was asked by the Subordinate Judge if proclamation of sale could issue and he (the pleader) said, it could. The pleader in his evidence says he did not know what he would have to do, meaning perhaps he had no instructions relating to the matter from his clients. The Subordinate Judge does not appear to have applied his own mind as to whether further details should be

given in the sale proclamation. In the circumstances stated, fresh proclamation was issued without any further details than those already given in the one issued before the case came up to this Court previously. It would seem that in the matter of supplying further details as to mortgages on the properties to be sold, the judgment-debtors were not very much interested, seeing that these details would have discouraged bidders at the sale. There was, however, an apparent irregularity inasmuch as the direction of this Court was not complied with, and also because of the judgment-debtors not having been given notice enabling them to comply with the said direction. The question then is whether there was any inadequacy of price fetched at the sale. On the evidence placed before us, regard being specially had to Ex. B, the judgment-debtors have failed to make out that so far at least as lots 1 and 2 mentioned in the sale proclamation were concerned there has been an inadequacy of price and substantial injury. From the evidence placed before the Court, it cannot be said that any serious attempt was made by the judgment-debtors to prove that these properties were not sold at the proper price.

3. The case so far as it relates to lots 3 and 4 in the sale proclamation stands, however, on a different footing. It appears that approximate value of the properties as stated in the sale proclamation was that given by the decree-holders only. The judgment-debtors' valuation was not even mentioned, as was done in the case of lots 1 and 2 referred to above and furthermore we are not satisfied that the judgment-debtors had a proper opportunity to state what the values of these two lots were. It is apparent on the materials before us that these two items of property (lots 3 and 4) are more valuable than the amount realized at the sale indicates. There was in the words of their Lordships of the Judicial Committee of the Privy Council used in the case of *Saadatmand Khan v. Phul Kuar* [1898] 20 All. 412 a material misrepresentation of the value of their properties contained in the sale proclamation, as it is manifest from the fact that the decree-holders themselves had offered higher bids. In this view of the matter the order of the Subordinate Judge, so far as it relates to the sale of the properties mentioned as lots 3 and 4 in the sale proclamation, should be set aside. The sale of the properties mentioned as lots 1 and 2 should stand for reasons stated above. It would be open to the decree-holders to bring lots 3 and 4 to sale if necessary, by means of proceedings in the Court below in accordance with law. We may state here that we have been told that by the sale of lots 1 and 2 the decree has been satisfied; and if that be so, it goes without saying that no further sale of lots 3 and 4 will take place. There will be no order for costs.

Mukerji, J.

4. I agree.