
(1895) 12 CAL CK 0009
In the Calcutta High Court

Amir Dulhin alias Mahamdijan

APPELLANT

Vs

Administrator-General of Bengal and Others

RESPONDENT

Date of Decision : 19-12-1895

Acts Referred:

Specific Relief Act, 1877 — Section 53

Citation : (1896) ILR (Cal) 351

Hon'ble Judges : Prinsep, J; Banerjee, J

Bench : Division Bench

Judgement

Prinsep and Banerjee, JJ.—The appellant asks us to reverse the order of the lower Court confirming the sale of Tengrahi and Rajapokur, and to set aside the sale, on the ground that there were material irregularities in the conduct of the sale which have led to substantial injury to her.

2. The irregularities complained of are two : (1) the improper postponement of the sale of Sankarsa which had been advertised for sale as lot No. 1 and which should have been sold first; and (2) the non-service of the proclamation of sale in the mofussil; and it is contended that the first-mentioned irregularity has caused substantial injury to the appellant, because if the sale of San-karsahad taken place as advertised, it would have realised enough to satisfy the decree and to render the sale of the appellant's properties wholly unnecessary; and the second irregularity is said to have caused injury, because if the sale proclamation had been duly published, there would have been more bidders, and the properties would not have been sold for such inadequate prices as they have been.

3. The questions for consideration, therefore, are: first, whether there have been any irregularities such as those alleged; and, second, whether they have led to any substantial injury.

4. As regards the first of the two alleged irregularities, this is how the facts stand : The District Judge, in whose Court the execution case was pending,

stayed the sale of Sankarsa, which was to have been sold first, in accordance with a temporary injunction granted by the Subordinate Judge under Section 492 of the CPC at the instance of a party who had brought a suit against the decree-holder to obtain a declaration that Sankarsa was not liable to sale in execution of the decree. The learned Counsel for the appellant contends that the District Judge was not bound by this injunction, as he was not subordinate to the Court which issued it; that the injunction was issued by a Court which had no power to grant it; and that the Judge has therefore acted with material irregularity in postponing the sale of Sankarsa by reason of the injunction. And in support of this contention Section 56 of the Specific Relief Act, I of 1877, and the case of *Dhuronidhur Sen v. Agra Bank* ILR Cal. 380 are relied upon.

5. We do not think there is any force in the appellant's contention. Section 56 of the Specific Relief Act applies only to perpetual injunctions, as it occurs in the chapter relating to perpetual injunctions, and as temporary injunctions are by the express words of Section 53 left to be regulated by the CPC which imposes no such restriction on the granting of temporary injunctions as the appellant contends for. Nor does the case cited lend any support to the appellant's contention. In the passage relied upon, Markby, J., observes: "But for one Judge to issue an injunction against a decree-holder to restrain him from executing the decree of another Judge exercising coordinate jurisdiction upon the ground that the proceedings by which the decree was obtained were altogether illegal is, as far as I am aware, a proceeding entirely without precedent, and one which seems to me very dangerous to introduce." This decision was reversed on review ILR Cal. 86; and even the passage cited clearly shows that in the opinion of the learned Judge the objection to the granting of an injunction by an inferior Court to stay proceedings in a superior Court is limited to cases, where the decree or order of the superior Court is questioned on the ground of its being illegal. And looking to the reason of the thing, the objection can go no further. Though it may be anomalous and inconvenient if a Court of inferior or co-ordinate jurisdiction were to order a stay of proceedings in another Court on the ground of error or illegality in its proceedings, there can be no anomaly or inconvenience, where (as in the case before us) the higher Court can under the law deal with a matter only in a summary way, and its summary order is made subject to the result of a regular suit which may lie in a Court of an inferior grade, and in the course of which such inferior Court may be asked to grant a temporary injunction restraining the defendant from carrying on the proceedings in the superior Court. Proceedings in execution of a decree for a large amount of money may be pending in a District Judge's Court and various properties may be attached in execution; an unsuccessful claimant to a small portion of those properties may bring a regular suit to set aside the order disallowing his claim in a Munsif's Court; and he may apply to the Munsif for an injunction u/s 492 of the CPC for staying the execution sale. Such proceedings are common and are allowed by the Code of Civil Procedure, and we do not think that Section 56 of the Specific Relief Act was ever intended to affect them. If Section 56 had been intended to apply

to temporary injunctions, then, considering the amount of interference with the ordinary course of trial that its-application would lead to, and the inconvenience that would result from the removal to the superior Courts of all cases in which inferior Courts have jurisdiction over the subject-matter of the suit, merely because a temporary injunction is sought for, one would have expected some express and special provision to that effect. The view we take is quite in accordance with that expressed by this Court in *Brojendro Kumar Rai Chowdhry v. Rup Lal Das* ILR Cal. 515. We are, therefore, clearly of opinion that the temporary injunction granted by the Subordinate Judge was not ultra vires; that the District Judge was bound to postpone the sale of Sankarsa; and that he did not act irregularly in doing so.

6. Nor is there any satisfactory evidence to show that the postponement of the sale of Sankarsa, granting that it was an irregularity, resulted in any substantial injury to the appellant. Two witnesses have been examined to prove that, if Sankarsa had been sold, the sale proceeds would have satisfied the whole decree so as to render the sale of the appellant's properties unnecessary. One of them, Sheonandon Patak, says he was employed by Rai Radha Kishen and was ready to buy Sankarsa for three lakhs of rupees, while the other, Rai Radhakishen, says he had directed his son to bid for Sankarsa up to two lakhs seventy thousand rupees, and he makes no mention of having given any direction to Sheonandon Patak. We consider the evidence altogether unreliable.

7. We would here state that there is no merit whatever in the contention that the postponement of the sale of Sankarsa, which led to the sale of Tengrahi and Rajapokur in execution of the decree of the Administrator-General, has caused substantial injury to the appellant. The appellant purchased Tengrahi and Rajapokur at execution sales benami in the name of Ramsaran Lal, as is admitted before us, and her sale certificates show that she made the two purchases for comparatively small sums, the properties being sold subject to the mortgage in favour of the Administrator-General for Rs. 2,36, 305-14-5, in respect of which decrees had been obtained. She can therefore have no just ground of complaint, because properties which she bought subject to a lien have been sold to satisfy the same.

8. Then as to the second irregularity complained of, there is no evidence whatever with reference to Rajapokur. As regards Tengrahi some evidence is adduced to contradict the peon who served the sale proclamation on the spot, but that evidence has been disbelieved by the Court below, and it is contradicted by Sheonandon Patak, one of the witnesses for the objector, who says he came to bid for Tengrahi on hearing that it had been advertised for sale. We are not inclined to differ from the Judge's estimate of the value of the evidence on this point. And then as to the question whether the properties have been sold for inadequate prices, the evidence adduced is utterly worthless, the only witness, Sheonandon, giving their values at amounts much in excess of those at which the objector herself has valued them in her own petition.

9. The grounds urged before us, therefore, all fail; and this appeal must consequently be dismissed with costs, separate costs being allowed to the three respondents, the decree-holder and the two purchasers.