

(1920) 04 AHC CK 0019
In the Allahabad High Court

Bhagwati Prasad alias Bhagwat Sahai and Others	APPELLANT
Vs	
M. Mukand Sarup	RESPONDENT

Date of Decision : 15-04-1920

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 54

Citation : AIR 1920 All 206(2) : 56 Ind. Cas. 523

Hon'ble Judges : Tudball, J;Sulaiman, J

Bench : Division Bench

Judgement

1. This is an appeal against an order refusing to set aside an auction sale. The appellant's case is that there was a material irregularity in proclaiming the sale as a result of which he suffered considerable loss, the property being undersold, The two irregularities of which complaint is made are: one, that the drum was not beaten at the time of the sale, and, second, that there was a mistake entered in the sale proclamation to the effect that there was an encumbrance of Rs. 14,000 on the property whereas there was no such encumbrance As to the beating of the drum, there is no force whatsoever in I his plea. There is nothing in the Code that says that at the time of gale the drum shall be beaten. The drum has merely to be beaten at the time of proclamation under Order XXI, rule 54. The complaint is also made that the drum had not been beaten even at the time of the proclamation of sale but evidence was directed to prove that the drum was not beaten at the time of auction sale. So far as the error in the sale proclamation is concerned, the property was put up for sale in execution of a decree on the basis of a mortgage It was the only mortgage on the property and it had been turned into a decree. The decree-holder himself filed an affidavit to the effect that there was no other burden on the property except the amount secured by his decree. The Sub Registrar in his report entered as the only encumbrance the mortgage of the plaintiff on the basis of which a decree had been obtained, and in the proclamation of sale the date of the registration was given and the fact that the plaintiff had obtained a decree upon it was also stated. There was really nothing in this transaction to dissatisfy anybody. Even if

there had been any irregularity, it would have been upon the appellant to prove that that irregularity resulted in material loss and damage to him. The property was sold for Rs. 17,500 According to the objectors its value was Rs. 30,000. According to the evidence of witnesses they called, its value was Rs. 25,000 The objectors stated that they had one person who was willing to advance Rs. 25,000 on a mortgage of the property; but they abstained from calling him into Court The decree holder, after the sale, was perfectly willing that the sale should be set aside if his money was paid. Although the sale took place so far back as October 1918, the objectors have made no attempt to pay off the debt. We have no power whatsoever to give any further extension of time. We find that there has been no irregularity established and no nonsequential loss. The appeal, therefore, fails and is dismissed with Costs, including fees on the higher scale.