

(1934) 07 CAL CK 0025
In the Calcutta High Court

Bhudeb Chandra Sarkar

APPELLANT

Vs

Asutosh Dutta

RESPONDENT

Date of Decision : 17-07-1934

Acts Referred:

Bengal Tenancy Act, 1885 — Section 163
Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1934 Cal 761 : 153 Ind. Cas. 992

Judgement

1. This is an appeal by a judgment-debtor from an order dismissing his objection to a proposed sale of his tenure in arrears in execution of a decree for rent obtained in respect of it. The decree for rent, which was passed on compromise, was put into execution, and a combined writ of attachment and sale proclamation was issued u/s 163, Ben. Ten. Act. The judgment-debtor put in an objection in which several grounds were taken. This objection having been overruled, the present appeal has been preferred.

2. One of the grounds of objection is that a sum of Rs. 4,000 was paid in part satisfaction of the decree, but no credit has been given for that payment. This objection falls within Section 47 of the Code, and so can legitimately form the subject matter of this appeal. On the merits, however, the objection cannot succeed, because no sufficient evidence to establish it has been adduced. The judgment-debtor has neither examined himself nor produced his accounts. His case is that the payment was made to the decree-holder's son. This gentleman has denied the payment and his evidence is far more reliable than that of the witnesses by whom the judgment-debtor has sought to prove it.

3. Another objection taken is that the valuation put down in the sale proclamation is too low and that the judgment-debtor is entitled to the notice contemplated by Order 21, Rule 66 of the Code and that in any event he should be allowed evidence to establish that the valuation suggested by him is correct. So far as this objection is concerned the order made by the Court below cannot be challenged by way of an appeal from that order. But apart from that, the provisions of Section 163, Ben. Ten. Act, sanctioning as it does a procedure for

issue of a combined order of attachment and proclamation, exclude by implication the procedure as to the issuing of a notice. The judgment-debtor's prayer to be allowed to adduce evidence therefore has been rightly rejected.

4. We think however it would be a wise exercise of discretion to put in, in the sale proclamation, the judgment-debtor's valuation, as in the alternative in addition to the valuation suggested by the decree-bolder. This should now be done as the parties have agreed to such a course being adopted. Subject to the direction just given the appeal is dismissed with costs. Hearing-fee three gold mohurs. Let the record be sent down with as little delay as possible.