

(1933) 04 CAL CK 0008
In the Calcutta High Court

Bhupendra Nath Roy Choudhury

APPELLANT

Vs

Jatindra Nath Ray Choudhury and Others

RESPONDENT

Date of Decision : 11-04-1933

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90, 64

Citation : AIR 1933 Cal 788

Hon'ble Judges : Mitter, J

Bench : Division Bench

Judgement

Mitter, J.—The only point which has been raised by this rule is as to whether a person who has purchased a property after it has been attached and before it has been sold is a person whose interest has been affected by the sale within the meaning of Order 21, Rule 90, Civil P.C. The Munsif took the view that such a person has no locus standi to set aside the sale under Order 21, Rule 90. The Subordinate Judge takes the contrary view. The question in this rule is which view is right.

2. It appears that the petitioner brought a money suit against opposite parties Nos. 2 and 3 and on 20th September 1930 attached before judgment certain immovable properties belonging to them. The suit was decreed on 29th January 1931, and the attachment was made final on that date. On 29th October 1930, opposite party No. 2 executed a mortgage in respect of the property attached in favour of one Sarat Jamini Devi, and on 19th June 1931 opposite party No. 1 purchased the mortgage security from Sarat Jamini. In execution of the money decree the property was sold on 24th February 1930 and was purchased by the petitioner. Opposite party No. 1 applied under Order 21, Rule 90, to set aside the sale on the grounds of material irregularity and fraud in conducting the same. The Munsif threw out the application on the preliminary ground that petitioner No. 1 has no locus standi and could not maintain the application. On appeal the Subordinate Judge being of a contrary opinion set aside the order of the Munsif and has directed him to hear the application on the merits. Hence the present

rule.

3. It is contended for the petitioner that u/s 64, Civil P.C., the transfer by way of mortgage in favour of opposite party No. I is void as against all claims enforceable under the attachment. The effect of this section may be that if the sale is confirmed the purchaser may get the property freed from mortgage in favour of Sarat Jamini which has been transferred to opposite party No. 1, but it does not mean that such a person cannot challenge the sale before it is confirmed; for the auction-purchaser knows that he does not acquire the title merely by paying his amount of the bid and he knows further that the sale is subject to the confirmation by the Court and is liable to be set aside if the judgment-debtor pays the money under Order 21, Rule 89, or anyone whose interest is affected by sale applies to set aside the sale on the ground of irregularity or fraud.

4. The mortgage is good as between the parties to the same and it can hardly be said in this view that his interest is not affected by the sale. In this view I am of opinion that the Subordinate Judge is right and this rule must be discharged with costs. The view I take receives support from a decision of the Madras High Court in the case of Pandiri Viranna Vs. Grandhi Sattiraju and Others, . I assess the hearing fee at 1 gold mohur. The records are to be sent down at once.