(1923) 06 PAT CK 0050

In the Patna High Court

Eknath Panday APPELLANT

Vs

Singeshwa Nath Choudhury RESPONDENT

Date of Decision : 05-06-1923

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90

Citation : AIR 1924 Patna 785

Hon'ble Judges : Foster, J

Bench : Division Bench

Judgement

Foster, J.—This application in revision arises out of proceedings under Order 21, Rule 90 of the Civil Procedure Code. The sale with which we are concerned was in execution of a decree for arrears of rent of a holding of about 7 acres and the applicant under Rule 90 is the usufructuary mortgagee in respect of about 5 acres out of the entire area. The decision in the Munsif''s Court was that the decree was a rent decree and that the simultaneous issue of attachment and sale proclamation was the proper procedure, that there was no suppression of notices; and that there was no collusion, as alleged, between the decree-holder and the auction-purchaser. He also held that there was no inadequacy of price. The Subordinate Judge in appeal found that the decree was a money-decree and the procedure was, therefore, improper. He found that the summons wore not properly served but he recorded no finding as to the alleged fraudulent collusion. He also found that there was a gross understatement of the value in the sale proclamation and he directed that sale should be set aside. The matter came in revision before a single sitting Judge of this Court and a remand was ordered for a finding whether the material irregularities in the matter of service of the attachment process and the sale proclamation together necessarily caused any inadequacy in price. The Subordinate Judge has recorded his finding that the property was sold for an inadequate price and that the inadequacy of price resulted from the suppression of processes and the misleading statements of the value in the sale proclamation. The auction-purchaser has, therefore, again come to this Court to press his application in revision. His first point is, that the usufruotuary mortgagee cannot show that ha has an interest affected by the sale. He did not raise this point when he firsts came before Mullick, J., and I do not see how he can raise it now at this late stage. I assume that the applicant has an interest that is affected by the sale. He is one of several mortgagees in possession of the holding and the surplus sale proceeds will not perhaps suffice to redeem all the mortgages. It is alleged that the learned Subordinate Judge has proceeded in a wrong method when he has not taken any direct evidence connecting the material irregularities as a cause with the inadequacy of price as an effect. For this purpose the learned Vakil relies upon the terms of the judgment in Tasadduk Rasul Khan v. Ahmed Husain (1893) 21 Cal. 66, No doubt in that decision the words used were "direct evidence." But that expression having been found capable of misinterpretation, the Select Committee adopted the present terminology of Rule 90 in order to make it quite clear what attitude the Court was to adopt in this respect. So the words

unless upon the facts proved the court is satisfied

were introduced as an amendment of the old Section 311 of the Code. It is not necessary, in my opinion, to have direct express evidence from any party to show that the inadequacy of price was the result of material irregularity. It is sufficient if the Court is satisfied that the one is the natural result of the other.

2. The next point urged is that if, as has been found, the decree is a money-decree, then only the right, title and interest of the judgment-debtor will have beau sold and the interest of the applicant, the usufructuary mortgagee, will subsist unaffected by the sale, and, therefore, this applicant can never assert, as he must assert, if he is to succeed under Rule 90, that he has substantial injury by reason of irregularities in the sale. Now, the learned Subordinate Judge has found that the decree is a money-decree. Ha has given substantial reasons, namely, the probable existence of two holdings and the proved fact that only one out of many co-sharers sued, and in suing appeared only for himself and not in any representative capacity. That finding that the decree is a money-decree has not bean questioned or set aside. It is, therefore, open to the auction-purchaser to adopt this argument. Now, it is certainly a sound contention that, unless the applicant shows that he has sustained substantial injury, the Court cannot grant an order setting aside the sale. In this matter, therefore, the applicant has shown good reasons why the order of the learned Subordinate Judge should be vacated.

3. There was a fourth argument put forward by the learned Vakil for the applicant which I need not discuss at length. He urged that the usufructuary mortgagee applying under Rule 90 should have been allowed to succeed only to the extent of his interest. For that purpose he quoted the case, Bajani Nath Bakshit v. Kusum Kamini Majumdar 18 C.W.N. 947, but in this reported case it appears to me that there were four separable sales with four sale prices though no doubt they took place in one auction. Here the sale can hardly be treated as divisible.

4. As I hold that the Court had no justification in law in passing the order under Rule 90, there being no proof of substantial injury to the applicant, I must set aside the order of the Subordinate Judge. Hearing fee three gold mohurs.

