

(1927) 03 AHC CK 0048
In the Allahabad High Court

Lala Mohan Lal

APPELLANT

Vs

Lieutenant Raja Kalicharan Opposite Party, and Pandit
Niranjan Lal and Another

RESPONDENT

Date of Decision : 28-03-1927

Acts Referred:

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

Citation : 102 Ind. Cas. 126

Hon'ble Judges : Cecil Henry Walsh, J; Banerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This is a judgment-debtor's appeal against an order of the learned Subordinate Judge of Budaun dismissing his application to set aside a sale.

2. The facts of this case are that a decree was passed in favour of Lieutenant Raja Kali Charan against the appellant, Lala Mohan Lal. In execution of that decree certain property was put up for sale on the 20th of April, 1926. On the 17th of April, 1926, an application was presented signed by the judgment-debtor and the decree-holder praying that the sale fixed for the 20th be postponed for a month and that it was unnecessary to publish a fresh proclamation for sale. Upon the application being put up, the decree-holder's Pleader stated that if fresh proceedings had to be taken, he did not consent to the sale being postponed. However, the Judge declined to postpone the sale. At the sale the property was bid for by Niranjan Lal, but Niranjan Lal had the names of himself and Indar Prasad recorded by the sale officer as the purchasers of the property. On the 27th of April, 1926, an application was filed under Order XXI, Rule 90 of the CPC by the appellant, Lala Mohan Lal, and he stated in the application the fact of time having been given by the decree-holder, and he being a resident of Bareilly thought that the sale would be postponed and, therefore, he could not attend the Court at Budaun; that there were serious irregularities in the conduct of the sale and that certain encumbrances were notified to be on the property, which were

contrary, to facts that the property was worth Rs. 10,000 and its approximate value was Rs. 7,279-11 and the sale having taken place for a sum of Rs. 2,150, the price was very low, there were various other allegations about irregularities in the sale proceeding. The auction-purchaser opposed this application and the learned Judge of the Court below dismissed the application on the ground that in his application under Order XXI, Rule 90, the judgment-debtor had impleaded one and not both the auction-purchasers. It has been urged by the Advocate for the appellant that under Order XXI, Rule 90, it was unnecessary to mention the name of the auction-purchasers. All that was incumbent on the Court hearing the application was that it should direct notice of the application to be issued to the auction-purchasers, and it was no part of the duty of the judgment-debtor to name in his application all the auction-purchasers. His contention further was that the case reported in *Karamat Khan v. Mir Ali Ahmed* (1891) A.W.N. 121 and the case reported in *Ali Gauhar Khan v. Bansidhar* 15 A. 407 : (1893) A.W.N. 173 : 7 Ind. Dec. (N.S.) were no longer good law in view of the provisions of the Code now. It is unnecessary to decide the question, as the matter, in our opinion, must be decided on another point.

3. The learned Vakil for the respondent has supported the order of the learned Subordinate Judge on the ground that it was not open to the judgment-debtor to come forward and challenge the details entered in the sale proclamation, as he upon the notice, which was issued to him under Rule 66, ought to have appeared before the Court and brought to the notice of the Court that there were incorrect statements in the proclamation.

4. The other points raised by the judgment-debtor have all been found by the Court below to be incorrect, namely, that there were no, irregularities as alleged by the judgment-debtor. The Court below had no doubt, come to the conclusion that the property sold was free from encumbrances, but that encumbrances had been notified in the sale proclamation. He says "The property put to sale was 2 biswas out of 5 biswas 4 biswansis and odd. Two encumbrances of 30th September and 27th October, 1920, were notified. This property is of patti Ram Prasad, Khata Khewat No. 9. The 4 biswansis only of this patti are mortgaged in the bond of the 30th September and 3 biswansis are mortgaged in the bond of the 28th October. They have a burden over 3 biswas and 4 biswansis only. After deducting 2 biswas to be sold in this decree there remain more than 3 biswas and 4 biswansis. When property can be assigned to all the mortgages without overlapping the share mortgaged in any one of them the property mortgaged in one bond cannot be said to be mortgaged in the other."

5. We have come to the conclusion that the judgment-debtor cannot raise this question inasmuch as it was open to him to point out to the Court that the encumbrances as mentioned by the decree-holder and certified to by the registration office, ought not to be entered in the sale proclamation, as it was possible to assign different portions of the property to the different mortgages. In the absence of the judgment-debtor it was impossible for either the Court or

the decree-holder to find out whether the property now sold was or was not subject to the two other mortgages. The law has been now made clear by the additions to Rule 90 added by the rules framed by this Court under the rule making powers, but those rules do not govern the facts of the present case but we see no reason to hold that the law was any different from what the law has now been declared by the rules to be the law applicable to such cases.

6. We are, therefore, of opinion that this appeal must fail and we dismiss it with costs.