
(1945) 03 PAT CK 0007
In the Patna High Court

Mandhata Jha and Others

APPELLANT

Vs

Muni Lal Thakur and Others

RESPONDENT

Date of Decision : 05-03-1945

Acts Referred:

Bihar Money Lenders Act, 1938 — Section 13, 14

Citation : AIR 1946 Patna 199

Hon'ble Judges : Pande, J;Chatterji, J

Bench : Full Bench

Judgement

Chatterji, J.—These four appeals are by two sets of judgment-debtors. Appeals Nos. 416 and 417 are directed against an order fixing valuation of certain properties sought to be sold in execution of a decree. Appeals Nos. 418 and 419 are directed against an order directing that lots Nos. 2, 3 and 4 should be sold first and in case the sale proceeds thereof be insufficient to satisfy the decree, lot No. 1 be sold, and lastly, lot No. 5, if necessary. The decree under execution is a mortgage decree for Rs. 14,581-11-4. There were six lots of properties covered by the decree. The Court acting u/s 13, Bihar Money-lenders Act, fixed the value of lot No. 1 to be Rs. 6000, lot No. 2 Rs. 3000, lot No. 3 Rs. 300, lot No. 4 Rs. 4000 and lot No. 5 Rs. 20,000. Thus the value of lots Nos. 2, 3 and 4 taken together comes to Rs. 7300. This is obviously insufficient to satisfy the decree; yet the Court below ordered that these three lots should be sold first.

2. This is quite contrary to the provisions of Sections 13 and 14 of the Money-lenders Act. Section 14 says that:

the proclamation of the intended sale of property in execution of a decree passed before or after the commencement of this Act in respect of a loan or the interest on a loan shall include only so much of the property of the judgment-debtor the proceeds of the sale of which the Court considers will be sufficient to satisfy the decree and shall state the value of the property or portion of the property to be sold, as determined u/s 13.

3. Section 13 provides that the Court shall estimate the value of the property sought to be sold and of that portion of such property the proceeds of the sale of which it considers will be sufficient to satisfy the decree. It is, therefore, clear that the Court after having estimated the value of the properties ought to have directed the sale of such property as would be sufficient to satisfy the decree. Mr. Bhabanand Mukherji on behalf of the respondents lays stress on the first proviso to Section 14, which runs as follows:

Provided that if the property to be sold is immovable and the decree-holder specifies which portion of such property should be sold the Court shall order that such portion or so much of such portion as may seem necessary to satisfy the decree shall be sold.

4. It is said that this proviso gives an option to the decree-holder to specify which portion of the property should be sold. But this proviso must be read subject to the first s paragraph of the Section which clearly says that only so much of the property shall be sold which will be sufficient to satisfy the decree. What the proviso means is that the decree-holder may specify any portion of the property, provided it is sufficient to satisfy the decree. It does not mean that the decree-holder may specify any portion which will not be sufficient to satisfy the decree.

5. In this case, as I have already shown, lots Nos. 2, 3 and 4 together, or even taken with lot No. 1, will not be sufficient to satisfy the decree. On the other hand, lot No. 5 has been valued at Rs. 20,000. About three-fourths of this property will be sufficient to satisfy the decree. Lot No. 5 is a 16 annas zemindary. Therefore, 12 annas of this lot will be sufficient to satisfy the decree. It is, however, urged by Mr. Mukherji that this lot is not really worth Rs. 20,000. But the decree-holder has not challenged the valuation of this lot by way of an appeal. Any how on the valuation fixed by the Court itself, three-fourths of lot No. 5 may be expected to satisfy the decree. Mr. T.N. Sahay on behalf of the appellants submits that if lot No. 5 be ordered to be sold first, he will not press the appeals Nos. 416 and 417 which relate to valuation. I think that the proper order to be passed is that the Court below will proceed first to sell so much of lot No. 5 as will be sufficient to satisfy the decree.

6. Appeals Nos. 416 and 417 are dismissed, while appeals Nos. 418 and 419 are allowed to the extent indicated above. Parties will bear their own costs.

Pande, J.

I agree.

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