
(1951) 05 PAT CK 0003
In the Patna High Court
Case No : A.F.A.O. No's. 87 and 88 of 1949

Md. Umar

APPELLANT

Vs

Moti Chand and Others

RESPONDENT

Date of Decision : 01-05-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 64, Order 21 Rule 68, Order 21 Rule 69, Order 21 Rule 90, Order 21 Rule 92
Limitation Act, 1908 — Article 166, 181

Citation : AIR 1952 Patna 244

Hon'ble Judges : Sinha, J; Narayan, J

Bench : Division Bench

Advocate : Mahabir Prasad, D.L. Nandkeolyar and Shivanugrah Narain, for the Appellant; P.R. Das, Rajkishore Prasad and Awadh Kishore Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Sinha, J.—These are two miscellaneous second appeals arising out of applications made by the appellant under Order 21, Rule 90, Civil Procedure Code.

2. The landlords-respondents filed two rent suits, being Rent Suits Nos. 1876 and 1886 of 1936, against the appellant and the other members of his family including the uncle and the brother of the appellant; the appellant was at that time a minor. The decrees in these two rent suits were executed in 1937, the execution cases being 1537 and 1535 of 1937. In one case the holding consisting of II bighas 3 kathas and in the other consisting of 2 bighas and 13 kathas were sold for Rs. 271/3/- and Rs. 159/12/- respectively on 14-7-1938 and were purchased by the landlords-decree-holders. Some of the lands purchased were settled by the landlords, respondents 1st party, with the respondents 2nd party, and respondents 3rd party are the uncle and brother of the appellant. These applications under Order 21, Rule 90 were filed by the appellant on the 24th January 1947, the date of knowledge of the sale having been given in the

applications as the 21st January 1947. In the applications it was alleged that the summons in the rent suits were served fraudulently and surreptitiously in collusion with the peon of the Court and the same allegation was made in regard to the service of the notice in the execution proceedings as also in the proceeding for delivery of possession. In regard to the service of notice upon the guardian-ad-litem of the appellant, there is no specific denial in the applications. All that is mentioned in the applications is that

"as it appears the opposite first party brought the petitioner's guardian also in their collusion and concert and did not allow him to take a proper legal action."

It is also alleged, that the value put upon the properties in the sale proclamation was not fair and that the opposite first party fraudulently did not allow any fair valuation to be fixed out of ulterior motive. The appellant alleged in his petitions that he had "now attained age of majority", no specific date of attainment of majority is mentioned. There is no specific allegation in the petitions to bring the case within Section 18 of the Indian Limitation Act to the effect that the appellant by means of fraud had been kept out of knowledge of his right to make an application.

3. The first Court held that the petitioner and members of his family had knowledge of the sale many years before the applications in question were filed and at page 14 of the brief there is a specific finding that the applicant got knowledge about the execution cases in question in the year 1938 and that the other members of the family of the appellant had also knowledge about the execution cases in the year 1938. It was also found that there was no evidence given by the appellant that there was any fraud by the decree-holders by which he was kept out of knowledge of his right to apply for setting aside the sale. In regard to the irregularities, the Court held that there was material irregularity in publishing and conducting the sale. As regards, the Court held that the price fetched at the sale was shocking to the conscience of the Court and that the appellant had suffered substantial injury. Although the properties in each of the two execution cases were valued in the applications at Rs. 2,000/- each, the Court found that the value of all the properties covered by the two sales could not be less than Rs. 20,000/-. It appears from the judgment of the 1st Court that on some of the lands sold there were big houses, but these houses were mostly in dilapidated condition, and, in view of the prices of lands having gone up very high at about the time when the Court was considering the value of these properties, it appears the Court put the valuation at Rs. 20,000/-. The question whether the decrees for rent were rent decrees or money decrees and whether or not the appellant was in possession even after the delivery of possession was not considered by the Court because in its view these questions were outside the scope of a proceeding under Order 21, Rule 90, Civil Procedure Code. In view of the finding that the applications were barred by time, the sales were not set aside and the applications were dismissed. The appellant went up in appeal against the order rejecting his applications, and the appeals were finally heard by

Mr. P.K. Nag, the learned Additional District Judge of Muzaffarpur. It appears from his judgment that only two questions were pressed before him in appeal -- the one being whether the applications were barred by limitation on the date they were presented, and the other, whether the sales were vitiated by fraud and irregularities which resulted in substantial loss to the applicant. The learned Judge has found that since three or four years before the applications in question were made, the appellant was looking after his affairs and that, before that period, his brother "Saddique used to look after the affairs and that the lands were in joint management of his brother Saddique and his uncle Rahmu. It has been found that Rahmu did appear in the execution cases on the 7th of April 1938, and by his petition of that date prayed that the sale be kept on hammer till the 20th April 1938, which application, however, was rejected. It has been found that Saddique and Rahmu had full knowledge of the execution and sales many years before the present applications were filed. It has further been found that the appellant attained majority some time in the year 1939 and that:

"Umar, the applicant, had full knowledge that the disputed properties had been sold in execution of rent decrees many years before he had filed the present applications."

This finding is based upon a consideration of the evidence to the effect that in 1938 there was one execution case, No. 47 of 1938; filed by one Mahabir Lall, the decree-holder, against Md. Saddique and other judgment-debtors including the appellant and that claim cases had been filed by several members of the family of the appellant and one was filed on behalf of the appellant himself, being Miscellaneous Case No. 69 of 1938. In Miscellaneous Cases 24 and 25 of 1938 filed by some of the ladies of the family of the appellant, copies of the petitions by Rahmu filed on the 7th of April 1938, had been filed. Then again in the year 1941 one Sheoprasad Chaudhury, a creditor of Saddique and the appellant Umar, had attached the disputed lands which had been sold in Execution Case No. 882 of 1941. Jagesher Lall, respondent 2nd party, the settlement-holder from the landlords-decree-holders had filed a claim case alleging that some of the properties sold in Execution Case No. 882 of 1941 belonged to him on the strength of the patta executed in his favour by the landlords who had purchased these holdings comprising the lands, the subject-matter of the claim case, in rent execution sales in Execution Cases Nos. 1537 and 1535 of 1937. There was other evidence to show that the appellant had also direct knowledge of the sales in June 1946 and, upon these findings, the learned Judge held that the applications were barred by time on the date when they were made. In regard to the service of notices, it was held that these notices in the execution cases were duly served on Rahmu and Saddique and the attachment and the sale proclamations were also proved. In regard to the service of notice on the guardian, it was held that no attempt was made to produce in Court the said guardian-ad-litem who was still then practising as a Pleader in the Kajipur Courts. The Court observed that, even conceding that there was no service of notices on the said guardian-ad-litem, it was a mere technical irregularity inasmuch as it was an admitted fact

that the uncle and brother of the appellant were adult members of the family who had been looking after and managing the property on behalf of the applicant as well. In view of these observations, the Court held that there was no fraud or material irregularity in publishing or conducting the sales. It, is to be noted, as I have said, that there is no allegation in the two petitions under Order 21, Rule 90, C. P. C., that the guardian-ad-litem of the appellant had not been duly served with the necessary notices in the execution cases. The allegations in the applications, on the contrary are that the guardian had been in collusion with the decree-holders, which impliedly showed that service of notice had been effected upon the guaraiian. In regard to the valuation of the properties, the learned Judge appears to think that the prices for which these lands were sold were not grossly inadequate because, in his view, at the time when these sales had taken place, there used to be no purchasers of holdings in rent sales and that fact had brought down the prices and that it had be-come the habit of the landlords, while executing rent decrees, to value the holdings according to the value of their decrees and that was what was done in the present cases. It was held that because, Rahmu, the seniormost raiyat of the holding, had appeared in both the cases and wanted time to pay the amount of the decree, it was impossible to hold that, if there was any undervaluation, it was the result of any fraud on the part of the decree-holders. In view of these findings, the lower appellate Court dismissed the appeals.

4. Mr. Mahabir Prasad, the learned Advocate-General, on behalf of the appellant, has argued the case with his usual vehemence from all possible points of view. He contended that there is no specific finding to the effect that the value of the lands, at which they were sold, was adequate and that the finding of the first Court to the effect that the price fetched at the sales was shocking to the conscience of the Court was not set aside by the appellate Court; that, if the valuation of the property is grossly inadequate so as to shock the conscience of the Court, that by itself is evidence of fraud; that, if there was fraud, the burden of proving definite knowledge of the sales to the appellant was entirely upon the decree-holders-respondents and that burden of proving it not having been discharged in the present case, it must be held that there was fraud practised upon the appellant and in that view of the matter, the applications for setting aside the sales could not be said to be barred by limitation especially when the possession of the properties, which were sold and of which delivery of possession was supposed to have been taken by the decree-holders was with the appellant. Lastly, it was contended that the sale was a nullity because of the non-compliance by the Court with the provisions of Order 21, Rule 69, C.P.C., inasmuch as the sales were held not on the date fixed and, in that view of the matter, the holding of the sales not on the dales fixed for them and the issue of a sale certificates for the same amounted in law to an abuse of the process of the Court and, therefore, the Court, under the provisions of Section 151 of the Civil Procedure Code, should recall that order. It was also contended on the same ground that they were not sales under the CPC and, therefore, there was no limit

of time under the Limitation Act for setting aside such sales.

5. As I have indicated there is no finding by the appellate Court that the price fetched at the sale was grossly inadequate; rather the findings arrived at by the Court on this point indicate that the properties were sold not at an under-value, taking into consideration the conditions prevailing in the year of the sales, and, in my opinion, the finding on this point arrived at by the first Court has been impliedly displaced by the findings referred to above of the lower appellate Court. It is no doubt true that, if the properties had been sold at the auction-sale at a gross under-valuation and had been purchased by the decree-holder himself, who was the only bidder at the sale, then it cannot be said that the sale was made in good faith; Chandra Bhukhan and Others Vs. Ramdutt Mahto and Others, . Cases have laid down that, if the discrepancy between the value stated in the sale proclamation and the real value is so great as to shock the conscience of the Court, that by itself is a valuable evidence of fraud on the part of the decree-holder Bhairab Chandra Sinha Vs. Kalidhan Roy Choudhury and Others, and Ramizaddin Basar and Others Vs. Naimaddi Basar and Others, . In my opinion, however, the authority of these cases has got no application to the facts of the present case. If the value at which the property had been sold could be explained, as has been done in this case by the Court below, on grounds other than the bad faith of the decree-holder, then it cannot be said that the low valuation at which the property was purchased by itself amounted to fraud by the decree-holder :

"Fraud, like any other charge of a criminal offence, whether made in civil or criminal proceedings, must be established beyond all reasonable doubt." AIR 1941 93 (Privy Council) ."

and it is well established that:

"where fraud is to be inferred from the circumstances and is not directly proved these circumstances must be such as to exclude any other reasonable possibility. Raja Singh and Others Vs. Chaichoo Singh, .

and in another case the Judicial Committee has said that:

"unless the proved circumstances are incompatible with the hypothesis of the person charged with fraud having acted in good faith that cannot be accepted as affording sufficient proof of fraud."

These are well settled rules and I do not see in this case that the findings arrived at by the Court below and the circumstances disclosed in the case lead to the inference that fraud was practised either upon the Court or upon the party by the decree-holder. As I have already mentioned, the Court of first instance did not find what was the value of the properties sold in the year 1938 when the sales had taken place. The lower appellate Court has definitely held that in these days, due to economic depression and abnormally low selling rate of foodgrains, the prices of lands had gone down to a great extent and that there used to be no

purchasers of holdings in rent sales. In view of these findings, I am unable to accept the contention that the property was sold at a gross under-valuation and, in that view of the matter. I find no substance in the ground taken by the learned Advocate-General. If fraud cannot be inferred from the low valuation at which the properties were sold, there are no other circumstances from which fraud could be inferred. In the applications for setting aside the sales there is no averment of facts so as to attract the provisions of Section 18 of the Limitation Act and no evidence has been led to show that the decree-holder contrived to conceal the knowledge of the sales from the appellant or other members of his family, and that by means of any fraud the appellant was "kept from knowledge" of his right to make an application. I, therefore, hold that the appellant failed to prove that fraud was practised upon him or upon the Court.

6. It has been definitely found that the appellant attained his majority in the year 1939 and that many years before he made the applications in 1947 he had knowledge of the sales. The learned Advocate-General has laid stress upon the fact that even after the so-called delivery of possession the appellant was in possession of the lands in question. There is no finding that the appellant is in possession of the properties sold. But, even if it were conceded that the appellant was in possession even after the sale and the delivery of possession, that, in my judgment, will not be enough to hold that either there was material irregularity or fraud in publishing or conducting the sales. The question of possession has got little bearing so far as the setting aside of the sales is concerned under the provisions of Order 21, Rule 90, Civil Procedure Code. If there were some evidence of fraud, then the question of possession might have been relevant to enable the Court to consider that circumstance along with others to come to a proper finding of fraud, but in this case, as there are no other materials upon which a finding of fraud could be founded, the mere fact that the appellant has remained in possession will not be sufficient to support a finding of fraud. The question as to whether Article 166 or Article 181 of the Limitation Act will apply to the facts of the present case will depend upon the allegations made in the applications for setting aside the sales. Reading the two petitions as a whole, it appears the sales were sought, to be set aside only under the provisions of Order 21, Rule 90, Civil Procedure Code, and, if that be so, the period of limitation will be 30 days from the date of sale under Article 166 of the Limitation Act. If, however, the allegations in the two petitions had amounted to a pleading that the sales were void, the appellant would be entitled to make an application within three years under Article 181 of the Limitation Act: *Chandra Bhukhan and Others Vs. Ramdutt Mahto and Others*, . Taking the most favourable view in favour of the appellant, he might have been entitled to file a petition within three years of the sales and, as he was a minor at the time, the period of limitation would be extended to three years after he had attained majority. Considering these applications even from that point of view, the applications are definitely barred by time, no fraud having been established. The evidence given in the case, and which has been elaborately discussed by the two

Courts below, leads to the only inference that fraud was not practised upon the appellant or the other members of his family who were the judgment-debtors in the rent suits and that the appellant had knowledge of the sale at least in 1941 long before three years of the date when the applications for setting aside the sales were filed.

7. It has been contended on behalf of the appellant that the sales were nullities because they were held on a date not specified in the sale proclamation. In both the execution cases the sale proclamation fixed (the 7th of April 1938, at 9 a.m., for the sale of the properties, and on the 7th of April, 1938, the order-sheet records the following order in both the cases:

"Attachment, sale proclamation served. Judgment-debtor 1 files a petition praying that the sale be kept on hammer till 20-4-1948. Petition rejected."

The judgment-debtor No. 1 in each case was Rahmu Mian. Then on the 14th of April 1938, the following order was recorded:

"Sale held today "on account of other sales"..... on decree-holder's undertaking to have the sale set aside if the decree money is paid within six months."

The important words have been underlined (here in single inverted commas) by me. The argument is founded upon the order-sheet of these two dates that the sales were not held on the date advertised for sale and, therefore, the sales were nullities. It has to be remembered that the sales, although fixed for the 7th of April, were actually held on the 14th, that is to say, within 15 days of the date of sale, order 21, Rule 69, as amended by this Court, says that where a sale is adjourned under Sub-rule (1) of Rule 69, for a period longer than 15 days, a fresh proclamation "under Rule 67 shall be made unless the judgment-debtor consents to waive it. It has been argued upon the language of this Sub-rule (2) of Order 21, Rule 69, that there was no adjournment of sale and, therefore, this Sub-rule had no application and, on that ground, it is argued that the sale was without jurisdiction. I agree that no express order, is recorded in the order-sheet adjourning the sales but it was not necessary to do so in the circumstances to be presently noticed. The order-sheet of the 14th of April shows quite clearly that these sales could not be held earlier "'on account of other sales", which can only mean that, on the 7th of April 1938, a large number of sales had to be held in several other execution cases and that the sales must have begun on the 7th of April 1938, but the sales in the present case could not be held until the 14th of April 1938 as the Court was engaged in holding other sales. From the language of the order-sheet it must be inferred that the sales had started on the 7th of April and were going on from day to day until the turn for the sales under these execution cases was reached on the 14th of April, 1938. As the question about the sales having been held without jurisdiction or that the sales were nullities had not been raised in the two applications for setting aside the sales, it appears definite materials were not brought on record to show that sales did actually begin on the 7th of April 1938, and the sales went on from day to day until these

properties were sold on the 14th of April 1938, Rule 13 of Chapter VI of Part I at page 34 of the General Rules and Circular Orders of this Court (Volume I, Civil) runs as follows:

"Subject to the proviso in Order XXI, Rule 43, sales of property in execution of decrees in the several Courts of each district (not being Courts of Small Causes) shall be held and commenced at a certain day each month to be fixed by the District Judge."

8. Rule 14 lays down that all properties to be sold shall be entered in a list and it shall be so prepared as to contain in regular order each item of property. Rule 15 provides that at the stated hour upon each fixed date the sale shall commence and shall be carried on in the order stated in the list and that sales shall be held from day to day until the list is finished. If we read the order-sheet of the two dates mentioned above along with these rules, it becomes crystal clear that a large number of sales must have been fixed for the 7th of April 1938, according to the rules and that sales must have commenced on that date and, according to the lists, the turn for the sale of these properties came on the 14th of April, 1938, when the sales were actually held. On the facts of this case I am, therefore, unable to hold that the sales so held were nullities without jurisdiction or that there was any material irregularity in publishing or conducting the sales. In my judgment, there was no lack of jurisdiction in the Court which held the sales. This view is amply supported by the decision of the Judicial Committee reported in "RANG LAL SINGH v. RAVANESHWAR PER-SHAD SINGH" 39 Cal 26 P C. In this case the sale was fixed for the 11th May and ultimately on the 16th the property was put up for sale, but as there were insufficient bidders, the sale was postponed and a fresh proclamation was issued fixing the 13th of July for the sale. The presiding officer was absent from the 13th to the 16th of July. On the 17th an application was made for postponement which was rejected and the property was sold on the 20th and on these facts their Lordships held that

"It is evident that on the 16th of May the sale was postponed to the 13th of July, the date on which the monthly sales were to commence; these sales did not actually begin until the 17th owing to the absence from the station of the presiding officer, and the sale was held on the 20th, in the course of the monthly sales. On the facts appearing on the record their Lordships think the Subordinate Judge did not act in contravention of the provisions of the Civil P. C. in holding the sale on the 20th of July."

The case of "BASHARUTULLA v. UMACHURN DUTT AND OTHERS" 16 Cal 794 was cited before their Lordships but obviously it was not followed. The view of the Judicial Committee is expressed in "TASADDUK RASUL KHAN v. AH-MAD HUSSAIN" 20 Ind App 176 (PC) & "GAJRAJ NATH TEORAIN v. AKBAR HUSAIN" 34 Ind App 37 (PC) shows that non-compliance with the provisions now contained in Order 21, Rules 68 and 69 amounts to a mere irregularity and that the sale held in contravention of such provisions is not a nullity but in the present cases it cannot be held that there was any breach of these rules. In the view I

have taken, the other point, namely, the holding of the sales on the 14th of April, 1938, and the issuing of sale certificate for these sales, could not by any stretch of imagination amount in law to an abuse of the process of the Court under the provisions of Section 151 of the CPC. A large number of authorities were cited at the Bar, but it is not at all necessary to consider these authorities. There are some decisions of the Calcutta High Court "UMAMOYEE DASIA v. JATAN BEWA", 54 Cal, 624; "JOGESWAR MAHATA v. JHAPAL SANTAL" 51 Cal 224, which lay down that when a sale is a nullity, no question of limitation arises for setting aside such a sale, on the other hand, the Allahabad High Court in Pandit Sridat Vs. Mohar Singh and Another, a judgment of Sir Muhammad Sulaiman, has held that there is no inherent jurisdiction in a Court to set aside a sale outside the provisions of Order 21. But, as I have already mentioned, those matters do not arise for decision in this case.

9. it was also argued that the sales which were held on the 14th April, 1938, being conditional sales, were no sales at all. As I read the order-sheet, it does not appear that the sales were conditional ones. It may be that in good faith the decree-holder had said that if the decretal amount, was paid to him within six months from the date of the sales, he would have no objection if the sales were set aside -- the Court may have used a bad language, but could never have meant to sell the properties subject to certain conditions.

10. In my judgment, upon a consideration of the material facts and circumstances and the law bearing upon them, I am definitely of the view that the sales were good sales under the provisions of the Code of Civil Procedure, that there was no fraud practised upon the Court or upon the judgment-debtors including the appellant and that as the applications for setting aside the sales have not been made within the time prescribed by law the applications were rightly dismissed by the Courts below.

11. I would accordingly dismiss these appeals with costs. As these Appeals were heard together, there will be one set of hearing fee.

Narayan, J.

12. I generally agree with my learned brother. On the findings arrived at by the lower appellate Court the application for setting aside the sale cannot be deemed to be in time if the sale is not regarded as a nullity. It is only when the sale is regarded as nullity that the petitioner can contend that the question of limitation does not arise, inasmuch as there was nothing which he could seek to set aside as such, the most important question in these appeals is whether the sale in question can be regarded as a nullity. As has been indicated in the judgment of my learned brother the sale proclamation had been issued fixing 7-4-1938 as the date for sale. On 7-4-1938, the judgment-debtor No. 1 filed a petition praying that the sale be kept on hammer till 20-4-1938, and this petition was rejected. On 14-4-1938 the sales were held and in one of the two cases the property was sold for Rs. 271/-/3 and in the other for Rs. 159/12/-. The order in both cases

shows that the sale was held on 14-4-1938, because there were other sales to be held, and it is further indicated in the orders of both the cases that the decree-holder had given an "undertaking to have the sale set aside if the decree money is paid within six months". The learned Advocate General has contended that such a conditional sale is unwarranted in law and that the sale is a nullity because it was held on a date for which it was not advertised. I have no hesitation in repelling the contention that the sale is vitiated because of the undertaking recorded in the order. The sale will remain a good sale in law even if at the time of the sale the decree-holder had given the Court to understand that he would return the pro-property within six months if he was paid the entire decretal amount. If the sale is otherwise good, then this undertaking given by the decree-holder cannot vitiate it. In my opinion, this undertaking would not have created any other complication except this that if the judgment-debtor had really come forward to pay the decretal amount within six months from the date of sale, the question would have arisen whether the decree-holder was bound on account of this undertaking to return the property on taking from the judgment-debtor the decree money. The event contemplated never happened and the question never arose as to whether this was an undertaking enforceable in law. It is a pure surplusage and has remained as such. We know of compromises between judgment-debtors and decree-holder-auction-purchasers to the effect that in case the decretal amount is paid before a certain date, the property will be returned, and in case it is not paid the sale will become absolute and remain binding on the judgment-debtor. Because of such a compromise a sale is never regarded as ineffective and inoperative. The first contention of the learned Advocate General must therefore be overruled. I am not also able to accept the other contention of the learned Advocate General that the sale should be regarded as a nullity, because it was held on a date for which it was not advertised. The decisions of the Judicial Committee in "TASSADUK RASUL KHAN v. AHMAD HUSAIN" 20 Ind App 176 (PC) and "GAJRAJ NATH TEORAIN V. AKBAR HUSAIN" 34 Ind App 37 (PC), appear to me to settle the question raised by the learned Advocate General in the former case there was a clear violation of Section 290 of the CPC which corresponds to Rule 68 of Order XXI. According to Rule 68 no sale can, without the consent in writing of the judgment-debtor, be held until after the expiration of at least thirty days in the case of Immovable property from the date on which the copy of the proclamation has been affixed on the Court-house of the judge ordering the sale. Their Lordships held that the decree-holder had failed to comply with the requirement of Section 290, but still their Lordships were of the opinion that this would be regarded as merely a case of material irregularity to be redressed pursuant to the provisions of Section 311, and in the application of that section it being incumbent on the judgment-debtor to prove that he had sustained substantial injury by reason of the irregularity. As was pointed out by Edgley J. in Jogendra Nath Bhattacharyya and Others Vs. Sheikh Nabi Newaj and Others, the provisions in Rules 67, 68 and 69 have been designed for the protection of judgment-debtors and for the purposes of ensuring that properties of such persons shall not be put to sale unless the publicity is

given to the fact that the sale is to be held and a proper opportunity is afforded to bidders to attend the sale after proper notice has been given. The provisions of Section 68 are certainly mandatory but still their Lordships of the Judicial Committee were of the opinion that non-compliance with these provisions amounts only to material irregularity. In the other case 34 Ind App 37 (P C) it was assumed on the facts that the issue of a fresh sale proclamation was necessary, but still their Lordships held that the omission could be regarded only as an irregularity and that no regular suit would lie for the purpose of setting aside the sale which had been held in violation of the terms of the old Section 291 of the Code. In some Calcutta cases no doubt, and especially in "MOTAHAR HOSSAIN v. MOHAMMAD YAKUB" 40 Cal LJ 311 a contrary view has been taken. But in view of the several other decisions of the Calcutta High Court it may be taken that the preponderance of authority even in that Court is in favour of the view that a sale which is held without strictly complying with the provisions of Rules 67, 68 and 69 of Order XXI cannot be regarded as a nullity. (See "GOBARDHAN BEHARI v. SARAT CHANDRA" 37 Cal WN 146; "HARI SADHUN ROY v. SHIB GOPAL MITRA" 35 Cal LJ 140; Jatindra Mohan Sarkar Vs. Mahipal Nayek and Others, and "SM. ASALATA BOSE v. MANINDRA NATH", 45 Cal W N 987. It was held in "JATINDRA MOHAN SARKAR'S Case" AIR 1948 Cal 203 that non-issue of a sale proclamation when the law requires the publication of a fresh sale proclamation stands on the same footing as the non-service or suppression of service of a sale proclamation in the matter of the reversal of a sale, and that they would be material irregularities and would not affect the jurisdiction of the executing Court to hold the sale. In "SM. ASALATA BOSE'S Case" 45 Cal W N 987 it was pointed out that if violation of one part of Order XXI, Rule 69, Civil P. C., as was held by their Lordships in "GAJRAJ NATH TEORANI'S Case" 34 Ind App 37 (PC) amounts only to material irregularity, it can certainly be argued that the violation of the other part could not produce a different result. I therefore agree in the conclusion arrived at by my learned brother that the sale cannot be regarded as a nullity, and if it is not a nullity, then on the facts found it cannot be set aside.