

(1934) 09 PAT CK 0014
In the Patna High Court

Muhammad Yaqub Khan

APPELLANT

Vs

Jag Sch and Others

RESPONDENT

Date of Decision : 27-09-1934

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90, 47

Citation : AIR 1934 Patna 695

Hon'ble Judges : Courtney-Terrell, C.J;Agarwala, J

Bench : Full Bench

Judgement

Courtney-Terrell, C.J.—This is an appeal from an order by the Subordinate Judge of Muzaffarpur, rejecting an objection by the judgment-debtor u/s 47 and under Order 21, Rule 90, Civil P.C., to the sale of his properties which had taken place in execution of decree. The decretal sum now amounts to a sum of Rs. 4,42,000 odd. The ordinary execution proceedings were taken for the sale of a large amount of property belonging to the judgment debtor and the judgment-debtor received notice of the proceedings for settling the valuation to be placed on the properties in the sale proclamation.

2. He did not however appear in those proceedings, and the Subordinate Judge in fixing the valuation was obliged to rely upon the figures supplied by the decree-holder. Later on however before the sale could take place, the judgment-debtor took the matter in appeal on the question of valuation, which had been fixed by the Subordinate Judge, to the High Court and that appeal was rejected. It was pointed out that as the judgment-debtor had allowed the matter to go by default he had no grievance.

3. Furthermore in the course of the proceedings the judgment debtor asked for a postponement of the sale. He was granted the postponement and he agreed not to demand the issue of a fresh sale proclamation as a term for that adjournment which was granted. The sale took place and the parcels of property were knocked down to bidders and in nearly every case fetched sums which greatly exceeded the value as stated in the sale proclamation. The judgment-debtor then not being

satisfied with the amounts that were received, although they were much larger than the amount stated in the sale proclamation, took these proceedings to have the sale set aside.

4. The point might have been taken at once that the judgment-debtor not having appeared in settling the sale proclamation and having been defeated right up to the High Court on the question of the values mentioned in the sale proclamation, has objections upon the question of value should have been considered at an end and that it was not right to allow him to reopen this matter. Nevertheless the Subordinate Judge did not immediately take that point of view and issued a commission to a pleader commissioner to investigate the value of the various properties which had been knocked down at the sale. The pleader commissioner made a lengthy investigation and the result of it was, it may be broadly stated, that he found that in his opinion these properties by reason of the value of the soil and so forth should be valued at some thing like 40 years" purchase of the produce which could be expected from the land in the way of rent and other revenue. The matter came back before the Subordinate Judge upon the pleader commissioner's report and the Subordinate Judge disagreed with the pleader Commissioner throughout.

5. His opinion was that the value of the properties instead of averaging 40 years" purchase should be properly valued at between 15 and 20 years" purchase, and as a matter of fact the price produced at the sale closely approximated to the value at which the learned Subordinate Judge arrived, that is to say, some of the properties fetched prices in the neighbourhood of 10 years" purchase; some fetched prices on the basis of about 20 years" purchase. This tends to show that the opinion of the learned Subordinate Judge was correct.

6. There is no doubt whatever as we have seen from the bid-sheets, that bidders did turn up to the sale and that the matter was not an uncontested attempt by the decree holder to buy the properties, although it is true that these properties were in the end all of them bought by the decree holder himself. However not being satisfied with the value arrived at by the Subordinate Judge, the judgment-debtor again comes before this Court in an attempt to resist the final completion of the sale by delivery of possession and he takes up a highly inconsistent attitude. He has throughout protested against the sale because he said that owing to the great commercial depression the prices obtained for the properties would be inadequate, and moreover that very few bidders were in any case likely to attend the sale because the properties being large ones were not much in demand.

7. He now wishes apparently that the sale should never take place, for certainly the commercial depression has continued and moreover in the area of these particular properties the recent earthquake has not improved conditions and besides the properties would fetch even less today than they did in fact at the sale that was held. To my mind the broad principle for dealing with the attitude of the judgment-debtor was clearly set forth by the Chief Justice of the Allahabad

High Court in the case of Chhuttan Lal v. Muhammad Ikran Khan 1933 All 546. It is true that the learned Chief Justice was there dealing with the special rules made by the Allahabad High Court under Order 21, Rule 90 which were an expansion of the rules of the Civil Procedure Code, but nevertheless the rule which he applied was no wider than the ordinary principles of justice in dealing with matters of this sort.

8. The rule quoted by the learned Chief Justice under Order 21, Rule 90 was as follows:

No such application shall be entertained upon any ground which could have been taken by the applicant at or before the date on which the sale proclamation was drawn up.

He quoted this- as a statement of principle which is clearly applicable to the circumstances of the present case. Now the judgment-debtor did not assist the Court to arrive at the proper valuation when the sale proclamation was drawn up. He held himself aloof from the proceedings. Later on, when the sale was actually about to take place, the learner Subordinate Judge made a further investigation of the matter in which the judgment debtor was unsuccessful.

9. Furthermore there was the decision of this High Court that having failed to appear at the proceedings for fixing the valuation in the sale proclamation, he had no more grievance as to the valuation which was actually fixed and the prices actually obtained at the sale, which were greater than the valuation which was actually fixed. It is therefore not open to him at this stage of the proceedings to come forward and raise further objections. Moreover I see no reason whatever for supposing on the merits of the case that the view of the Subordinate Judge was erroneous.

10. His opinion and experience must be taken at least as important as that of the pleader commissioner and the reasonings that he has applied in his criticism of the pleader commissioner's report seem to me to be good and sound. It is true that he rejected from consideration certain matters with regard to the valuation of a part of the property which had been taken into account by the pleader commissioner, those matters being certain records of proceedings which had been taken in an earlier valuation. But the rejection is really on the ground of the weight of the evidence which was rejected rather than on matters of admissibility of evidence. In my opinion the appellant has quite failed to make out any case for disturbing the decision of the learned Subordinate Judge and this appeal should be dismissed with costs.

Agarwala, J.

11. I agree.