

(1970) 12 CAL CK 0007
In the Calcutta High Court
Case No : Ex. Case No. 21 of 1958

Nalini Kanta Laskar

APPELLANT

Vs

Satish Chandra Rana and Others

RESPONDENT

Date of Decision : 15-12-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 52, Order 21 Rule 90

Citation : AIR 1971 Cal 275

Hon'ble Judges : A.N. Sen, J

Bench : Single Bench

Advocate : Ghosh, for the Appellant; Das and Deb, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Sen, J.—This is an application by one of the judgment-debtors for setting aside the sale of premises No. 38, Kali Krishna Tagore Street, Calcutta held on 25th of March 1970 by the Sheriff of this Court in execution of a decree.

2. The said premises No. 38, Kali Krishna Tagore Street appears to be heavily encumbered. It appears that there are 4 mortgages on the said property and the said mortgages have all been mentioned in the Sale proclamation. One of the mortgagees. United Bank of India Ltd has filed a suit in this Court for enforcement of the mortgage and in the said suit a Receiver has been appointed over the said premises No. 38, Kali Krishna Tagore Street. Calcutta and the Receiver has been and is still realising the rents, issues and profits of the said premises The Receiver was there when the plaintiff decree-holder took steps for execution of this decree and the plaintiff decree-holder after obtaining necessary leave of this Court to proceed in execution against the property in the hands of the Receiver made an application in execution on the 23rd of February, 1966 on a tabular statement for attachment and sale of the right, title and interest of the petitioner and also of the defendant No. 1 En premises No. 38. Kali Krishna Tagore Street, Calcutta for realisation of the decretal amount. The decree in favour of the plaintiff was for Rs. 11,500/- with interest on judgment and costs.

On the said application in execution of the decree-holder for attachment and sale of premises No, 38, Kali Krishna Tagore Street Calcutta, S. K. Mukherjea, J., made an order on the 16th of November 1967 directing a writ of attachment to be issued in respect of the said premises No. 38, Kali Krishna Tagore Street and the learned Judge further directed that the decree-holder would be at liberty to apply for sale of the said property after giving necessary notice to the Official Receiver before sale. An application for sale was made on the 21st of May, 1968 on notice to the Official Receiver and R. M. Datta. J., made an order on the said application on the 24th of July, 1969 directing the Sheriff to sell in execution of the said decree the right, title and interest of the petitioner as the sole proprietor of the business of Satish Chandra Rana and Sarat Chandra Rana in premises No. 38, Kali Krishna Tagore Street, Calcutta by public auction. The applicant and United Bank of India Ltd. amongst others were parties to the said application and the order was made in their presence on contest. Pursuant to the said order for sale made by Datta, J., the sale-proclamation had been settled on notice to the judgment-debtors and the petitioner had in fact participated at the sale reference. The property was put up for sale subject to encumbrances mentioned in the sale proclamation and was sold for a sum of Rs. 18,000/-. The petitioner in the present application seeks to set aside the said sale.

3. It appears that at the initial stage of the proceeding when this application was moved, there was no prayer in the petition for the setting aside of the sale and notice of this application had been served only on one of the purchasers though there were 6 joint purchasers of the property. Subsequently, however, notice of this application has been given to all the purchasers and the prayer for the setting aside of the sale has also been included in the petition. The principal ground on the basis of which the petitioner has made this application for setting aside the sale is that there has been a material irregularity in the conduct of the sale as the provisions contained in Order 21, Rule 52 of the CPC have not been complied with, Order 21, Rule 52 lays down--

"Where the property to be attached is in the Court or in public officer, the attachment shall be made by a notice to such Court or Officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the said notice is issued:

Provided that where such property is in the custody of a Court any question of title arising between the decree-holder or any other person, not being the judgment-debtors, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court."

4. Mr. Ghosh, learned counsel appearing in support of this application, has contended that the aforesaid provisions contained in Order 21, Rule 52 are mandatory and any non-compliance with the said provisions will undoubtedly result in a material irregularity. He has submitted that there is some difference of opinion as to whether the effect is to render the sale void or voidable but it is

well settled that the effect of non-compliance in any event results in a material irregularity. Mr. Ghosh has referred to the decisions in the following cases:

(1) Panchanan Das v. Kunja Bebari, reported in 42 Ind Cas 259 (Cal.).

(2) Nareshchandra Mitra Vs. Moll Ataul Huq, .

(3) Kanhaiyalal Vs. D.R. Banaji and Others, .

(4) AIR 1945 67 (Privy Council) .

(5) Moti Laul Roy Vs. Bhawani Kumari Debi and Others .

5. Mr. Ghosh has referred to the letter addressed by the Official Receiver, High Court, a copy whereof has been annexed to the petition, in support of his submission that non-compliance of the provisions contained in Order 21, Rule 52 is clearly established. Mr. Ghosh has further contended that in the sale proclamation that income of the property has not been mentioned and it is his submission that not stating the income that the property fetches in the sale proclamation is a material irregularity which vitiates the sale. In support of this contention Mr. Ghosh has referred to the decision in the case of AIR 1943 204 (Oudh) . Mr. Ghosh has argued that the aforesaid irregularities which are very material and serious, have resulted in substantial injury to the petitioner and have caused the property to be sold at a very low price to the serious prejudice to the applicant. Mr. Ghosh has argued that if the requirements of law had been complied with the Official Receiver who is holding, according to Mr. Ghosh, about a lakh and ten thousand rupees on account of rent collected by him, would have been able to furnish these valuable informations and the property then would have fetched a better and higher price. It is the argument of Mr. Ghosh that in the sale proclamation the particulars of encumbrances have been stated but the intending purchasers were never informed that as against the said liabilities the Receiver had in his hands the said huge amount. Mr. Ghosh has submitted that the property fetches a monthly rent of about 2,000/- rupees and is situate in the heart of Calcutta on an area of more or less 4 kottah 11 ch. 37 sq. ft. and the building is a 5 storied one. Mr. Ghosh has drawn my attention to the valuation report by Mr, R. N. Dhar, an Engineer, submitted in the year 1952. It appears from the said report the Engineer valued the property at Rs. 3.71.413/-. Mr. Ghosh has submitted that the valuation has gone higher up and the value of the property will be over 4 lakhs of rupees now. Mr, Ghosh has finally submitted that taking into consideration the intrinsic value of the property and the money lying in the hands of the Official Receiver, a proper sale price should have been much more than Rs. 18,000/- with all the encumbrances on the property. Mr. Ghosh has, therefore, submitted that the sale which has been conducted with material irregularity and has resulted in substantial injury to the petitioner should be set aside.

6. This application has been opposed on behalf of the decree-holder and also on behalf of the auction purchasers. Dr. Das has mainly argued on behalf of the

contesting respondents and Mr. Deb the other learned counsel has adopted the argument advanced by Dr. Das. Dr. Das has submitted that this application is mala fide and has been made only with the object of putting off the sale and delaying the payment of the decree-holder. Dr. Das has pointed out that the petition was not in order when the same was moved, as there was no prayer for the setting aside of the sale and no notice was given to all the auction purchasers as required under law. Dr. Das has also submitted that incorrect and false statements have also been made in the petition and he has drawn my attention to the statement made in paragraph 21 (e) (viii). Dr. Das has argued that there has been no material irregularity in the matter of the conduct of the sale. He has submitted that full and frank statements have not been made by the Receiver in the letter, a copy whereof has been annexed to the petition, and it is his submission that the facts mentioned by the petitioner in the petition clearly go to show that the Receiver had full knowledge of the relevant facts. Dr. Das has pointed out that necessary leave had been obtained from Court to proceed with the application for execution and Dr. Das pointed out that the Court had directed notice of application be given to the Receiver before obtaining an order for sale at the time of passing the order for attachment and notice of the application for obtaining the order for sale had been duly served on the Official Receiver. Dr. Das has submitted that in the facts of the instant case there has, therefore, been compliance with the provisions contained in Order 21, Rule 52. Dr. Das has argued that even if it be held that there has been no proper compliance with the provisions contained in Order 21, Rule 52, the sale in the facts of the instant case is not affected or liable to be set aside. Dr. Das has argued that Order 21, Rule 52 has no application in the facts of the instant case as the Receiver who was appointed in the suit was really the receiver only over the rents, issues and profits of the property. Dr. Das has submitted that as the Receiver was a Receiver of the rents, issues and profits, the said provisions contained in Order 21, Rule 52 have no application and he has referred to the decision in the case of Pratapmal Rameshwar Vs. Chunilal Jahuri, . Dr. Das has submitted that even assuming that for some reason or other the attachment was not a valid one, the sale is still a valid sale and is not vitiated. Dr. Das has referred to the following passage occurring at page 1128 contained in Note 4 under Order 21, Rule 64 in Mulla's CPC (13th Edn.)-- "Omission to attach property before sale--The omission to attach any property before sale does not vitiate the sale. It is not even an irregularity. Rule 64 has to be read with Section 51, Some High Courts have, however, held that it is an irregularity, but It does not vitiate a sale." Dr. Das has also relied on the decision in the case reported in ILR 57 Cal 1206, which is also reported in AIR 1931 Cal 35 and has been referred to by Mr. Ghosh. Dr. Das has next contended that even assuming that there was any irregularity, the petitioner, is not entitled to make any grievance because of the following provisions introduced in Order 21, Rule 90 by way of Calcutta Amendment. The relevant portion of the Calcutta Amendment to Order 21, Rule 90 provides--"Cancel the proviso and substitute therefore the following: Provided-- (1) that no sale shall be set aside on the ground of such irregularity, fraud or

failure unless upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity, fraud or failure: (ii) that no sale shall be set aside on the ground of any defect in the proclamation of sale at the instance of any person who after notice did not attend at the drawing up of the proclamation or of any person in whose presence the proclamation was drawn up, unless objection was made by him at the time in respect of the defect relied upon."

7. Relying on this Calcutta Amendment, Dr. Das has argued that as the proclamation had been settled on due notice to the petitioner and in his presence, he is not entitled to make any grievance as to any defect in the said proclamation. Dr. Das has argued that in the facts of the instant case it is quite clear that the property has fetched a very fair price, has not been sold at any under-value and the petitioner has not suffered any prejudice or loss. It is the contention of Dr. Das that the encumbrances on the property will very much exceed the value of the property and in view of the existing encumbrances, the sum offered by the purchasers is more than adequate. Dr. Das, therefore, submits that this petition should not be entertained.

8. Before dealing with the respective contentions of the parties it will be convenient to consider the cases cited from the Bar.

9. In the case reported in 42 Ind Cas 259 (Cal.), a Division Bench of this Court held that a property which has not been attached cannot be ordered to be sold in view of the provisions contained in Order 21. Rule 64 of the Code of Civil Procedure. In this case the court below had found that there was in fact no attachment of the property before it was sold and the Division Bench set aside the sale. The Court relied on the following observations of Lord Moulton which are quoted in the judgment at page 259--

"Their Lordships are of opinion that this is a very plain case. That which is sold in a judicial sale of this kind can be nothing but the property attached and that the property is conclusively described in and by the Schedule to which the attachment refers."

10. In the case reported in AIR 1931 Cal. another Division Bench of this Court held at page 35 of the report that an auction sale would not be invalid for want of attachment, even though the sale proclamation correctly mentioned and described the property which was sold. The Division Bench considered the decision in the case of (1917) 42 Ind Cas 259 (Cal) and observed at page 36--

"The case of (1917) 42 Ind Cas 259 (Cal) is the only case of this Court, in which a different view has been taken. We are unable to agree in the interpretation that case has given to the decision of the Judicial Committee in the case of Thakur Barmha v. Jibanram Marwari ((1914) ILR 41 Cal 590 PC) upon which It purports to proceed. In the case before the Judicial Committee, the property that was under attachment and sale was a 6 as share of a Mahal subject to a mortgage, and after the sale the purchaser applied for correction of the certificate of sale by

adding the word "not" to the description of the property, the result of which would be to pass an unencumbered 6 as share, an entirely different property from what was attached and sold. The case is no authority for the proposition that an auction is invalid for want of attachment, even though the sale proclamation correctly mentioned and described the property which is sold."

11. In the case *Kanhaiyalal Vs. D.R. Banaji and Others*, , the Supreme Court held at pp. 727-728--

"So far as the Indian Courts are concerned, it is settled law that a sale held without making attachment of the property, or without duly complying with the provisions of the law relating to attachment of property, is not void but only voidable. Rule 52 of Order 21 of the Code of Civil Procedure, requires that where the property is in the custody of any Court or public Officer, attachment shall be made by a notice to such Court or Officer. But the absence of such a notice would not render the sale void ab initio because the jurisdiction of the Court or the authority ordering the sale does not depend upon the issue of notice of attachment. It is also settled law that proceedings taken in respect of a property which is in the possession and management of a Receiver appointed by Court under Order 40, Rule 1 of the CPC without the leave of that Court, are illegal in the sense that the party proceeding against the property without the leave of the Court concerned, is liable to be committed for contempt of the Court, and that the proceedings so held, do not affect the interest in the hands of the Receiver who holds the property for the benefit of the party who, ultimately, may be adjudged by the Court to be entitled to the same. The learned counsel for the respondent was not able to bring to our notice any ruling of any court in India, holding that a sale without notice to the Receiver or without the leave of the Court appointing the Receiver in respect of the property, is void ab initio. In the instant case, we do not think it necessary to go into the question raised by the learned counsel for the respondents that a sale of a property in the hands of the Court through its Receiver, without the leave of the Court is a nullity."

12. In the case reported in AIR 1945 PC 67, the Judicial Committee observed at p. 70 of the report--

"Order 21, Rule 66 imposes upon the Court the duty of causing proclamation of the intended sale to be made and requires the proclamation to be drawn up after notice to the decree-holder and the judgment debtor and such proclamation must specify, as fairly and accurately as possible, among other things, any encumbrance to which the property is liable. In most cases no doubt the Court has no means of checking the information supplied by the parties but the court ought, as far as practicable, to bring its mind to bear upon the contents of the proclamation; and where the material is readily available to check the information supplied by the parties the court ought to avail itself of such material." The Judicial Committee further held at p. 70 --

"The position therefore is that the sale took place at a serious under-value

occasioned by failure on the part of the Court, and of the respondent decree-holder, to carry out their obligations under Rule 66, and there can be no doubt that the appellant sustained substantial injury thereby. Their Lordships are of opinion that the case falls within the language of Rule 90 and that, however dilatory and unsatisfactory the conduct of the appellant may have been, he has not on the facts found debarred himself of the right to have the sale set aside."

13. In the case reported In (1902) 6 Cal WN 836, a Division Bench of this Court held that the absence of specification in the sale proclamation of the encumbrances to which a property advertised for sale was subject, and which was required by Clause (c) of Section 287 of the CPC to be specified, coupled with the fact that the value of the property as stated in the sale proclamation was much below the proper price, amounted to a material misrepresentation which must be treated as a material irregularity in publishing the sale within the meaning of Section 311.

14. In the case reported in AIR 1943 Oudh 204, the Oudh Court took the view that omission to give annual rent of a house property in a sale proclamation was a material irregularity within Order 21, Rule 90. The Oudh Court referred to Rule 66(2) (e) of Order 21 of the CPC which reads as follows--"(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible--(e) every other thing which the court considers material for a purchaser to know in order to judge of the nature and value of the property." The Court then proceeds to observe-- "This sub-rule does not in specific terms lay down that the valuation of the property must be shown in the proclamation. Indeed this was the point urged by the learned counsel for the respondents in the course of the argument. In view of the decision of their Lordships of the Privy Council in 25 Ind App 146. it is no longer open to doubt that the value of the property is a material fact which a purchaser is entitled to know in order to judge the nature and value of the property, and any mis-statement in regard to the value of the property is calculated to mislead possible bidders and prevent them from bidding at adequate price or prevent them from bidding at all. In order to arrive at the valuation of the property the most valuable test in regard to house property in a large town, such as Lucknow, is to ascertain its annual rent or income and to arrive at a valuation of the house according to the market rate prevalent at the time." The court then holds at page 202-- "If the mention of the rent in the proclamation was a material fact, as we hold it to be, it would have enabled the purchaser to form his own opinion about the value of the property. That Sub-rule (2) (e) is mandatory follows from its language quoted above. We are of opinion, therefore, that the omission to state the annual rent of the property in the sale proclamation was a breach of statutory obligation which rested on the court under the provisions of Rule 66(2) (e) of Order 21. Civil P. C., and amounted to a material irregularity in the publication of the sale and vitiated the sale. This view is quite sufficient to dispose of the present appeal."

15. In the case reported in AIR 1933 Cal 417. Rankin, C. J. had to consider Order 21, Rule 42 of the CPC in deciding an appeal in an insolvency case. The learned Chief Justice observed at page 418--

"It appears that the Court appointed a Receiver over the properties of the debtors including this property. It appears that the petitioning creditors, who held a decree for their debts, applied to the Court, which had appointed a Receiver, and asked for leave, notwithstanding appointment of a Receiver, to attach two definite specified immovable properties in which the debtors had an interest. The court gave the leave asked for and the attachment was formally and regularly made by an attachment under Order 21, Rule 54. The way in which it is said that attachment is illegal or improper Is this: It is said that under Rule 52, Order 21, C.P.C., this proceeding was not rightly taken. It is quite true that that proceeding has no connexion whatever with Rule 52, Order 21. E. 52 refers to property in the custody of a Court or public officer. It provides that an attachment can be made in a way which leaves no room for an application for the leave of the Court or of the public officer. It is to be noticed that it treats the Court and the public officer exactly in the same way. Under that rule, in any case to which it applies, the executing Court simply issues attachment without consulting the other Court. Apart altogether from any question whether Rule 52 applies to immovable property, while it is true in a sense that the Court, when it appoints a receiver, takes possession of the property. I am reasonably clear that the rule was never intended to apply to a case where the Court appoints a receiver of the rents and profits of the immovable property.

What has been done in this case has been done following the practice on the original side, which of late years became settled in view of principles well settled in England and is now in Ch. 17 of our rules. It is very common for persons who apprehend execution to start a partnership suit and have a receiver appointed of the assets of the partnership, or a partition suit, and have a receiver appointed of the assets of the family; or a mortgage suit and have a receiver appointed of the assets under mortgage. In these cases, the endeavour to use Order 21, Rule 52 is of very small use to the executing creditor. It may be that the suit for partition or for dissolution of partnership is entirely collusive, and under Rule 52, Order 21, very little relief is to be obtained by the executing creditor. According to the particular practice in this Court and in the Courts in England the creditor, in such circumstances, is to go to the Court who appoints the Receiver, and he asks the Court to give him leave, so far as a certain property is concerned, to ignore the receivership altogether. In that case he proceeds exactly as if no receiver has ever been appointed and that is the course adopted by the creditor in this case. Sometimes, when a creditor goes and asks leave in such fashion, the Court will not allow him to attach the assets direct.

In many cases that might result in interfering with the administration of the Court as regards the partnership assets. In a partnership case, the Court calls for the creditors and endeavours to pay the creditors of the firm out of the assets

and to hand back the balance, if any, to the partners according to their shares. In many cases therefore to allow an executing creditor to come in and levy upon the assets directly and independently of the Court's proceedings would lead to confusion and cause injustice or give preference to the attaching creditor. In such cases the Court will refuse the relief in that form and will make an order in the well known form now known by the case of *Kewney v. Attril* ((1886) 55 LT 805). It will give the creditor no leave to attach direct, but it will give him a charging order upon the assets that are being administered upon the term that the creditor will use that charging order in a way which will be under the control of the Court. The present is a case where, the Court granted leave to attach the assets direct by the ordinary process and the Master, in this case, upon a tabular statement, is quite right in ordering attachment under Rule 54, Order 21. The attachment is a perfectly good attachment and the act of bankruptcy therefore cannot be challenged,"

16. The decision of the Supreme Court in the case *Kanhaiyalal Vs. D.R. Banaji and Others*, clearly lays down that a sale held without making attachment of the property or without duly complying with the provisions of law relating to attachment of property is not void but only voidable. The instant case is not one of the cases in which the property in the hands of the receiver had been attached without the leave of the Court, In the instant case necessary permission had been obtained from Court to make the application in execution for attachment of the property in the hands of the receiver and the order for attachment had been obtained after obtaining necessary permission. Pursuant to the order made by the Court for attachment of the property on the basis of the leave given, the property had in fact been attached. It is to be noted that when the Court made the order for attachment of the property and directed attachment to be levied on the property in the hands of the receiver, the Court had not made any order for sale of the property at that stage and had further directed that an application for sale would have to be made on notice to the receiver. The application for sale had been made on notice to the receiver and also to the judgment-debtors and United Bank of India Limited at whose instance the receiver had been appointed. The order for sale had been made on contest in the presence of the applicant, It, therefore, appears that In the facts of the instant case there has been substantial compliance with the provisions of Order 21. Rule 52. Even assuming that there had not been proper compliance with the provisions of Order 21 Rule 52 sale is not vitiated and rendered void in consequence of any irregularity in the attachment and at the most it is a question of irregularity in the matter of attachment of the property sold. Mere irregularity in the mode of attachment is no ground for setting aside the sale. The irregularity complained of must be a material one and must have resulted in substantial injury to the petitioner. The proviso to Order 21, Rule 90 makes the position abundantly clear.

17. In the facts of the instant case I am of the opinion that it is not open to the petitioner to raise this question of non-compliance with the provisions of Order 21, Rule 52 and of the irregularity in the sale in consequence thereof. In the

instant case after the decree-holder had obtained necessary leave of Court to proceed with the execution in respect of the property in the hands of the receiver, the Court had made the order for attachment and at the time when the Court made the order for attachment and directed attachment to be levied, the Court had made a further order that the application for sale would be made on notice to the receiver. The application for sale was made on notice to the receiver and also to the other interested parties, namely, the judgment-debtors and United Bank of India Limited at whose instance the receiver was appointed. The applicant had appeared at the said application and had contested the same. On contest the Court had made an order for sale of the property in the said application of the decree-holder. This question of irregularity, if any, in the matter of attachment on the basis of which the sale is sought to be impeached, was there before the Court when the Court made the order for sale. This question of irregularity if any, must be deemed to have been considered and rejected by the Court, when the Court made the order for sale. The Court had considered it fit to make the order for sale notwithstanding any irregularity or infirmity in the attachment of the property. The property had been sold on the basis of the said order for sale made by the Court notwithstanding such irregularity in the attachment, if any. It is not open to the judgment-debtor to agitate the question of any irregularity in the attachment of the property for impeaching the sale held.

18. There also appears to be some force in the contention of Dr. Das that Order 21, Rule 52 has really no application in the instant case as the receiver had only been appointed for the purpose of realising the rents, issues and profits. Although the order indicates that the receiver was appointed over the property, the whole purpose of the appointment of the receiver, it appears, was to ensure collection of the rents, issues and profits from the tenants of the property in the interest of the mortgagee and the receiver has been authorised to realise all such rents, issues and profits and has in fact been realising all such rents, issues and profits.

19. The other contention raised on behalf of the applicant is that there was a material irregularity in the conduct of the sale, as there was no mention in the sale proclamation of the monthly income the property yields. The sale proclamation had been settled on notice to the judgment-debtor who had participated in the sale reference and no such objection was raised at the time when the sale proclamation was settled. In view of the provisions introduced in Order 21, Rule 90 by way of Calcutta Amendment, it is not open to the applicant to challenge the sale now on the ground of the said irregularity without raising any such objection at the earlier stage and the sale cannot be set aside on that ground. As under the provisions introduced by the Calcutta Amendment to Order 21, Rule 90, the sale cannot be impeached on the ground of this defect in the sale proclamation, I do not think it necessary to consider the decision of the Oudh Court in the case reported in AIR 1943 Oudh 204 and I also do not consider it necessary to decide whether not mentioning the amount of rent the property yielded was an irregularity in the conduct of the sale in the facts of the

instant case.

20. Even if I had come to the conclusion that there was any irregularity which would entitle the petitioner to challenge the sale held, I would have had no hesitation in the facts of the instant case in holding that the petitioner had not suffered any substantial injury in consequence thereof. The only injury complained of by the petitioner is that the bid of Rs. 18,000/- offered at the sale is very low, compared to the intrinsic value of the property. Taking into consideration the encumbrances on the property mentioned in the sale proclamation I am unable to come to the conclusion that the property has been sold at any under value. The purchaser in the instant case is really purchasing the right, title and interest of the judgment-debtors in the property. The purchaser in reality and in essence is purchasing the right of equity of redemption and in view of the heavy encumbrances on the property, particulars whereof are all set out in the sale proclamation, the price offered, to my mind, is fair and reasonable. In any event there are no proper materials which will justify a conclusion that the property has been sold at any under-value.

21. Although I was not satisfied in the present case that any proper grounds had been made out for setting aside the sale. I adjourned the matter after the hearing was more or less concluded to enable the judgment-debtor to produce any purchaser who would be prepared to buy the property at a higher price than offered. I gave this opportunity to the judgment-debtor for my own satisfaction, although the merits of the application did not justify any interference with the sale. I had given the judgment-debtor in the first instance a fortnight's time and thereafter on the prayer of the judgment-debtor I had given a further fortnight's time. The judgment-debtor was not in a position to produce any purchaser who was prepared to buy at a higher offer.

22. In the result this application fails and is dismissed with costs.