
(1920) 04 CAL CK 0056
In the Calcutta High Court

Newajuddin Mondal and Others

APPELLANT

Vs

Raja Sashi Kanta Acharjee Bahadur

RESPONDENT

Date of Decision : 19-04-1920

Acts Referred:

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

Citation : 57 Ind. Cas. 883

Hon'ble Judges : Panton, J;N.R. Chatterjea, J

Bench : Division Bench

Judgement

1. This appeal is against an order rejecting an application for setting aside a sale under Order XXI, Rule 90, Civil Procedure Code.
2. The sale was sought to be set aside on the ground that the sale proclamation and other processes had been suppressed and that in consequence the property had been sold at a grossly inadequate price. The appellant, however, failed to produce any evidence that the property had been sold for an inadequate price and the lower Appellate Court practically found that there was no suppression of the sale proclamation, nor was the price realized really very inadequate. The findings, therefore, on these points cannot be challenged and the appellant has not sought to challenge these findings before us.
3. The only point, however, which the appellant pressed before us was that there was no notice under Order XXI, Rule 22, of the Code and that all the proceedings consequently were void.
4. The objection was not, however, specifically raised in the Court of first instance. It was stated in a general way that no notice was served upon the judgment-debtor. Before the Munsif, the question of notice under Order XXI, Rule 22, does not appear to have been gone into and there is no trace of it in the judgment of that Court. In the grounds of appeal to the lower Appellate Court also it was not taken and it was not until the matter came to be argued in that Court that the question was raised.

5. It appears from the record that there was a notice issued under Order XXI, Rule 22, and there is the peon's report of service. As against that, there is only the evidence of the petitioner that no notice was served and even in his evidence, he does not specifically refer to the omission of service of notice under Order XXI, Rule 22.

6. In these circumstances, we are not inclined to entertain the objection which would necessitate a remand of the case to the Court of first instance to determine a question of fact which was not raised, at any rate not specifically, in the first Court. It seems that it did not strike the appellant, until the matter had been argued before the lower Appellate Court, that any such objection should be raised.

7. In these circumstances, we think that the appeal must fail and is dismissed.

8. No order as to costs.