

(1919) 05 CAL CK 0047
In the Calcutta High Court

Paresh Nath Ghose

APPELLANT

Vs

Hari Charan Shaha and Others

RESPONDENT

Date of Decision : 08-05-1919

Acts Referred:

Citation : AIR 1919 Cal 350 : 52 Ind. Cas. 23

Hon'ble Judges : Walmsley, J; Syed Shamsul Huda, J

Bench : Division Bench

Judgement

Walmsley, J.—This appeal is preferred by the judgment-debtor. The respondents obtained a decree against him on a mortgage for a sum of about Rs. 12,000 and applied for execution. A notice was then issued to the judgment-debtor under Clause (2) of Order XXI, Rule 66, Code of Civil Procedure, and the judgment debtor appeared in Court. Shortly after that, he applied to this Court for stay of execution of the decree and this Court ordered an enquiry to be made for the purpose of ascertaining whether the mortgaged property was sufficient security for the amount of the decree. This enquiry was held by the learned Subordinate Judge and the conclusion at which he came was that the property was worth about, Rs. 11,200. Shortly after that enquiry was completed, the decree holders asked to have a sale proclamation issued and a proclamation was issued; and, in that proclamation, the value of the property was stated to be not Rs 11,200 as it was found in the enquiry, but Rs. 6,000. In due course, the property was put up to sale. One item was sold at Rs. 2,100 and the other at Rs. 4,200 making a total of Rs. 6,300--only Rs. 300 above the sum mentioned in the sale proclamation. The judgment-debtor filed an application before the lower Court asking to have the sale set aside on the ground of material irregularity resulting in loss to him. The lower Court has rejected that application and he has consequently preferred this appeal. It appears to me quite clear on the recent authorities that the misstatement of the approximate value of the property constituted a material irregularity within the meaning of Rule 90 of Order XXI, Code of Civil Procedure. That there was a misstatement there is no doubt. There was an elaborate enquiry in the lower Court as to the value of the property and it was found to be

Rs. 11,200. That fact was perfectly known to the decree-holders and, if they were honest, they would have put that sum in the sale proclamation. On the same materials, it is obvious that there has been a substantial injury to the judgment-debtor because the property has been sold, not for 11,200 but for Rs. 6,300. I do not think it is of any consequence that the judgment debtor did not at once bring it to the notice of the Court that in the sale proclamation the value had been put as Rs. 6,000 instead of Rs. 11,200.

2. The remaining question is whether there is sufficient material for drawing the inference that the injury to the judgment-debtor resulted from the irregularity mentioned. I think there is, for we have the further fact that the only outsiders who bid at the sale stopped their bids at a few rupees more than the sums mentioned in the sale-proclamation. One man went up to Rs. 2,050 for one item and the decree-holders bought it for Rs. 2,100. Another man bid up to Rs. 4,150 for the second property and the decree-holders bought it for Rs. 4,200. It is probable that these bidders were discouraged from bidding beyond the sums entered in the sale proclamation. I think, therefore, it is safe to infer that the price realised was the direct result of the misstatement contained in the sale-proclamation. The appeal should, in my opinion, be allowed and the sale set aside with costs to the judgment debtor both in this Court and in the Court below. We assess the hearing fee in this Court at three gold mohurs.

Shamsul Huda, J.

3. I agree.