(1929) 05 PAT CK 0006

In the Patna High Court

Pirtam Mandar APPELLANT

Vs

Naresh Mohan Thakur and Others RESPONDENT

Date of Decision : 22-05-1929

Acts Referred:

Citation : AIR 1929 Patna 588 : 123 Ind. Cas. 65

Hon'ble Judges : Adami, J

Bench : Single Bench

Judgement

Adami, J.—These three applications are directed against the order of the Additional Subordinate Judge of Bhagalpur, reversing the order of the Munsif setting aside sales in execution of decrees in three suits.

2. Three rent suits were instituted by the respondents opposite party. They failed to add one of the co-sharers and, therefore, the decrees in the three suits were merely money-decrees; they were, however, executed as rent-decrees. The attachment and sale proclamation were issued simultaneously and the three holdings, two of which are nakdi and the third bhaoli, were put up for sale and purchased at what the applicants in the proceedings under Order XXI, Rule 90 alleged to be an absolutely inadequate price.

3. The objections put forward to the sales were: firstly, that the suits being money suits the simultaneous issue of attachment and sale proclamation was wrong, that no notice was issued under Order XXI, Rule 66, that an altogether inadequate value was entered in the sale proclamation, that no mention of incumbrances was made in the sale proclamation, and that the service of the sale proclamation and for processes was suppressed owing to the fraud of the decree-holder and the mortgagee.

4. The Munsif found that the processes were suppressed, that there was fraud, that the price was absolutely inadequate, and that the irregularity in the conduct of the sale and the fraudulent suppression of processes caused an inadequacy of price and material loss to the judgment-debtor.

5. On appeal, the Subordinate Judge held that the processes were properly served and that there had been no fraud. He held that the price fetched was inadequate and that the land should have been valued at about Rs. 100 to Rs. 125 a bigha. He noticed that the incumbrances had not been mentioned in the sale proclamation but held that the intending bidders at the sale would have made inquiries and found out that there were incumbrances and, therefore, were slow to offer any adequate bide. He also held that the valuation in the proclamation was inadequate. In his opinion the judgment-debtor did not suffer by the simultaneous attachment and sale proclamation and it was his finding that the lowness of the price obtained was not due to any irregularity in the proceedings in the sale.

6. It is argued that the learned Subordinate Judge came to a direct finding that the inadequacy of price was not due to an irregularity and, therefore, this Court cannot interfere in revision. This case, however, is, in my mind, one in which this Court should interfere in order that justice may be done. The finding that the processes were properly served must stand. But then we have the fact that the attachment and sale proclamation were issued simultaneously. This was wrong and the effect was that the judgment-debtor got no notice under Rule 66 and, therefore, had no means of assisting the Court in determining the proper valuation. I agree with the lower Court that the fact that the attachment itself was simultaneous would make little difference to the judgment-debtor inasmuch as the attachment is made in order to protect the decree-holder. But I do think that the failure to issue notice would prejudice the judgment-debtor inasmuch as the Court was prevented from learning of the valuation which should be entered in the proclamation.

7. The law requires that incumbrances should be shown in a sale proclamation. In this case there was a very big incumbrance in the shape of a mortgage-decree for Rs. 10,000 or more and the bidders would have no chance of learning from the proclamation how the lands were charged. Of course, if the decree were a rent-decree there would be a right to annul the incumbrance but in this case though the decree is a money-decree being executed as a rent-decree bidders might be misled by the fact that no incumbrances were mentioned. The Courts have agreed that the price fetched was quite inadequate. The valuation in the sale proclamation was so glaringly low that it could hardly have been made in good faith. It has been held in Moti Lal Roy v. Bhawani Kumari Debi 6 C.W.N. 168 that the absence of a specification in the sale proclamation of the incumbrances to which the property advertised for sale is subject and which are required by 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 amounts to a material misrepresentation which must be treated as a material irregularity in publishing the sale. The value of the nakdi holdings should be about Rs. 3,200; in the sale proclamation the value is entered as Rs. 225, the price paid was only Rs. 700. There was no incumbrance on the bhaoli plot but it was worth about Rs. 900 and was sold for Rs. 140. In the sale proclamation it was shown as being worth Rs.

50.

8. It is argued that these various irregularities would not prevent bidders from coming forward. But I am not of that opinion. Those who read the proclamation would see that holdings of a fair area were valued at a ridiculous price and they would naturally suspect that something was wrong and would hesitate to buy litigation. This is a case in which there are so many irregularities and the price fetched was so inadequate that one cannot help finding that the inadequacy was due to the irregularities. As I have said, this is a case in which I think the Court in all justice should interfere, and I would, therefore, set aside the order of the lower Appellate Court and restore that of the Munsif setting aside these sales.

9. The petitioners will get their costs in each of these applications, hearing-fee three gold mohurs.

