

(1901) 06 CAL CK 0015
In the Calcutta High Court
Case No : Appeal from Order No. 249 of 1900

Preo Lall Paul Chowdhry

APPELLANT

Vs

Radhika Prosad Paul Chowdhry and others

RESPONDENT

Date of Decision : 21-06-1901

Acts Referred:

Citation : (1901) 06 CAL CK 0015

Judgement

Maclean, C.J.—This is an appeal from a decision of the Subordinate Judge of Nudia refusing an application by the present Appellant, the judgment-debtor, under see, 311 of the CPC to set aside a sale under a decree. The Respondents are the decree-holder and the auction-purchaser. The applicant complained of material irregularities in relation to the sale, and alleged that, in consequence, his property, which was worth upwards of a lakh of rupees, was sold for about Rs. 29,006. The Court below refused to go into any evidence in support of the alleged irregularities and loss, and held that the Appellant had waived them all by a petition which he presented to the Court on the 7th April 1900 when asking for an adjournment of the sale, and dismissed the application with costs. In his petition of the 7th April 1900 the applicant asked for an adjournment of the sale until the next 12th May "without issue of fresh proclamation and beat of drum" and this application was acceded to. The Subordinate Judge has relied upon the decision of the Judicial Committee in the case of Girdhari Singh v. Hurdeo Narain Singh L. R. 3 I. A. 230 (1876) which is a binding authority upon us, to the effect that the applicant must be taken to have waived any misdescription or misstatements apparent on the face of the proclamation itself. The same view was taken later on by the. Judicial Committee in the case of T. R. Arunachellam Chetti v. V. R. R. M. A. R. Arunachcllam, Chetti L. R. 15 I. A. 171 (1888). That must be taken to be so, but in the present case the Appellant complains of something more than the mere misstatements and misdescriptions in the proclamation itself. It has been admitted that the property to be sold consisted of separate zemindaries, situated apart, and in para. 3 of his petition, a petition which like so many mofussil pleadings is not very artistically drawn and for which

some allowance may reasonably be made,--he says; "As proclamation of sale was not served on each of the properties in the mofussil, no purchaser of the locality was present, and as purchasers were not present, properties of the value of rupees one lakh have been sold for Rs. 29,000 and the judgment-debtor has been totally mined." The Appellant contends that he ought not to have been shut out from giving evidence on this issue, and that his waiver does not prevent him from going into this question assuming,--for no evidence has been taken on the point, that when he presented his petition of the 7th April 1900 he was ignorant of the fact,--if such it were, that the proclamation had not been properly posted up on the various properties according to law. Under such circumstances he says that there would have been a material irregularity in the publishing of the proclamation, which he could not be taken to have waived, as he was ignorant of the fact at the date of the alleged waiver. In my opinion the Appellant ought to have at least an opportunity of going into evidence on this point and that he ought not, to cite the language of the Court below, to be "gagged at the very threshold."

2. Then again the Court below says of paragraph 4 of the Appellant's petition,--a paragraph which is very vaguely drawn. "No doubt this 4th ground might be interpreted to impute fraud to the decree-holder." If it may be so interpreted, the Appellant ought to have an opportunity of going into evidence on the point, for his waiver could scarcely be said to amount to a waiver of any fraud practised upon him. I may point out that in the Privy Council cases to which I have referred, all the facts were gone into, and the waiver was dealt with as one of the elements in the case. On the whole, in a case of this nature, dealing with property of very substantial value, I think the proper course is to remand the case in order that it may be more carefully enquired into, and that the Appellant may have the opportunity of adducing such evidence as he desires, in support of his application. The Respondents will also be at liberty to adduce such evidence as they wish. The costs, 10 gold mohurs will abide the result.

Hill, J.

I agree.