
(1904) 02 CAL CK 0003

In the Calcutta High Court

Case No : Appeal from Orders Nos. 443 of 1902 and 9 of 1903

Rai Kashi Pershad Singh and others

APPELLANT

Vs

Babu Duleep Narain Sahu and another

RESPONDENT

Date of Decision : 04-02-1904

Acts Referred:

Citation : (1904) 02 CAL CK 0003

Final Decision : Dismissed

Judgement

1. These are appeals against orders of the Subordinate Judge of Monghyr passed in an execution case. The decree which it is now being endeavoured to execute is dated the 26th June 1900. It was passed on a compromise. The present objector has mortgaged certain property to the opposite party and borrowed from him. Rs. 322,000, and there was a clause in the mortgage bond providing that if the interest was not paid for three consecutive years the creditors would be at liberty to institute a suit for the interest only and recover it by sale of the mortgaged property subject to the charge for the principal money. The opposite party sued under this clause for interest amounting to Rs. 176,779 and a decree was given on a compromise between the parties to the effect that the decretal amount was to be paid within two years" time and in default was to be realized by sale of the mortgaged property subject to the remaining charge under the mortgage bond. The decretal amount was not paid within the two years. The decree-holder accordingly applied for the sale of the mortgaged property. The judgment-debtors objected. The Subordinate Judge overruled their objections and they now appeal to us. In Appeal No. 9 of 1903, they appeal against an order of the 18th December 1902, directing under sec. 287, cl. (e), C.P.C. that the estimated income from the property about to be sold should be entered in the sale-proclamation at Rs. 21,400 and that the estimated value of the property should be entered as at 10 times this estimated annual income. In Appeal No. 443 of 1902 the judgment-debtors appeal (1) against an order of the Subordinate Judge, estimating the value of the property at this amount and (2) against his further order overruling the judgment-debtors" objection that the execution

could not proceed at all. On behalf of the judgment-debtors the same objections as taken in the lower Court have been pressed before us. We consider that there is no force in either of these objections. The law does not require the Court executing a decree to enter in the sale-proclamation the value of the property to be sold, but only that it shall enter "any other thing which it considers material for the purchaser to know in order to judge of the nature and value of the property." Now the Court executing the decree has entered in the sale-proclamation both the estimated annual income of the property and its estimated value. It has calculated the value at 10 times the amount of the annual income according to the decree-holder. It has allowed only 10 years' purchase, because the property is subject to the mortgage charge for the loan of Rs. 325,000 the principal of the debt, and for further interest on the debt. We consider that in the circumstances the Court could not have estimated the value at any higher rate. But the judgment-debtors urge that the annual Income from the property is not Rs. 21,410 but Rs. 87,395, and the complaint of the Appellant is that the Subordinate Judge has not accepted this estimate of the income and has not made an elaborate investigation into this question, recorded evidence and come to a decision on this point. But sec. 287, cl. (e), C.P.C., does not require the Judge to do so. No law or case has been shown us that makes it necessary for an executing Court to do this. If this were regarded as incumbent on an executing Court, it would be disastrous to decree-holders. It would make it necessary for an executing Court to hold a trial every time it proceeded to draw up a proclamation for sale and the subsequent inevitable appeal and possible second appeal would protract the proceedings to such an extent as practically to deny execution of the decree to the decree-holder altogether. We have been pressed with the decisions in *Saadatmand v. Phul Kuar* L.R. 25 IndAp 146 (1898) and *Siva Sami Naickar v. Ratna Sami Naickar* I.L.R 23 Mad. 568 (1900).

2. But these rulings go no further than to hold that the value of the property stated in the sale-proclamation is a material fact within the meaning of sub-sec. (e) of sec. 287, and that a material misrepresentation of its value is a material irregularity in publishing or conducting it. This has not been denied by any one in this case. No ruling has gone so far as to fetter the discretion given to the executing Court by the law or to lay down how it is to ascertain the material facts it considers necessary to be entered in the sale-proclamation.

3. The next plea urged on behalf of the judgment-debtors is that the decree cannot be executed at all, as the decree-holder in obtaining his decree did not proceed under sec. 99, Act IV of 1882, by bringing a suit under sec. 67 of the same Act. To this it may be replied that the provisions of sec. 99 do not apply at all, as the decree to be executed is a mortgage decree, and there was no attachment required or made: (2) that the decree-holder would appear to have brought a suit under sec. 67 of Act IV of 1882 : (3) that in any case the decree was passed on a compromise and the Appellants are consequently estopped from objecting to it: and (4) whether it be a good or a bad decree, the Court executing the decree cannot call it in question; but must execute it [Maharaja of

Bharatpur v. Rani Kanno Dei 5 C.W.N. 137 (1900)]. For these reasons we dismiss both appeals with costs, which we estimate at 5 gold mohurs in Appeal No. 443 of 1902 and at 3 gold mohurs in Appeal No. 9 of 1903. We direct that the records be returned to the lower Court without delay, so that it may proceed with the execution of the decree.