

(1914) 04 CAL CK 0012
In the Calcutta High Court

Rajani Nath Rakshit

APPELLANT

Vs

Kusum Kaminimajumdar and Others

RESPONDENT

Date of Decision : 22-04-1914

Acts Referred:

Citation : AIR 1914 Cal 778 : 24 Ind. Cas. 64

Hon'ble Judges : Woodroffe, J;Herbert Carnduff, J

Bench : Division Bench

Judgement

Woodroffe, J.—This appeal arises out of an order passed upon an application to set aside a sale.

Pour properties were put up for sale, which are mentioned in the judgment of the District Judge. The learned District Judge set aside the sale as regards all these four properties. Now, as regards properties Nos. 1 and 4, there is no appeal before us and, therefore, the order of the District Judge stands.

2. As regards property No. 2, it is "admitted that there were irregularities, but the contention has been that there is no evidence which shows that substantial injury, which the Judge has found to exist in this case, was caused by the irregularities referred to in the judgment. I think that the facts to which the learned Judge refers in his judgment supports the conclusion at which he has arrived as regards this property and, therefore, his order setting aside the sale as regards property No. 2 stands.

3. The main question in this appeal is as regards property No. 3. No doubt, the irregularities alleged may have affected this property as much as other properties put up at this sale, but it must be found that substantial injury was caused by such irregularity and the learned Judge found on the evidence that as regards property No. 3, no substantial injury has been proved.

4. We have been referred by the learned Pleader for the respondents to some facts connected with the second sale which took place after the Judge's order. I am not sure that we are entitled to look at those facts, but if we do, the result of

that second sale seems to support the Judge's order now under appeal : for, according to the learned Pleader for the respondents, whilst at such . second sale properties Nos. 1 and 2 were sold at an increased price of Rs. 890 and property No. 4 was sold at an increased price of Rs. 550, property No. 3 with which we are now concerned fetched only Rs. 80 more than Rs. 420 at the first sale, which the learned Judge found not to be unreasonable. The question now is whether under these circumstances the sale should also be set aside as regards property No. 3. There is no question but that if at this sale property No. 3 had alone been sold, there would have been no ground for setting aside the sale. But the argument is that because property No. 3 formed part of a lot of four properties and the sale has been set aside as regards the other properties, therefore, the sale as regards property No. 3 must also be set aside although it has not been shown that any substantial injury has been suffered. The learned Judge has gone upon this ground and says that though there has been no injury in respect of property No. 3 or properties Nos. 1 and 4, yet he is unable to discriminate between the properties and confirm the sale of one and cancel the sale of another and on that ground he set aside the whole sale.

5. If, however, we look at the words of the section, they would appear to justify us in this case in dealing with property No. 3 separately from the others : for the section says that where any Immovable property has been sold, application may be made to Court to set aside the sale. The question then is, what is the meaning of Immovable property. Does Immovable property mean all the Immovable properties which are to be put up for sale at one and the same time, or does it mean any one of such Immovable properties the sale of which is liable to be set aside upon the grounds mentioned in the section? I do not see anything in the wording of the section which, under the circumstances of this case, precludes us from giving effect to the contention of the appellant and we have asked the respondents to refer us to any reported authority which would prohibit us from adopting the course which we have been asked to pursue : but no such authority has been produced. On the contrary, we find that in the case of *Macnaghten v. Mahabir Pershad Singh* 9 C. 656 . the High Court, which had previously set aside the sale of twenty properties which were sold at an execution sale, subsequently on review withdrew its order as regards six of those properties so that the effect was as though the High Court had in the first instance set aside the sale as regards fourteen properties under one auction sale and not as regards the remaining six properties. It is true that the order of the High Court was reversed by the Privy Council upon other grounds, but there is nothing in the Privy Council judgment to indicate that they disapproved of the High Court judgment on the ground that it was not proper for the High Court to set aside the sale as regards some of the properties put up at one auction sale and not others. Had that course been illegal, doubtless exception would have been taken to the High Court judgment also on other grounds, but there is no evidence of that. Therefore, it appears to me that we are justified in accepting the argument addressed to us by the appellant as regards the property No. 3,

namely, Estate No. 2593, Taluk Shibkate.

6. As regards this particular property, I would set aside the order of the District Judge setting aside the sale and direct that the sale of property No. 3 should stand.

7. As regards the appellant and the judgment-debtor, each party will bear his own costs. As regards the purchaser of the property No. 2, the appellant must pay his costs. The, hearing-fee is assessed at three gold mohurs. We make no order as to costs of the lower Courts.

Carnduff, J.

8. I agree.