
(1943) 03 PAT CK 0001
In the Patna High Court

Sobhan Khan

APPELLANT

Vs

Gangadhar Senapati and Others

RESPONDENT

Date of Decision : 03-03-1943

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115(c)

Citation : AIR 1944 Patna 40

Hon'ble Judges : Agarwala, J

Bench : Division Bench

Judgement

Agarwala, J.—These applications in revision arise out of a proceeding under Rule 90 of Order 21, Civil P.C., to set aside the sales of two items of property held in execution of a decree for rent. The petitioners are mortgagees of the tenancy rights. In the first case an area of 2.95 acres was sold for Rs. 40 the estimated value in the sale proclamation being Rs. 35. In the second case an area measuring 1.2 acre was sold for Rs. 25 the estimated value in the sale proclamation being Rs. 25. The applications under Rule 90 were made considerably more than 30 days from the date of the sales, but the petitioner alleged that he had no knowledge of the sales until 2nd July 1940, which was within 30 days from the date of the applications.

2. The Court of first instance found that the value put on the properties in the sale proclamation was lower than their real value but was satisfied that the processes had been properly served. The appellate Court also held that the properties had been undervalued and observed that had the applications not been barred by limitation there would have been good grounds for setting the sales aside. The appellate Court also accepted the decree-holder's evidence that processes were duly served and, therefore, did not believe the petitioner's defence that he had no knowledge of the sale until 2nd July.

3. In revision it has been contended that the Courts below have misdirected themselves and that this misdirection amounts to material irregularity in the exercise of jurisdiction so as to enable this Court to interfere u/s 115(c), Civil

P.C. Reference was made to two decisions of Mitter J. sitting singly in the Calcutta High Court in Bhairab Chandra Sinha Vs. Kalidhan Roy Choudhury and Others, and Ramizaddin Basar and Others Vs. Naimaddi Basar and Others, where it was held that where the difference between the real value of the property sold and the estimated value in the sale proclamation is so great as to shock the conscience, the Court should, as a matter of law, infer fraud. It is contended that that observation governs the present case. It is to be observed that in both the cases before Mitter J. the Court of first instance had come to a decision on the evidence that the processes had been fraudulently suppressed and that in each case the decision of the first Court had been reversed on appeal.

4. In the present case both the Courts below have agreed in finding that the processes were served. It is true that when a person, applies under Rule 90 to set aside an execution sale beyond the prescribed period of limitation, the onus is, in the first place, on him to shew that he had no knowledge until within 30 days of the application. It may be that in the circumstances of a particular case, owing to the disparity between the value stated in the sale proclamation and the real value of the property, it is possible to infer fraud in the service of the processes. But the presumption" which may arise in such a case is obviously rebuttable by credible evidence that the processes were in fact served. In the present instance, in spite of the undervaluation of the properties, there was evidence which both the Courts below have found to be true that the processes were properly served.

5. In these circumstances the petitioner has been unable to get over the bur of limitation.

6. The applications must be dismissed with costs. There will be only one hearing fee which I fixed at one gold mohur.