
(1939) 04 PAT CK 0013
In the Patna High Court

Sri Kant Lal

APPELLANT

Vs

Ram Bhajan Singh and Others

RESPONDENT

Date of Decision : 25-04-1939

Acts Referred:

Citation : AIR 1940 Patna 422

Hon'ble Judges : Rowland, J;James, J

Bench : Full Bench

Judgement

James, J.—This is an appeal by one of the judgment-debtors from the order of the Subordinate Judge of Gaya in execution proceedings. The decree under execution is a final decree in a mortgage suit. The mortgaged property consists of an estate contained in forty-eight villages which was comparatively recently constituted a separate mahal by collectorate partition. When the sale proclamation was being prepared, one of the judgment-debtors, Shama Kant Lal, put in separate valuation of each village for inclusion in the sale proclamation as the judgment-debtors' valuation; but the decree-holder objected and the Subordinate Judge decided in the end that a single sum should be stated as the valuation of the whole estate. After this objection had been disposed of, and another sale proclamation issued, the brother of judgment debtor 1, Sri Kant Lal, took the same objection, which has again been overruled by the Subordinate Judge.

2. He also objected that the sale proclamation ought to have been published in each village affected by the decree. The villages lie in thanas Sherghati, Barachati and Aurangabad. Sale proclamation was published in nine villages in Sherghati, in six villages in Barachati and in one village in Aurangabad. The Subordinate Judge held that there had been sufficient local publication. Mr. Rai Gurusaran Prasad on behalf of the appellant does not now contend that there ought to have been a separate sale proclamation published in each village affected; but he argues that the valuation given by the judgment-debtor ought to have been inserted in the sale proclamation, giving a separate valuation for each

village; and that the sale ought to be held village by village and not of the mahal in one single block. Mr. L.K. Jha suggests on behalf of the decree-holders that these objections can no longer be raised because the matter is made res judicata by the decision of the Subordinate Judge in the objection preferred by Sham Kant Lal.

3. Whatever may have been decided by the Subordinate Judge on the objection preferred by Sham Kant Lal, the fact remains that he has to insert in the sale proclamation under Order 21, Rule 66 the valuation given by the judgment, debtor. This valuation has to be inserted as given by the judgment, debtor and must not be altered or corrected by the decree-holders before insertion. Mr. L.K. Jha on behalf of the decree-holders suggests that the application of Sri Kant Lal is imperfect because it was not accompanied by a separate valuation for the sale proclamation; but the valuation put forward by Sham Kant Lal was already on the record and he was entitled to press for its insertion in the sale proclamation. When; the sale is held it must be held village by village and not in one block; and it is proper that in preparation for this the valuation village by village given by the judgment-debtor should be inserted in the sale proclamation.

4. The sale must be held village by village; but this is the sale of a single mahal which for purposes of sale must be broken up into lots. It does not follow that there is any necessity to make proclamation of sale in every village affected; and the publication of the kind which was found to have been made by the order now under appeal may be regarded as sufficient publication, if it should be necessary again to issue the sale proclamation. The appeal partly succeeds and partly fails and each party may bear his own costs in this Court.

Rowland, J.

5. I agree.