

Mohammad Sami Vs. Ashraf Ali and Others

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Court : Allahabad

Decided On : Nov-23-1992

Reported in : AIR1993All135

Judge : D.S. Sinha, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 21, Rules 66 and 90;
[Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ Pition No. 13368 of 1988

Appellant : Mohammad Sami

Respondent : Ashraf Ali and Others

Advocate for Def. : Mr. S.K. Garg, Adv. and ;T.P. Singh, S.C.

Advocate for Pet/Ap. : Mr. R.H. Zaidi, Adv.

Judgement :

ORDER

1. Mohammad Sami, the judgment-debtor in original suit No. 435 of 1973, decided by the 1st Addl. Munsif, Nagina, district Bijnor, seeks to challenge the order and judgment dated 13th September, 1982 passed by the Special Judge (Addl. District Judge), Bijnor where by the order and judgment of the learned Munsif rejecting the objection of the petitioner under Order XXI Rule 90 of the Code of Civil

Procedure, 1908, hereinafter called the Code, has been upheld.

2. Heard Sri R. H. Zaidi and Sri T. P. Singh, learned counsel appearing for the petitioner and contesting respondents Nos. 1 and 2 respectively.

3. The executing court as well as the appellate court have concurrently recorded a finding of fact that the petitioner judgment-debtor has not sustained any substantial injury by reason of any alleged irregularity. As noticed by the appellate court, it was not alleged by the petitioner that there was any fraud or irregularity in conducting the auction sale. What was complained of by the petitioner was the alteration in the sale proclamation of the date of sale from 13th February to 12th February, 1982. This has been found by the court below to be of no consequence in as much as the auction sale did actually take place on 12th February, 1982, which was the date appointed therefor in the proclamation issued under Rule 66 of Order XXI of the Code. It is not the case of auction sale taking place on a date other than the date notified in the proclamation for sale. The view of the courts below that the petitioner had not sustained any substantial injury by the election of the date of sale in the sale proclamation from 13th February to 12th February, 1982, has not been demonstrated to suffer from any such vice which may warrant interference by this Court in exercise of its special and extraordinary jurisdiction under Art. 226 of the [Constitution of India](#).

4. Under Rule 90 of Order XXI of the Code, as amended by this Court, no sale can be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud. The question as to whether any substantial injury has been sustained by the petitioner is purely a question of fact and the courts below have recorded a concurrent finding that the petitioner has not sustained any substantial injury by reason of the irregularity alleged by him.

5. For the foregoing reasons, the Court is clearly of the opinion that the orders, impugned herein, are perfect and do not call for any interference by this Court.

6. In the result, the petition fails and is hereby dismissed. No order as to costs.

7. Petition dismissed.

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