

NavIn Chandra Vs. Ram Devi and ors.

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Court : Allahabad

Decided On : Dec-09-1932

Reported in : AIR1933All161; 147Ind.Cas.212

Appellant : NavIn Chandra

Respondent : Ram Devi and ors.

Judgement :

Mukerji, Ag.C.J.

1. This is an appeal against an order of the learned Subordinate Judge refusing to set aside a sale and arises under the following circumstances: The decree-holder Navin Chandra held a very large simple money-decree against Ram Devi and several other judgment-debtors. The property of the judgment-debtors consisted of houses and shops and they were sold in separate lots. We are concerned with the property which was sold as one lot, though it was described as lots 4 and 5. The sale was conducted by the Amin on 2nd September 1931. There were eight bidders among whom the decree holder, Navin Chandra, was one. His was the highest bid, namely, Rs. 7,100. The Amin did not conclude the sale, as he ought to have done, ordinarily. He made a report to the Court that he feared that people were in the habit of appearing in Court and making larger offers there than- before him, and therefore he did not conclude the sale and waited for the Court's orders. He added that, while he was coming back from the place of the sale, he met on the way two persons, one Bhola Nath and the other Shib Charan Das; that Bhola

Nath offered Rs. 7,200, and Shib Charan Das then offered Rupees 7,300, and that thereupon he had asked them to appear before the Court and make such application as they might be advised. On the next day, that is to say, on 3rd September, Bhola Nath appeared before the Court and he complained that although he had bid before the Amin, the latter had omitted to record his bid and that he was willing to offer Rs. 7,400. The learned Judge then and there accepted Ms offer and concluded the sale. The decree-holder was not present in Court and he did not know of these proceedings. Five days later, on 8th September 1931, he appeared in Court and said that he was willing to pay Rupees 200 more, namely, Rs. 7,600. The learned Judge, for reasons, which we cannot discover, directed the decree-holder to make an application for setting aside the sale. Such an application purporting to be one under Order 21. Rule 90, Civil P.C. was made by Navin Chandra on 23rd September 1931. He stated in the application that his decree was for Rs. 45,000, that the judgment-debtors had no other property and that he was willing to pay Rs. 10,000 for the property in question.

2. After issue of notice to all concerned the learned Judge took up the matter.' The decree-holder did not adduce any evidence and the auction-purchaser Bhola Nath did not think it necessary to adduce any evidence, apparently because the decree-holder did not adduce any. The learned Judge, by a judgment which is impugned in this Court by this appeal, held that there was no material irregularity in conducting the sale and that at any rate, the decree-holder did not suffer any injury. In the result he dismissed the application. In appeal before us it has been contended that the procedure adopted was contrary to law, that there was no valid and proper sale, that there was material irregularity in publishing and conducting the sale and that the decree-holder had suffered substantial injury. It was argued that the sale was not only irregular but it was an absolute nullity. Although there are cases decided under the Civil Procedure Code of 1882 in which it was held that a sale could be a nullity and could be set aside on that ground alone, without it being necessary to prove that any substantial injury was suffered by the applicant, the Code of 1908 does not contain any warrant for any such view. If a sale is held contrary to the rules laid down by the Civil Procedure Code the sale is an irregular one. In some cases where it may be said that there was a fraud committed and for them there is a provision. But there is no provision for setting aside a sale on the

ground of the sale being null and void.

3. We have therefore to consider whether there was any material irregularity in the conduct of the sale. We are of opinion that a sale under the Civil Procedure Code is a public sale unless it is otherwise prescribed: see Order 21, Rule 65, Civil P.C. So far as the bids were held by the Amin the sale was undoubtedly a public one but when the learned Judge accepted the offer of Bhola Nath for Rs. 7,400 the sale was not a public one although it was held at a public, place, namely in Court room. A public sale must imply a sale after notice to the public. In this view the sale to Bhola Nath was only a private sale. We are accordingly of opinion that there was material irregularity in conducting the sale. The next question is whether the applicant, who is the decree-holder in this instance, suffered 'substantial injury' by reason of such irregularity. The point is not free from difficulty and apparently has not been considered by any reported cases that may have been brought to our notice. The position taken up by the decree-holder is this He has a large decree which is going to remain unsatisfied to a large extent. He would prefer to have judgment-debtor's property to the money that might be fetched by a purchase by any other person. For this reason he made the highest bid before the Amin and he was willing to pay Rs. 10,000 for the property for which Bhola Nath was offering only Rupees 7,400. His contention is that he is entitled to purchase an immovable property just as any other person is entitled to purchase it and, circumstanced as he is, he, is willing to pay a very very large price and to have a particular property at the purchase of which he has set his heart. The question is whether in the circumstances we can say that by being denied an opportunity to make a purchase the decree-holder has suffered a substantial injury.

4. The learned Counsel for Bhola Nath has argued that if Navin Chandra has suffered any injury it is not as the decree-holder but as an individual, who is anxious to purchase a particular property. But para. 2, Sub-rule 1, Rule 90 does not say that the injury should be suffered, where the applicant is the decree-holder, 'as a decree-holder.' Therefore we have only to see whether the applicant has sustained any substantial injury. It does not matter whether that substantial injury be in his capacity as a decree-holder or in his capacity as an individual. As we have said, the point is not free from difficulty but after a consideration we are of

opinion that the denial of an opportunity to purchase the property which is to be sold by auction would be a substantial injury within the meaning of Order 21, Rule 90, Civil P.C. It may be true that anybody else who is not one of the persons entitled to apply for the setting aside of a sale may suffer a similar injury and he has no remedy to apply for the setting aside of the sale. But it does not follow necessarily from this that a person who is entitled to ask the Court to set aside a sale cannot establish that by being denied an opportunity to bid at the sale he has sustained a substantial injury, inasmuch as he has lost his opportunity to purchase an immovable property which he wanted to purchase. A right of pre-emption is a recognized right in this country and it is recognized by the Civil Procedure Code in Order 21, Rule 88, Civil P.C. This right of pre-emption is nothing but a right to purchase a particular property on payment of a price offered by another. If such a right is a good right, a right to purchase a property at an auction sale must also be a good right. It has been held that a loss of immovable property cannot be properly compensated for in money and therefore where an injury to immovable property is concerned, an injunction must be issued and it cannot be held that a monetary compensation would be sufficient for the injured party.

5. We have already mentioned that the applicant was prepared to pay Rupees 10,000 for the property and his counsel states before us that he is still willing to pay this sum for this property. We are used to consider Rule 90, Order 21, Civil P.C., from the point of view of a judgment-debtor whose property has been sold for less than the market value or from the point of view of a decree-holder who has not received sufficient value for the property he has put up for sale, because these are cases which more frequently happen. But we have no right to assume that other possible cases, like the present one, are not within the language of the Code, simply because such cases are rare. On a consideration of the entire circumstances of the case we think we ought to set aside the sale complained of and to send back the case to the Court below for a resale of the property according to law. We order accordingly. The decree-holder must bid not less than Rs. 10,000 at the next auction sale. The respondent Bhola Nath must pay the costs of the applicant in this and in the Court below.

