

Rajendra Behari Lal Vs. B. Gulzari Lal and ors.

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Court : Allahabad

Decided On : Nov-14-1932

Reported in : AIR1933All747; 147Ind.Cas.844

Appellant : Rajendra Behari Lal

Respondent : B. Gulzari Lal and ors.

Judgement :

Mukerji, Ag. C.J.

1. This is an appeal from an order, refusing to set aside the auction-sale held on 20th August 1931. It appears that a mortgage decree was made on 28th May 1929 against a minor, Rajendra Behari Lal, who is the appellant before us, in favour of the respondents, Gulzari Lal and others. 15 biswas of village Hirdamai and 10 biswas of village Shadipur were sold, the former for a sum of Rs. 23,000 and the latter for Rs. 20,000. On 14th September 1931 an application was made on behalf of the minor by the guardian of the minor to set aside the sale. The grounds taken were so far as we are concerned in this appeal, that there was no proper proclamation of the proposed sale in the villages and that the property sold was worth over a lakh of rupees. The Court of first instance found that there was no proclamation of the proposed sale by beat of drums but the learned Judge held that it was not an irregularity in the circumstances of the case and he found that the irregularity did not result in any serious loss. He also found that the judgment-debtor was estopped from questioning the value of the property as stated by the decree-holder in his affidavit filed when he applied for sale.

2. It appears that the evidence on the point is entirely one-sided and there can be no denying the fact that there had been no publication of the proclamation of sale by beat of drums. The law requires that an impending sale should be proclaimed by beat of drums or other customary mode (see Order 21, Rules 54 and 67). The Bombay High Court in Trimbak Ravji v. Nana (1886) 10 Bom 504 held that a failure to publish the sale proclamation by beat of drums was a material irregularity, and the same view was taken in Krishna Pershad v. Moti Chand (1913) 40 Cal 635. The learned Subordinate Judge has expressed the opinion that in view of the slight change in the language of the Code, the old rulings did not hold good. It appears that in Order 21, Rule 67, the words 'as nearly as may be' have been added which did not find place in the Code of 1882, Section 289. In our opinion, however this addition does not make any change in the law, where it is possible to proclaim the sale by beat of drums. It has been suggested, but there is no evidence on the point, that the villages being in the zamindari of the judgment-debtor nobody would come forward to undertake the beating of drums; but surely a beater could have been hired from some other village and the sale could have been published by beat of drums. The finding of fact arrived at by the Court below stands good, namely, that there was no publication of the sale proclamation by beat of drums.

3. The second point is whether the irregularity has resulted in any loss to the judgment-debtor. The evidence on this point is again one-sided and consists of the statements of the two patwaris of the two villages. It does appear that the properties recorded are recorded as fetching large profits. The land revenue of 15 biswas of

Hirdamai is Rs. 1,358 and the land revenue of 10 biswas of Shadipur is Rs. 1,416. The net profits deposited by the patwari for Hirdamai is Rs. 2,500 for 15 biswas and for 10 biswas of Shadipur the net profits are Rs. 4,316. But it appears that all these are mere entries in the papers, for we have not got a single witness who may be forthcoming to swear that he was prepared to purchase the property for a larger value and was prevented from doing so because he had no information of the sale. The sale had been under contemplation for nearly a year. One proclamation was issued for 21st July 1930; another for 20th October 1930; a third for 20th December 1930; a fourth for 21st February 1931 and at last the sale took place on, 20th August 1931. At one of the earlier sales one Murlidhar purchased the property for Rs. 40,000 but he was unable to deposit the purchase money and the sale did not take effect. The sale in question fetched Rs. 3,000 more

4. In his petition before the Court the appellant stated that he had been able to procure an offer of Rs. 48,000 since the sale. This statement would amount to this that the judgment-debtor could not procure a purchaser who could offer more than Rs. 48,000. Thus the difference in the price is only Rs. 5,000. We are, in the circumstances, unable to connect the irregularity with the loss and this is essential under the language of the Code and under a decision of their Lordships of the Privy Council in *Tasadduk Rasul Khan v. Ahmad Husain* (1894) 21 Cal 66. The result is that the appeal fails and is hereby dismissed with costs.

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