

**Babu Ram Vs. Inamullah**

**Babu Ram Vs. Inamullah**

**SooperKanoon Citation :** [sooperkanoon.com/476018](http://sooperkanoon.com/476018)

**Court :** Allahabad

**Decided On :** Dec-21-1926

**Reported in :** AIR1927All241

**Appellant :** Babu Ram

**Respondent :** inamullah

**Judgement :**

1. It is unfortunate that this Court should be compelled to interfere twice after an interval of more than one year with the order of the Court below, but we feel that we have no alternative in this case and that there ought to be a fresh sale. There are several unsatisfactory features about the case. First, the property is valued at Rs. 1,000 in the sale proclamation. The judgment-debtors originally gave over Rs. 12,000 for it. Some shops have collapsed and some buildings are obviously dilapidated. This would depreciate the value of the property very much, and the Judge in this case says 'it can hardly be worth more than half,' which would be Rs. 6,000. He then goes on to say that in his opinion the property would be worth a little more than Rs. 3,000. This is rather a big jump from Rs. 6,000, but it explains a specific finding by the Judge that the property fetched a low price and the judgment-debtors have suffered. The low price was Rs. 1,550 and, therefore, the figure in the sale proclamation was too low. When a fresh sale proclamation is issued, this matter ought to be carefully considered by the Court below.

2. The next point is that the provisions of Order 21, Rule 69 were ignored. The rule distinctly says that the sale shall be adjourned to a specified day and hour. In the ordinary way those are the only two important things to be known, after the property has been properly advertised by a sale proclamation. It is admitted that no hour was fixed on this occasion. The learned Judge says this is a thing which is hardly ever done by the Courts and elsewhere it is said 'it is more honored in the breach than in the observance.' We can only say that this honored breach must stop. It is a very serious matter. The hour is only of slightly less importance than the day and ought to be clearly announced to the public, and we think it right to draw the attention of the learned Judge to this matter, with a view to intimating to the Courts below that this provision in the rule must be followed. The learned Judge himself attached importance in his judgment to the hour of the adjourned sale, but he attributes to proposing purchasers a knowledge that the sale would take place at the same hour.

3. Why a would-be purchaser should be supposed to know this, when the rule says that the hour is to be specified in the order of adjournment, it is difficult to follow, unless would-be purchasers must be taken to know that the subordinate Courts invariably break the rules in the Code which direct them how to conduct the sales. But in this particular instance, if it be the fact that the would-be purchasers knew that the sale would take place at 12, there could hardly have been any body of persons in Budaun on that day who were more surprised and deluded by the difference between the actual facts and what they were supposed to know, because, although according to the learned Judge, by the practice of the Courts the sale ought to take place at 12, and everybody in Budaun ought to know that it would take place at 12, the Sale Officer did not arrive till 3. How it happened that there were ten bidders still left at 3 o' clock for the sale, which everybody knew was going to take place at 12, is a matter which is left somewhat mysterious. But the learned Judge has not had the courage of his opinions in holding that the appellant ought to have called the purchasers who were misled by the time of the sale taking place, when he himself holds that everybody ought to have known it.

4. Under the circumstances, closely following the direction contained in the decision of the Privy Council, to which we have been referred, namely, Mahabir

Pershad Singh v. Dhanukdhari Singh [1904] 31 Cal. 815, we think that we, differing from the lower Court, are bound to draw the inference that, assuming that the learned Judge is right when he says that the property fetched a low price the real explanation of that low price is the breach of the law, and the muddle and misdirection to the proposing purchasers which was allowed to take place about the hour of the sale.

5. Now, without direct evidence, a strong clear case is required to establish the connexion between the irregularity and the inadequate price. In our opinion, the circumstances in this case are strong, and leave no doubt as to the proper inference which ought to be drawn. We are confirmed in this view by the fact that an experienced Judge on a previous occasion, although for somewhat unusual reasons, which did not approve themselves to this Court, was satisfied that the sale was not a fair one, and ought to be set aside. We will leave the costs of this appeal to abide the result of the sale in this way: if the price fetched is more than Rs. 1,550, the judgment-debtor must have his costs with fees on the higher scale. If it fetches only Rs. 1,550 or a smaller price, each party must pay his own costs of this appeal.