

Rup Kishore Vs. Collector of Etah and ors.

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Court : Allahabad

Decided On : Jul-16-1929

Reported in : AIR1929All948

Appellant : Rup Kishore

Respondent : Collector of Etah and ors.

Judgement :

Pullan, J.

1. This is an appeal by an auction-purchaser against an order of the Subordinate Judge setting aside a sale. The sale took place on 28th February 1927, and certain property was sold for Rs. 6,500. The purchaser was the decree-holder-It is alleged, and the lower Court has held, that the property is of a much greater value and this fact is conceded by the appellant. We have, however, to consider whether the low price was caused by a material irregularity in the proclamation or conduct of the sale. The first question raised is whether there was any legal proclamation of the sale for 28th February, and the second is whether supposing that the proclamation as made for 27th February can be taken to be a proclamation for the sale held on the 28th, that proclamation itself was irregular. I will take the second point first.

2. The proclamation of sale for 27th February contains the ordinary details required by law under Rule 66, Order 21, Civil P.C., that is to say, there is a

description of the property to be sold and a statement of the incumbrances and the amount of the decree. There is no statement of the value of the property, and the lower Court has held that this is a material irregularity, relying upon the judgment of their Lordships of the Privy Council in the case of Saadatmand Khan v. Phul Kuar [1898] 20 All. 412. I do not consider that the remarks of their Lordships in that case are authority for holding that the Court must under Clause (e), Rule 66(2) give a valuation of the property. What their Lordships held was that if the Court stated the valuation of the property, that must be considered to be a material fact. They did not say that this being a material fact must always be stated by the Court in the sale proclamation, and I am of opinion that it will be unwise to direct that the Court should in every case give a valuation for the property to be sold. It is clear that such action on the part of the Court might affect the price in an undesirable manner, and although certainly it is open to the Court to state anything which it considers material for the purchaser to know, and undoubtedly the opinion of the Court as to the value of the property is a material fact, yet I am not of opinion that the Court should be compelled by law to give this guide to the purchaser. For the rest there are certain minor irregularities which have been mentioned in connexion with this proclamation; thus there is some doubt as to the drum having been beaten at the right place, and it is said that the notice was not affixed to the property itself but on a tree in the neighbourhood. Failing definite proof that these irregularities affected the price finally realized at the sale I should not be disposed to hold that the proclamation was defective as regards the sale fixed for 27th February. But the sale did not take place on 27th February. It took place on the 28th. The reason for this is that on 21st February the amin who was the sale officer informed the Court that 27th February was a Sunday, and on 24th February the sale officer gave an order to the amin to hold the sale on 28th February instead. The lower Court has gone into the evidence as to whether the change of date was notified by beat of drum and it has found that the evidence is conflicting, but in my opinion this is not an essential point in the case. Either the Court could adjourn the sale to the 28th under Rule 69, Order 21, in which case the old proclamation for 27th February was still a valid proclamation, and as the new date was within 14 days there was no need for any further action; or the Court could not alter the date from 24th February to 28th without giving notice to the parties

concerned. Rule 69, Clause 1 runs as follows:

The Court may in its discretion adjourn any sale hereunder to a specified,, day and hour and the officer conducting any such sale may in his discretion adjourn the sale recording his reasons for such adjournment.

3. It is clear to me that this rule so far as it relates to the officer conducting the sale can only apply to an adjournment on the date of the sale, and I see no reason to form a different opinion as to the rule relating to the Court. In my opinion the rule means that when the date of the sale arrives it may be adjourned either by the Court or by the officer conducting the sale. Such an adjournment takes place when the parties have received their notice and have had an opportunity of appearing at the place of sale. It is for this reason that there is no need for a fresh proclamation unless the adjournment is for a longer period than 14 days. But I am not prepared to hold that the Court can, unknown to the parties, at any time alter the date fixed for the sale to some other date without giving notice. In my opinion a sale held under such circumstances would be a sale of which no notice has been given and consequently no proclamation.

4. A proclamation for 27th February is not a proclamation for 28th February and a notice given for 27th February is not a notice given for 28th February. Unless the parties could be proved to have been present on 24th February when the date was altered, it cannot be held that they have had a notice that the sale would be held on 28th, and I would, therefore, find that this sale on 28th was made without any proclamation for that date as required under Rule 66(2) and without any notice being given to the parties concerned. There is, therefore, a material irregularity, and as it is admitted that the sale took place for a very low value I am prepared to find that the irregularity committed is the cause of the low price. I am further led to this view by the fact that no notice of the altered date was given to the Court of Wards who represent the judgment-debtor in this case, and neither the judgment-debtor himself nor the Court of Wards had any representative present at the time of the sale.

5. In these circumstances I would dismiss this appeal.

Sulaiman, J.

6. I agree that this appeal ought to be dismissed. Before a sale is set aside under Order 21, Rule 90, it is incumbent upon the judgment-debtor to make out that there was a material irregularity or fraud in publishing or conducting the sale, and he must further show that he has sustained substantial injury by reason of such irregularity or fraud.

7. That he has sustained a substantial injury admits of no doubt. The property was actually sold for a sum just exceeding Rs. 6,000 but several persons are prepared to offer much more. Indeed the judgment-debtor himself offered to take the property on payment of Rs. 10,000 but the decree-holder who has himself purchased the property did not agree to accept less than Rs. 15,000. There can, therefore, be no doubt that the property has been sold very cheap and the judgment-debtor has suffered loss. The question for consideration is whether there has been a material irregularity and whether the loss is its consequence.

8. The learned Subordinate Judge has referred to the fact that there was no mention of any value in the proclamation of sale. It is difficult to say that in all cases an omission to specify the valuation is necessarily a material irregularity, though there may be circumstances in which it may become necessary to specify the value in order to enable the bidders to judge of the value of the property. I would, therefore, not be prepared to hold that in this present case the omission was a material irregularity.

9. Under Order 21, Rule 54, Sub-clause (2) it was necessary that the order for sale should be proclaimed at some place on or adjacent to the property by beat of drum or other customary mode and that a copy of the order should be affixed on a conspicuous part of the property and upon a conspicuous part of the Court house. Admittedly the sale proclamation was not affixed on any part of the property which was going to be sold. It was hung up on a pipal tree at some distance from the place. An omission to affix the sale proclamation on the property itself, when it was required expressly by the Act, was a material irregularity. That fact might have contributed towards the absence of sufficient bidders on the date of the sale which prevented the proper price from being offered.

10. The main circumstance which undoubtedly has led to the property being sold for an inadequate price is that, on the report of the amin that the date previously proclaimed was a Sunday, the Court directed that the sale should take place on the following Monday. No notice of this alteration of the date was given to the judgment-debtor or the Court of Wards in which the property had become vested. Admittedly no fresh proclamation of sale was issued. The evidence led by the decree-holder was to the effect that there was a fresh beat of drum on 27th and 28th February 1927, announcing that the sale would take place on 28th February. The learned Subordinate Judge, who heard this evidence has considered it unworthy of belief and has rejected it. I see no reason for taking a contrary view.

11. The question for consideration is whether there has been a material irregularity in the publication of the sale. The learned advocate for the appellant argues that under Order 21, Rule 69, the Court has an absolute discretion to adjourn any sale to a specified day and hour and that if the adjournment is not for a longer period than 14 days no fresh proclamation is necessary. The rule, however, merely lays down that if the adjournment is for more than 14 days a fresh proclamation shall be made. The argument addressed to us on behalf of the respondent is that under this rule the Court can adjourn the sale only by an order passed on that very day i.e., the day fixed for the sale, and that it would not be a case of adjournment if the date is altered or the sale is postponed in advance. The language of the rule is undoubtedly ambiguous, but I am not prepared to commit myself to holding that the word 'adjournment' would not be wide enough to cover a postponement by an order passed in advance.

12. But it seems to me that no exhaustive list of material irregularities is given in Order 21, and the absence of due notice to the parties concerned may in certain circumstances itself amount to a material irregularity. The order in this particular case was passed on a report received from the amin. It is not at all clear why Sunday was necessarily objectionable. The sale had been previously proclaimed to take place on that date and prospective purchasers might have made arrangements to be present on that date. The date was suddenly altered without any notice having been given to the Court of Wards, which might have liked to send a representative to be present on that date. In this particular case the amin

did not appear at the proper time and place on 27th February to announce to the bidders, who arrived there, that the sale would take place on the next day, but merely absented himself. Thus even if bidders arrived on the scene on 27th. they would have no means of knowing that the sale was going to take place the very next day. I am, therefore, of opinion that the cumulative effect of the entire proceedings is that there has been a material irregularity in the publication of the sale and that in consequence of it the judgment-debtor had suffered substantial loss inasmuch as the property had been knocked down for a grossly inadequate price. I would, therefore, dismiss the appeal with costs.

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