

Surendra Mohini Debi Vs. Amaresh Chandra Chatterjee

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Court : Kolkata

Decided On : Feb-22-1912

Reported in : (1912)ILR39Cal687

Judge : Cecil Brett and; Carnduff, JJ.

Appellant : Surendra Mohini Debi

Respondent : Amaresh Chandra Chatterjee

Judgement :

Cecil Brett and Carnduff, JJ.

1. A suit was brought by Shib Coomari Debi, who is described in the present Rule as the opposite party No. 21, against other persons, who are also parties to this Rule, or against their previous representatives-in-interest for the recovery of the rent of a certain dur-putni. Shib Coomari Debi obtained an ex parte decree, and the dur-putni was sold in satisfaction of that decree on the 12th June 1907, and purchased by the petitioner in this Rule, Surendra Mohini Debi who, from her description, appears to be the wife of the opposite party No. 7, Jnanendra Nath Chattopadhyaya. On the 31st July 1907 an application was made, under Section 311 of the old Code of Civil Procedure, by Debendra Nath Chattopadhyaya, opposite party No. 13, and on the same date three other judgment-debtors, namely, opposite parties Nos. 1, 14 and 17, filed a similar application. The three last-mentioned persons also filed an application under Section 108 of the old Code

to have the ex parte decree set aside. On the 4th January 1908 the application came up for disposal, and a petition of compromise between the decree-holder and the judgment-debtors was filed, by which the decree-holder consented to the sale being set aside on receipt of the amount decreed. The application under Section 108 of the Code of Civil Procedure was also dismissed on the same day.

2. These proceedings were taken without notice to the auction-purchaser, and the case which is set up by the auction-purchaser, who is the petitioner in this Rule, is that she was not aware of these proceedings.

3. On the 27th March 1908 the petitioner put in an application under Section 312 of the Code of Civil Procedure asking that the sale to her might be confirmed and the sale-certificate issued. That application was rejected by the Court of first instance on the ground that the sale, having already been set aside, could not be confirmed. There was an appeal against this order to the lower Appellate Court, and the case was remanded. On remand the Court of first instance arrived at the same conclusion as it had come to before. 1 There was an appeal again to the District Judge against the decision on remand, and the District Judge dismissed the appeal, holding that as the sale had been set aside he could not interfere. At the same time he expressed the opinion that the auction-purchaser, not having been made a party to the proceedings for setting aside the sale, was not bound by them. Against this decision of the District Judge the auction-purchaser first applied to this Court on the 29th November 1909, and obtained the present Rule 1 (No. 4178 of 1909) on the opposite party to show cause why the order of the District Judge, dated, the 29th July 1909, should not be set aside, the sale confirmed and the sale-certificate granted to her, or why such. If other order should not be made as to this Court might seem fit and proper. On the 3rd March 1910 the petitioner also filed an appeal against the same order, which is appeal from order No. 95 of 1910, and the Appeal, and the Rule have now come before us for disposal.

4. A preliminary objection has been taken to the hearing of the appeal on the ground that no second appeal lies, as the present case between the auction purchaser and the judgment-debtors cannot be regarded as a proceeding between the parties to the suit or their representatives under Section 244 of the old Code of

Civil Procedure. The learned pleader, who appears on behalf of the appellant, does not oppose the objection, and, in our opinion, it must prevail and the appeal be dismissed.

5. We have then to deal with the Rule, and the ground which the learned pleader has advanced in support of it is that the auction-purchaser was a necessary party to the application under Section 311 of the old Code of Civil Procedure, and that, as she was not made a party, the provisions of the section were not fully complied with, and the order of the Munsiff was made without jurisdiction. In support of the contention that an auction-purchaser was a necessary party to an application under Section 311 of the old Code of Civil Procedure, the learned pleader, who appears for the petitioner, relies mainly on the decision of the Allahabad High. Court in the case of Karamat Khan v. Mir Ali Ahmed (1891) All. W.M. 121. The learned Judges, who decided that case, appear to have held that, as from the terms of Section 312 of the Code, it was obvious that the auction-purchaser must be a party to a proceeding under Section 312, it followed that he was also a necessary party in the case of an application under Section 311 in order to fulfil the conditions of Section 311. Reliance is also placed on a decision of a single Judge of the Allahabad High Court in the case of Ali Gauhar Khan v. Bansidhar (1893) I.L.R. 15 All. 407. In that case, however, the question for consideration was whether the decree-holder was a necessary party to an application under Section 311, and the learned Judge, in deciding that he was a necessary party, appears to have been influenced by the fact that, in the case of Karamat Khan v. Mir Ali Ahmed (1891) All. W.N. 121 to which we have already referred, it was held that the auction-purchaser was a necessary party. The learned Judge held that, if the auction-purchaser was a necessary party, therefore much more the decree-holder should be held to be a necessary party; but he did not consider the question whether, in fact, the auction-purchaser was a necessary party or not. Reference has also been made to an unreported case of this Court (Appeal from Order No. 421 of 1906), which was decided on the 17th January 1908. That, however, was an appeal against a decision after remand, and, on referring to the judgment and the remand order, we find that the learned Judges of this Court, when remanding the case for a re-hearing, expressed the opinion that the auction-purchaser should be made a party to the miscellaneous proceedings, and the

learned Judges, who decided the appeal after remand, having found that the directions of this Court had not been complied with and the auction-purchaser had not been made a party, held that the appeal was defective in form, and that it should be dismissed with costs. The rulings to which we have been referred do not, in our opinion, give as much assistance in the present case.

6. The learned pleader, who appears for the petitioner, has, however, relied on the provisions of Section 310A of the old Code, and he has contended that, as it has been held in certain cases that the auction-purchaser is a necessary party to an application under Section 310A, it must necessarily follow that he is also a necessary party to an application under Section 311. We have been referred to several decisions in which it has been held that to an application under Section 310A the auction-purchaser is a necessary party; but on behalf of the opposite party in the present Rule it has been contended that those decisions are no authority for the contention which has been advanced before us in the present case. Section 311 itself contains no provision to the effect that notice shall be issued to the auction-purchaser, and the ground on which a sale can be set aside under that section is not a ground on which, ordinarily, the auction-purchaser would have any interest or be able to offer any assistance. The ground is material irregularity in publishing or conducting the sale. As the auction-purchaser can have no part in a proceeding with regard to the publishing or conducting the sale, ordinarily he would not be a person who would be directly interested in an application under that section. The learned pleader for the petitioner has, however, contended that the auction-purchaser has interests in the property which might suffer if the proceedings were not conducted in his presence. He has not distinctly pointed out what those interests are; but we will take it that he refers to what was described in *Adhur Chunder Banerjee v. Aghore Nath Aroo* (1898) 2 C.W.N. 589 as the equitable or inchoate right of the successful bidder awaiting completion by the grant of the sale-certificate. Sales in execution of decrees are, however, held for the benefit of decree-holders, not of auction-purchasers, and it seems to us that the Legislature in 1882 evidently considered that the latter's interests would be sufficiently safe-guarded by the provisions of Section 315 of the old Code. Section 310A does not apply to the same set of facts, as form the subject of an application under Section 311; and in an application under Section 310A, the purchaser

certainly has an interest in seeing that the provisions of Clause (a) of that section are complied with. Moreover, even in a proceeding under Section 310A, it has been held by this Court in *Bhairab Pal v. Premchand Ghose* Civil Rule No. 411 of 1897 (unreported) that notice to the auction-purchaser is not necessary. We may further observe that Section 313 gives the purchaser a right to make an application to set aside the sale on certain special grounds, and in that section there is a distinct proviso that the judgment-debtor shall have an opportunity of being heard against the order. In Section 311 there is no such proviso, and it is only since the passing of the new Code of Civil Procedure that a general provision has been inserted in Order XXI, Rule 92, giving all persons affected a right to be heard on an application made by the decree-holder or any other person to have the sale set aside on the ground of material irregularity in publishing or conducting it. In our opinion the ground advanced by the learned pleader on behalf of the petitioner for setting aside the order of the lower Court cannot be maintained. So far as this Court is concerned, no authority has been produced before us to support the contention that the auction-purchaser is a necessary party to an application under Section 311 of the old Code of Civil Procedure, and the reasons given in the decisions of the Allahabad Court, to which we have referred, do not appear to us to be based on sound or sufficient grounds. We, therefore, see no reason to interfere with the order of the lower Court. The Rule is accordingly discharged with costs.