

MANU/BH/0434/1917

Equivalent Citation: 37Ind. Cas.872

**IN THE HIGH COURT OF PATNA
FULL BENCH**

Civil Revision No. 198 of 1916

Decided On: 24.01.1917

Appellants: **Raghunath Singh**
Vs.

Respondent: **Hazari Sahu**

Hon'ble Judges/Coram:

Edward Maynerd Des Champs Chamier, Kt., C.J., Saiyid Sharfuddin and Atkinson, JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: Sushil Madhub Mullick

For Respondents/Defendant: K.P. Jayaswal

JUDGMENT

Edward Maynerd Des Champs Chamier, Kt., C.J.

1. This is an application for revision of an order of the Subordinate Judge (1st Court) of Gaya. A decree upon a mortgage was obtained against the applicant in execution of which the mortgaged property is to be sold. When the Court was preparing the sale proclamation, the first mortgagee said that the value of the property was Rs. 7,800 odd. The mortgagor (present applicant) estimated the value at Rs. 65,000 while a puisne mortgagee estimated it at Rs. 20,000. The applicant put in a petition praying that evidence might be taken regarding the value of the property, and he desired to call witnesses on the subject. On August 12th, 1916, the Subordinate Judge recorded the following order: "Heard Pleaders of both sides. The values of properties given by both sides are agreed to be stated in the sale proclamation. Hence the judgment-debtor's prayer for time is rejected as not necessary. Let the value given by both sides be stated in the sale proclamation." The agreement referred to in this order was an agreement between the first and second mortgagees. The mortgagor (present applicant) who was the judgment-debtor did not agree. In fact as already stated, he wished the Court to ascertain the value. The figures given above are those stated to us by the learned Vakil for the applicant. When we examined the sale proclamation, it appeared that the figures stated, by the learned Vakil were not correct and that the difference between the values given by the different parties was proportionately much greater than in the figures given above. I have not examined the figures further, because they do not affect the view which I take of this case. It is certain that the mortgagor wished the Court to enter a very much larger figure in the sale proclamation than either of the mortgagees was prepared to accept. The questions for decision are whether the Subordinate Judge ought to have ascertained the value himself and secondly if he ought to have done so, whether upon the present application this Court can require him to do so.

2. It was suggested that the action of the Court in settling the proclamation was administrative and not judicial and that no case had been "decided" within the

meaning of section 115 of the Code of Civil Procedure. In my opinion, the action of the Court in settling the terms of a proclamation under Order XXI, rule 66, is a judicial proceeding. I would point out that Order XXI, rule 66, differs from section 287 of the Code of 1882 in that it required the Court to draw up the proclamation after notice to the decree-holder and the judgment-debtor. This indicates, in my opinion, that the action of the Court in settling the proclamation is intended to be judicial. I do not think it necessary to consider the question whether a case has been "decided" within the meaning of section 115 of the Code of Civil Procedure. The jurisdiction of this Court to interfere under section 107 of the Government of India Act is clear, whether the action of the Court below was administrative or judicial. It is conceded that no appeal lies in this case.

3. If, as I hold, this Court has jurisdiction to entertain the present application it ought, in my opinion, to set aside the order now in question and direct the Subordinate Judge to ascertain the value of the properties to be sold. Order XXI, rule 66, requires the Court to cause a proclamation of the intended sale to be prepared. Such proclamation is to be drawn up after notice to the decree-holder and the judgment-debtor and is to specify as fairly and accurately as possible, inter alia, every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property." In *Rajah Ramessur Proshad Narain Singh v. Rai Sham Krissen* MANU/WB/0266/1901 : 8 C.W.N. 257, it was held that the judgment-debtor was entitled to have a reasonably correct valuation placed upon the property. In *Kashi Pershad Singh v. Jamuna Pershad Sahu* MANU/WB/0062/1904 : 3 C. 922, it was said that the Court was not bound to investigate the value of the property, but in *Saurendra Mohan Tagore v. Hurruk Chand* 12 C.W.N. 542, it was pointed out that the remarks made in *Kashi Pershad Singh v. Jamuna Pershad Sahu* MANU/WB/0062/1904 : 3 C. 922 were obiter dicta. In *Lachman Pershad Singh v. Ganga Pershad Singh* MANU/WB/0384/1910 : 6 Ind. Cas. 180 : 15 C.W.N. 713, the Court referred to the case of *Saurendra Mohan Tagore v. Hurruk Chand* 12 C.W.N. 542 and held that the Subordinate Judge was wrong in refusing to consider an application made to him to have the sale proclamation amended by inserting in it the proper value of the property to be sold. The learned Judges were of opinion that the question had been settled by the decision of the Privy Council in *Saadatmand Khan v. Phul Kuar* MANU/PR/0026/1898 : 20 A. 412 : 25 I.A. 146 : 2 C.W.N. 550 : 7 Sar P.C.J. 380 : 9 Ind. Dec. (N.S.) 624. With that view I entirely agree. Their Lordships of the Privy Council were of opinion that a gross misstatement of the value was something more grave than an ordinary irregularity of procedure and that the value of the property was a very material fact and must be considered one of those things which the Court considers material for the purchaser to know, and they observed that it had been enacted in terms (although express enactment was hardly necessary for such an object) that those things should be stated as fairly and accurately as possible. It seems to me that in view of the decision of their Lordships it is not open to any Court in India to hold that it is not the duty of a Court preparing a proclamation to state as fairly and accurately as possible in the proclamation the value of the property. It was suggested that this view of the law laid a very heavy burden on the Court. In the first place, that would be no reason for not enforcing the law. Next, it has never been suggested that the Court should hold an elaborate enquiry and ascertain the exact value of the property. Lastly, in my experience in another province no practical difficulty has been experienced by the Courts in giving effect to the decision of their Lordships of the Privy Council and I see no reason why any-greater difficulty should be experienced in this province. In my opinion it is absurd for a Court to enter in the sale proclamation a statement that the property to be sold is valued by one person at Rs. 7,000 and by another at Rs. 70,000 or as in

one case Rs. 1,500 by one person and Rs. 1,00,000 by another. The value must be stated as fairly and accurately as possible. An entry of two figures like Rs. 7,000 and Rs. 70,000 in the proclamation is calculated to cause great confusion in the minds of bidders.

4. I would allow this application, set aside the order of the Subordinate Judge dated August 12th, 1918, and direct him to prepare a proclamation of sale according to law. No order as to costs.

Saiyid Sharfuddin, J.

I agree.

Atkinson, J.

5. I concur in the judgment of this Court delivered by the Chief Justice.

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