

ALLAHABAD HIGH COURT

Dwarka Dass

Vs

Bhawani Prasad

F.A.F.O. No. 45 of 1953

(S.S. Dhavan, J.)

08.09.1952. 21.08.1959

ORDER

S.S. Dhavan, J.

1. This is a judgment-debtor's appeal against an order of the learned Civil Judge, Bareilly rejecting his objections under Order 21 Rule 90 C. P. C. against the sale of his property in execution of a decree and confirming the sale.

2. Mr. Singh, who argued the case for the appellant with ability, raised several contentions against the validity of the proclamation of sale which was made under Order 21 Rule 66 C. P. C. First, he stated that the value of the property had not been mentioned in the proclamation and urged that this is a material irregularity. But Order 21, R. 66, does not enjoin that the value of the property should be specified in the proclamation. Clause (e) of sub-rule (2) requires that the proclamation shall specify "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." The language of this clause shows that the Court is not required to specify the value of the property but only such materials which will enable the prospective purchaser to make his own estimate of its value.

In fact, this clause impliedly suggests that it would not be proper for the court to influence the mind of any prospective purchaser by its own estimate of value. It would be somewhat inconsistent for a provision to require the Court to give its own estimate of the value of the property and also require it to place before the prospective purchaser sufficient material to form his own estimate of the value. The Court would be placed in a not very dignified position if any purchaser afterwards complains that the court's estimate of the value of the property was incorrect. This was the view taken by a Division Bench of this Court in *Md. Said Khan v. Md. Abdus Sami*¹, in which it was held that it is not necessary to give the estimated value of the property in a sale proclamation. It was further observed,

"The value of property is "difficult in most cases to ascertain, and the insertion of the

value would always give rise to a dispute later, unless the parties were agreed as to the value to be put in the sale proclamation."

3. In *Sadatmand Khan v. Mt. Phul Kuar*², it was held that the value of property, when stated in the proclamation of the intended sale, is a material fact, and if the property is under-valued, this would amount to a material misrepresentation. However, in that case it was observed by the Privy Council that the estimate of value had been made gratuitously by the decree-holder and the court and inserted in the sale proclamation. The use of the word "gratuitously" shows that, in the view of the Privy Council, there was no rule requiring publication of the value in the proclamation.

4. Learned counsel for the appellant relied upon an observation of Sulaiman, J. in *Rup Kishore v. Collector of Etah*³, which runs as follows :

"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 bidder to judge of the value of the property."

This was an obiter dictum made en passant, but the learned Judge held in the circumstances of that case, that the omission to specify the value of the property in the proclamation did not invalidate the sale. The observation at the most amounts to this that in rare cases it may be necessary to specify the value of the property. The learned Judge may have had in mind cases where, due to the peculiar nature of the property, the normal method of valuation fails and it is necessary to put a price on the property. I therefore, hold that the omission to state the value of property does not invalidate the sale in this case.

5. Mr. Singh next contended that the place of the sale had not been mentioned in the proclamation and that this omission rendered the sale a complete nullity. He relied upon a decision of Bose, J, in *Fakira Mahadji v. Sangidas Sadaram*⁴, in which it was held that a sale which was postponed and then held on the adjourned date on a place other than the one previously specified was a nullity, not having been held in accordance with the provisions of the Code. It is not necessary for me to make any respectful comment on the principle laid down in that case as it was applied where the proclamation specified one place but the sale was actually held in another. There is no such irregularity in the present case. Learned counsel then relied on a decision of a Division Bench of this Court in *Chedami Lal v. Amir Beg*⁵, in which it was held that a sale which was advertised to begin at 11 a.m. but in fact began at 7 a.m. was vitiated by more than a mere irregularity in conducting the sale, for the mistake went to the very root of the whole proceeding. It was observed by Petheram, C.J. :

"The statute authorises a sale which is to be conducted at a time and place properly notified, and a sale otherwise conducted is not a sale at all within the meaning of the statute. I am, therefore, of opinion not merely there was an, irregularity in the sale, but that there was, practically speaking, no sale at all."

Here again, it is not necessary for me to comment upon the rule laid down in this case, for the

facts of that case were vitally different. It is one thing to advertise a sale at a specified hour and hold it four hours before the fixed time but quite another to be a little late in conducting the sale. The irregularity may be vital in the first case but trifling in, the second. But the dictum that there is no sale at all in such circumstances does not appear to have been followed in several subsequent decisions of this court of which mention will be made presently.

6. The weight of authority seems to be against the contention of learned counsel for the appellant. In *Tuljaram Row v. Rama Chandra Row*⁶, it was held that the omission to mention the place of the sale, especially if it caused no damage to the objector is no ground for setting aside the sale. In *Noor Mohd. Khan v. Malik Noor Mohd. Khan*⁷, it was held that if time and place are omitted in a proclamation under Order 21 Rule 66, the objector must prove loss as a direct consequence of this material irregularity before the Court will set aside the sale. In *Krishnaji Ramachandra Datar v. Bomanji Edalji*⁸, it was held that the holding of a court auction at a time and place different from that mentioned in the proclamation amounted to a mere irregularity.

In *Harindra Nath v. Bhola Nath*⁹, it was held that the omission to specify the time and place of sale in the sale proclamation issued under Order 21 Rules 68 and 69 is a material irregularity but an objection based on this omission would be allowed only if the objector succeeds in proving not only the material irregularity but also substantial injury to him as a result of it. It was further observed that a sale which is illegal and a nullity cannot be set aside under Order 21 Rules 89, 90 and 91 : C. P. C. and that when the purchaser in a sale is a person other than the decree-holder, any objection to the sale on the ground that it is null and void must be made by means of a suit but the execution court cannot set aside the sale on that ground.

7. Lastly, Mr. Singh contended that the sale was not held at the time specified in the proclamation, but on a careful reading of that document, it was found that the time given was "between 12 and 4 P.M." When this was pointed out to Mr. Singh, he very properly did not press this point.

8. It must also be mentioned that the appellant was not able to substantiate before the lower court or this court that any of the alleged material irregularities had been the direct cause of any loss or prejudice to him. On this ground too the objection must fail.

9. The appeal is, therefore, dismissed. In the circumstances of this case the parties shall bear their own costs of this appeal.

Appeal dismissed.

Cases Referred.

- 1AIR 1932 All 664
- 2ILR 80 All 412 (PC)
- 3AIR 1929 All948
- 4AIR 1944 Nag 199
- 5ILR 7 All 676
- 6AIR 1921 Mad 484

7AIR 1923 Lah 213

811 Bom LR 380 : 2 Ind Cas. 459

9 1937 All LJ 288 : AIR 1937 All 407