

# CALCUTTA HIGH COURT

Minatoonnessa Bibee

Vs

Khatoonnessa Bibee

(Sale , J.)

18.01.1894

## JUDGMENT

**Sale, J.**

1. The only point remaining to be determined is as to whether in the circumstances I ought to make an order for possession to be given to the purchaser. The question depends on whether a purchaser from a Receiver is entitled to be put in the same position as a purchaser at a sale by the Registrar, or at an execution sale under the provisions of the Civil Procedure Code. A sale by the Registrar is made under an order of the Court, and is binding on all parties to the suit. So is a sale by a Receiver. In what particular, then, does it differ from a sale by the Registrar? In the case of *Chandra Nath Biswas v. Biswa Nath Biswas*<sup>1</sup> it appears that an application was made by a Receiver to compel a defaulting purchaser to come in and complete his purchase. The learned Judge (MACPHERSON, J.) held that the application was irregular in form and dismissed it, but in the course of his judgment he made observations which seem to show that he considered that a sale by a Receiver stood on a different footing from a sale by the Registrar. If that were so, and if a sale by a Receiver under an order of Court differs in no respect from a private sale, a purchaser at a Receiver's sale can only obtain possession adversely by a suit for possession against any person withholding possession, even though such person should be a party to the suit and bound by the order for sale, and by it concluded and estopped from making any defence. But there are cases in this Court in which sales by a Receiver have been regarded as sales by the Court, and orders for possession have been obtained by the purchasers under the Code. In one instance where property was attached in the hands of a Receiver, the Court ordered the property to be sold by the Receiver instead of by the Sheriff, and the subsequent proceedings were precisely similar to those which take place in an execution sale by the Sheriff: *Pertab Chunder Johurry v. Bhoobun Mohun Neogy*, Suit No. 144 of 1884, order dated 30th July 1888.'

2. In another case, a mortgage suit, the Receiver, instead of the Registrar, was ordered to sell the property comprised in the mortgage, viz., a family dwelling-house in the occupation of the defendant, who was the widow and executrix of the deceased proprietor. After the sale, an order was obtained by the purchaser on notice, that a conveyance be executed by the Registrar for and in the name of the defendant, and that the Sheriff do in the manner provided for by Section 318 of the Code deliver over possession to the purchaser: *Herumbo Chunder Haldar v. Mohalucky Dossee* Suit No. 100 of 1883, order dated 8th December 1888.

3. A similar order was made in an administration suit in which the Receiver appointed in the suit, instead of the Registrar, was directed to sell. In that case, on the application of the purchaser, an order was made confirming the sale and directing possession to be given to the purchaser. This was followed by an order directing the Sheriff to put the purchaser in possession : Suit No. 27 of 1889, orders of 29th August 1889 and 22nd November 1889. In another case, an administration suit, in which property was sold by the Receiver under a decree of Court, an order was made, under the provisions of the Code, for the execution of the conveyance by the parties to the suit, or, if they should fail to comply with the order, by the Registrar for them and in their names: Broughton v. A shroffooddeen Ahmed Suit No. 694 of 1879, order dated 12th September 1893.

4. In Suit No. 118 of 1884, Roy Chund Dutt v. Sham Lall Soor, a sale by a Receiver was treated as a sale by the Court, and a certificate of sale was granted by an order, dated 6th May 1885.

5. These are unreported cases, a note of which has been furnished by the Registrar.

6. They show that sales by Receivers under the directions of the Court have been treated as sales by the Court. And when sales by Receivers are in all essential particulars similar to sales by the Registrar, I confess I can see no reason why they should not be treated as sales by the Court. They have not, it is true, been provided for by the rules of the Court. Being of an exceptional character, it was probably not thought necessary to provide for them by any special rules. But if they are sales by a Civil Court in a suit, the procedure prescribed by the Code for sales in a suit would be applicable.

7. It should be observed that the procedure prescribed by the Code is applicable not only to a suit, but also to miscellaneous proceedings, the intention being that it should be as widely applicable as possible--see Section 647 of the Code.

8. An important fact in the present case is that this particular sale has been already treated as a sale by the Court, the Registrar having been directed under the provisions of the Code, to execute the conveyance on behalf of some of the parties to the suit. The practice followed in these cases shows that this Court has recognised the right of a purchaser at a Receiver's sale to invoke the assistance of the Court in obtaining possession under the provisions of the Code.

9. On the materials before me, it sufficiently appears that possession has not been obtained by the purchaser of all the properties purchased by him. I must, therefore, make an order for possession in his favor. This order will supersede the previous order for possession made in favor of the Receiver.

10. The remaining question is one of costs. The parties against whom the rule was obtained have succeeded on the main point in having the rule discharged as far as the commitment is concerned. On the other hand the purchaser is entitled to an order as to a portion of his application. Under the circumstances I should be disposed to apportion the costs if that can be done. I direct that Mr. Jackson's client shall have the costs incurred in meeting the application for commitment.