

CALCUTTA HIGH COURT

Lachira

Vs

Rameswar Singh

(C Rankin, J.)

04.04.1928

JUDGMENT

C Rankin, J.

1. This rule is directed against an order of the Subordinate Judge of 24. Parganahs dated 11th February 1928 directing the valuations mentioned by the decree-holder and the judgment-debtor of the property to be inserted in the sale proclamation. The property intended to be sold is a mill of the judgment-debtor and the decree-holder valued it at Rs. 4,24,000. The judgment-debtor's case was that it was at different times estimated by experts and that its present value was Rs. 14,00,000. This matter came up before the learned Subordinate Judge when he passed the following order: The petitioner Lasmiram examined him self and none else. The decree-holder did not examine any witness. The valuation, as given by the decree-holder is Rs. 4,24,000. The valuation, given by the judgment-debtor is Rs. 14,00,000. Without making any elaborate enquiry into the valuation which cannot be made without a good deal of trouble and expense it is deemed proper that the valuation given by both parties be put in the sale proclamation. The learned advocate of the decree-holder has no objection to that. Hence the order of the Court is that let proclamation of sale be issued putting both valuations as given, by the decree-holder and the judgment-debtor.

2. Against this order it is contended that the learned Subordinate Judge is wrong in refusing to enter into an enquiry as to the proper valuation of the property, sold and directing the valuations as given by the judgment-creditor and the judgment-debtor to be inserted in, the sale; proclamation. We think that there is considerable force in, this contention. It is true that the Civil Procedure Code does not make it incumbent upon the executing Court to insert the value of the property to be sold in the sale-proclamation. But under Order 21, Rule 66(2)(e) the proclamation shall contain everything besides the amount of the debt, &C., which the Court considers material for a purchaser to know in order to: judge of the nature and value of the property. It cannot be denied that the value, of the property, to be sold as estimated by the Court is a piece of very valuable information which helps the intending purchaser to form an idea of the price which he is prepared to offer of the property. In the case of Saadatmand Khan v. Phul Kuar [1898] 2 All. 412, their Lordships of the Judicial Committee, suggested: the, course which ought to be followed by the executing Court in circumstances like the present. Their Lordships realize that it is not expressly enjoined upon the executing, Court in mention the value of the property but they say that if it considers a fact to, be material which should be mentioned in the sale proclamation (and

the valuation of the property is a very material fact) such fact should be stated as fairly and accurately as possible. In the case before their Lordships the value given in the sale proclamation; was much below what was subsequently found to be the real value. In consideration of that fact they observed:

It must have been possible to state the value of this property with very much greater approach to fairness and accuracy than was done in the proclamation.

3. This observation of the Judicial Committee has induced Courts here to hold that the executing Court would not be discharging its duty properly if it evades an investigation into an approximate value of the property to be sold. In this Court this view has been adopted in several cases of which reference may be made to Saurendra Mohan Tagore v. Harrak Chand [1908] 12 C.W.N. 542 . The facts are not similar to those in the present case but the observation made by the learned Judges is to this effect "Whether this clause" (referring to Section 287, Clause (c) of the old Code) requires that the value should be stated in all cases or not, the Court has in the present instance elected to state the value in the sale proclamation and has thus considered that element to be a material one. If in the opinion of the Court it is material, the value must be stated with approximate accuracy. For that purpose it may be and in some cases it will be necessary for the Court to make an enquiry in order to ascertain what the value of the property really is and this will be necessary in such a case as the present one, where there is conflict between the value placed on the property by the judgment-debtor and that by the judgment-creditor.

4 The same view was adopted in *Lachman Per shad v. Ganga Per shad*¹, where the following observation was made: In circumstances such as those which have occurred in the present case, where an application is made by a debtor objecting to the value of the property as stated in the sale proclamation, it is certainly the duty of the Court executing the decree to make an enquiry and to satisfy itself that the amount stated in the sale proclamation is substantially correct.

5. This question was carefully considered by the Patna High Court in the Full Bench case of *Raghunath Singh v. Hazari Sahu*² where the view as expressed in the above cases by this Court was unreservedly adopted under circumstances on all fours with the present case. The last case upon the point is the case of *Bejoy Singh v. Ashutosh Gossami* . It has been held there that it is proper that the Court should try to arrive at a fairly accurate value of the property to be mentioned in the sale proclamation in order to enable the purchaser to judge of the nature and value of the property but it cannot be laid down as an imperative rule of law that it must be done in every case. We agree with the observations made in that case. We take this occasion to deprecate the practice which is becoming common of evading the responsibility which undoubtedly rests on the Court.

6. In the circumstances of the present case we think it desirable that an enquiry should be made by the Court below and that the enquiry should not be shirked on the grounds mentioned by the learned Subordinate Judge, namely, trouble and expense. We do not suggest that this enquiry should be an elaborate one but there should be an enquiry and the value that is to be put in the proclamation should be the value estimated by the Court and not what the parties state it to be. If the Court is satisfied that the value mentioned by the decree-holder or the judgment-debtor is approximately correct it should be put in the sale proclamation as the value fixed by the Court; and if it is satisfied that some other value ought to be put there it should try to ascertain what that value should be. In this view we make the Rule absolute, set aside the order of the Court below

and send the case back to it to be tried according to law. The petitioner is entitled to the costs of this Rule. We assess the hearing fee at five gold mohurs. Let the record be sent down as early as possible.

Cases Referred.

1[1911] 15 C.W.N. 713

2[1917] 2 Pat. L.J. 130