

BOMBAY HIGH COURT

Charandas VasANJI

Vs

Dossabhoy Maganlal

(John Beaumont, Kt., C.J. Lokur , J.)

07.12.1938

JUDGMENT

John Beaumont, Kt., C.J.

1. This is an appeal from a decision of Mr. Justice Black-well on a summons taken out by the present appellants asking that the value of certain properties to be sold by the Sheriff should be settled by the Commissioner for Taking Accounts and forwarded by him to the Sheriff of Bombay.

2. The facts are that a money judgment was obtained against the present appellants, and in execution of that judgment the judgment-creditor is proposing to get the immovable properties of the debtors sold by the Court.

3. Under Rule 524 of the Rules of this Court, the Commissioner had to prepare a proclamation under Order XXI, Rule 66, Civil Procedure Code, and forward the same to the Sheriff. That was done, but the complaint is that the Commissioner did not ascertain the value of the property and, therefore, did not inform the Sheriff of such value. It is admitted that in sales by the Sheriff it is not the practice to fix a reserve price, and I have myself some difficulty in seeing what object there can be in the Court valuing the property, unless a reserve price is to be fixed. The learned Judge held that the Commissioner was not bound to value the property, and dismissed the summons. He gave a judgment pointing out that the question whether or not the value of the property should be ascertained by the Court and stated in the proclamation, has given rise to a difference of opinion between the Calcutta High Court and the Madras High Court, and he preferred the view of the Madras High Court.

4. In this appeal a preliminary objection is taken that no appeal lies, and I am disposed to think that that objection must prevail. Under the decision of this Court in *Krishnarao Ambadas v. Krishnorao Raghunath*¹ it seems to me to follow that an order of the nature asked for on this summons is not a decree under Section 47 of the Civil Procedure Code and is, therefore, not

appealable under Section 96 ; nor I think can such an order be held to be a judgment within Clause 15 of the Letters Patent. However, as the point raised on merits is one on which there is no decision of this Court and involves a point of practice on which there has been a difference of opinion in other High Courts, I will shortly state my view on the matter, which is entirely in accordance with that of the learned Judge in the Court below.

5. Order XXI, Rule 66, lays down what the proclamation of sale is to contain, and it does not say that it is to contain any valuation by the Court. Sub-paragraph (e) provides 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. It was held by the Privy Council in *Saadatmand Khan v. Phul Kuar*² that if the valuation was stated, but stated inaccurately, that was a material irregularity, and nobody would dispute that proposition ; but the Privy Council did not hold that it was necessary in every case to state the value of the property in the proclamation. In *Banbihari Chatterji v. Bhukhanlal Chaudhuri*³ the Calcutta High Court reviewed the authorities and came to the conclusion that it was necessary in cases of sales by the Court for the Court to value the property and state the value in the proclamation. That view really involves adding a clause to Order XXI, Rule 66, which is not to be found within the rule, and I do not myself appreciate what benefit is likely to accrue from adopting such a practice. The purchaser has to make up his own mind as to the value of the property, and normally I should suppose that it would not materially help him to know the value which the Court or the vendor places on the property. In England it is the practice in sales by the Court for the Court to fix the reserve price, but the amount of the reserve price is not stated in the particulars. However conditions are different in India and if in any case the Court thinks it desirable to value the property and state the value in the proclamation, it ought to state it under Order XXI, Rule 66(e). But I disagree with the view of the Calcutta High Court that in every case the value must be so stated. I agree with the ruling to the contrary of the Madras High Court in *Thiruvmgadaswamy Ayyangar v. Govindaswamy Udayar*⁴

6. The appeal must be dismissed with costs. All costs thrown away by the postponement to be paid out of Rs. 500 deposited for the purpose.

Lokur, J.

7. I agree.

Cases Referred.

1(1928) I.L.R. 52 Bom. 441 : S.C. 30 Bom. L.R. 679

2(1898) L.R. 25 I.A. 146 : S.C. I.L.R. 20 All. 412

3 (1932) I.L.R. 60 Cal. 581

4(1927) I.L.R. 51 Mad. 655