

*Judgment of the Lords of the Judicial Committee of the Privy Council, on the Appeal of Saadatmand Khan v. Phul Kuar from the District Court of Farrukhabad, North-West Provinces; delivered 3rd May 1898.*

Present:

LORD WATSON.

LORD HOBHOUSE.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

The Respondent is the proprietor of an estate in the mouza of Jira Rahimpur in Farrukhabad. In April 1890 one Pati Ram obtained a decree for the sum of Rs. 565. 9 annas against her and another as heirs of a recently deceased owner who was Pati Ram's debtor. This decree was transferred to Chunni Lal. On the 10th December in the same year Chunni Lal applied for the attachment and sale of the property. It was put up for sale on the 20th April 1891, and was bought by the Appellant for the sum of Rs. 670. The property is valued at eight or nine thousand rupees.

In May 1891, within the time allowed by law, the Appellant filed a petition in the Court of the Moonsiff of Kaimganj for the purpose of setting aside the sale under Section 311 of the Code. The Moonsiff held that, notwithstanding the inadequacy of price, there had been no irregularity within that section which justified him in setting the sale aside, and accordingly he dismissed the petition. On appeal the District

Judge took a contrary view and decreed that the sale should be set aside. That is the decree appealed from.

The Respondent alleged several irregularities in the execution proceedings, as to the existence or the effect of which the two Courts took opposite views. Their Lordships do not think it necessary to mention more than one ground for impeaching the sale. It is indeed something more than the kind of irregularity which is commonly alleged, for it is a mis-statement of the value of the property which is so glaring in amount that it can hardly have been made in good faith, and which, however it came to be made, was calculated to mislead possible bidders, and to prevent them from offering adequate prices, or from bidding at all.

Section 287 of the Code orders that the Court shall cause a proclamation of the intended sale to be made. The proclamation is to specify "as fairly and accurately as possible" several enumerated particulars; and, finally, "every other thing which the Court considers it material for the purchaser to know in order to judge of the nature and value of the property."

The proclamation in this case appears to have followed an affidavit of Chunni Lal, the decree-holder, in which he stated that the property is valued at about Rs. 800. It states, among other things, that the sale is for the recovery of Rs. 652. 3. 9 and interest, and that the particulars specified in the schedule are filled in to the best of the knowledge of the Court. The schedule contains several columns. One shows that the jama of the property is Rs. 543. 10. Another is headed, according to the English translation, "Other particulars, whatever ascertained regarding the nature and value of the property," and it contains the

figures Rs. 800. This means that the value of the property to sell was estimated by the Court at Rs. 800.

The Moonsiff considered that this misrepresentation of value was not a material irregularity for which a sale could be set aside. His reason was, that no rule required that the value of the property should be mentioned in the proclamation; and that as the entry was uncalled-for and not legally obligatory, to give a wrong value is no reason for setting aside a sale.

This is a very mistaken view. It is true, as before observed, that the mis-statement is something more grave than an ordinary irregularity of procedure, but the fact that it is so, and that it was made gratuitously by the decree-holder and the Court, does not prevent it from being "a material irregularity in publishing or "conducting" the sale, such as to bring the case within the special remedy provided by Section 311. Whatever material fact is stated in the proclamation (and the value of the property is a very material fact) must be considered as one of those things "which the "Court considers material for the purchaser to "know," and it is enacted in terms (though express enactment is hardly necessary for such an object) that those things shall be stated as fairly and accurately as possible. 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. The learned District Judge holds that there was a gross misrepresentation on the part of the decree-holder, and he intimates his opinion that the Court ought to have seen from the amount of the jama that the value could not be as stated. Certainly it seems that there must have been blamable carelessness on the part of whatever

officer was responsible for the terms of the proclamation.

The learned District Judge points out two circumstances calculated to enhance the amount of injury done to the debtor by such a misstatement. One is, that Section 245 of the Code orders that the value of the property attached "shall, as nearly as may be, correspond with the amount for which the decree has been made;" so that an intending purchaser would readily accept the assurance of the Court that an estate attached for Rs. 565 was worth no more than Rs. 800. Another is, that the disproportion between the jama and the total value was calculated to excite suspicion of something wrong with the title, and so to deter biddings. Their Lordships have to express entire agreement with the learned District Judge, and they will humbly advise Her Majesty to dismiss the Appeal. The Appellant must pay the costs.

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