

(1880) 04 AHC CK 0006

Allahabad High Court

Case No: None

Mahtab Bibi

APPELLANT

Vs

Ram Narain Singh

RESPONDENT

Date of Decision: April 6, 1880

Citation: (1880) ILR (All) 828

Hon'ble Judges: Pearson, J; Oldfield, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Oldfield, J.

The two defendants in this case have instituted separate appeals which may be disposed of by one judgment. The defendants held decrees of the Revenue Court against Khair-un-nisa Bibi, and in course of execution of these decrees a share in mauza Dohowa, described as 11 annas, 5 kants, 3 jaus, was attached, and the rights of the judgment-debtor were sold and bought by the plaintiff in this suit. Subsequently, the sons of the judgment-debtor brought a suit for the declaration of their right and possession in a portion of the said share and obtained a decree, and the plaintiff, auction-purchaser, has brought this suit against the two appellants to obtain a refund of the sale-price proportionate to the interest which she had to give up and for the costs incurred by her in defending the suit. Amongst the pleas urged in answer to the suit, those, material to the disposal of the appeals before us were that the plaintiff purchased the rights and interests of the judgment-debtor without any guarantee on the part of the decree-holders of their extent, and being a sister-in-law of the judgment-debtor and mother-in-law of one of those who succeeded in the suit for the recovery of a share, she bought with a full knowledge of the extent of the judgment-debtor's interest. The Subordinate Judge has held that there was a guarantee that the entire 11 annas, 5 kants, 3 jaus, belonged to the judgment-debtor, and he has decreed the greater portion of the claim.

2. We are of opinion that the grounds of appeal, so far as they take up the objections which we have above noticed, are valid. In judicial sales in execution of decrees of Court there is ordinarily no warranty of the title of the judgment-debtor in the property sold, on the part of the decree-holder or officer conducting the sale. In sales of rights and interests in Immovable property, the extent and nature of the interest of the judgment-debtor as described in the revenue registers, are notified at the time of sale under the rules in force, but the description so given is not intended by the decree-holder or the officer conducting the sale or taken by the purchasers at those sales to convey any warranty of the correctness of the description of the judgment-debtor's interest given in the revenue registers, or any warranty of the extent and nature of those interests. The subject of sale is nothing more than the right, title, and interest of the judgment-debtor described in the revenue register to be of a particular extent and character. Such will be the rule if the usual and ordinary practice be observed in the publication and conduct of these sales; and in the case before us nothing of an exceptional nature has been brought to our notice to show that there was any express or implied guarantee on the part of the decree-holders, nor are the facts such as will support any imputation of fraud or misrepresentation against the decree-holders. The application for sale is in the usual form for the sale of the rights and interests of the judgment-debtor, and the proceeding of the Collector, dated 22nd February 1875, at the close of the sale, shows very distinctly that the rights and interests of the judgment-debtor whatever they might be in the 11 annas, 5 kants, 3 jaus entered in the statement, were sold, and refute any supposition of express or implied warranty.

3. The plaintiff's case seems to rest on proceedings not so much with reference to the sale of the share in Dohowa, the subject of this suit, as to proceedings connected with the sale of the same judgment-debtor's interests in another mauza, i.e., mauza Pakri. It appears that the sons of the judgment-debtor also claimed an interest in the share in mauza Pakri entered as that of the judgment-debtor and brought a suit, and that the defendants then denied that they had any interest, and asserted the share belonged to the judgment-debtor, and their suit was dismissed by the Court of First Instance, though ultimately decreed in appeal, and it was before the decision of the appeal that the sale with which we are concerned took place. But those proceedings show nothing more than that the defendants, the decree-holders, bona fide contested the claim set up, which they were quite at liberty to do, and not that they induced the auction-purchaser in the case before us by fraud or otherwise to believe that the judgment-debtor had an interest which they knew she had not, or guaranteed that she had any particular interest. Moreover, looking to the relationship between the plaintiff and the judgment-debtor and the circumstances under which the sale took place, there is every reason to believe that the plaintiff was aware at the time of her purchase of the true character and extent of the judgment-debtor's interests which were put up for sale. The case of *Neelkunth Sahee v. Asmun Mathoo* H.C.R. N.W.P. 1871 p. 67, was brought to our

notice by the counsel for respondent, but that case is to be distinguished from the one before us. There the decree under which a judgment-debtor's rights and interests had been sold and the sale so far as affected him were set aside and the property recovered by the judgment-debtor. We decree the appeal and reverse the decree of the lower Court and dismiss the suit with all costs.