

(1927) 01 CAL CK 0001

Calcutta High Court

Case No: None

Satindra Narain Sinha

APPELLANT

Vs

Chunilal Jamadar and Others

RESPONDENT

Date of Decision: Jan. 4, 1927

Citation: AIR 1927 Cal 818 : 103 Ind. Cas. 621

Hon'ble Judges: Rankin, C.J; Ghose, J

Bench: Full Bench

Judgement

Rankin, C.J.

This is appeal from an order made by Mr. Justice Greaves upon, the application of an auction-purchaser at a sale held by the registrar of the original side under a mortgage decree.

2. The sale was held on the 20th of March 1926 and the question before us concerns lot 3. Now lot 3 is described in the notification of sale as a

parcel of land containing by measurement an area of 8 cottahs 1 chittack and 32 square feet, be the same a title more or less, within the municipal limits of the town of Calcutta, being premises No. 5 Ahiripukur 1st Lane, and situate in (a certain district) and being a portion of holding No. 161 (formerly holding No. 43) in Subdivision A, Division V, within the district of the 24-Parganas and paying an annual rent of Rs. 2-13-9 in respect of the entire holding.

3. It is further described as bounded on the north by a certain land and on the east by No. 6 Ahiripukur 1st Lane (formerly by old holdings Nos. 44 and 45).

4. The sale was held under the rules of the High Court contained in Chap. 27 and the property was put up to auction under certain conditions of sale which do not merely provide that the highest bid should be accepted and the amount of the deposit or other matters of ordinary auctioneering, but prescribe certain conditions as to the title which the purchaser should be entitled to require before he is compelled to

complete, Provision is made for requisitions and answers. Provision is made with regard to compensation for misdescription. Provision is made that the title of the lot shall be taken to commence with the kobala, dated the 5th March 1899, and that the purchaser shall admit the identity of the property purchased by him with that comprised in the muniments abstracted as containing the title thereto and so forth.

5. Now, the auction-purchaser says that he bid for by his brother and had perfectly correctly knocked down to him this lot No. 3 on the 20th March 1926, but he says that when the abstract of title came to be put before him he found two things : first of all, that nobody could tell him what the eastern boundary of the property sold was, and there was nothing in the abstract to show what it was. He says that this is more unfortunate, to say the least of it, because the only entrance from the lane into this piece of land is in the southwest corner and that it makes all the difference to him whether or not the boundary is to be in one way or to be in another on the eastern side. He was referred to the surveyor who had measured the property for the purpose of sale as eight cottahs and so forth, and he enquired from him what he took as the eastern boundary of the land, and he discovered that the surveyor had apparently measured the land without taking any particular eastern boundary that he was able to assign. He was referred to the corporation as to whether there was any information there as to the boundary of what is now called No. 5 and what is now called No. 6, and he failed entirely to get anything from the corporation. He was referred to a map prepared by a gentleman called Mr. Smart which throws no light whatever upon the question what the position of this boundary was.

6. What he does discover and lay before the Court is that this : according to the map made by Mr. Billon in 1870 there were three holdings, now Nos. 43, 44 and 45, that in 1879 the mortgagor's father Kashi Jamadar bought No. 5 and No. 6 and proceeded to occupy two of them together if, indeed, he may be said to have occupied them at all, the land being apparently open land with busti dwellings scattered over. At a much later time there was a partition between the sons of Kashi Jamadar and No. 5 was allotted to the present mortgagor, There is no map in those partition proceedings, so far as can be seen, which throws any light at all as to what was considered to be No. 5 and where it was considered to march with No. 6; and whether or not at the time of that partition the parties or the commissioner of partition accurately stated in dividing No. 5 from No. 6 the precise boundaries which formerly were thought before 1879 to divide No. 43 from the other two holdings cannot be stated at all. In these circumstances the auction-purchaser says:

You have not made out a title in conformity with the contract which I entered into.

7. He says, therefore, that, he is entitled to rescind the sale, not as a sale which never ought to have been made or as tainted by fraud on the 20th March or as irregular in some other manner,

8. The learned Judge, in my judgment, dealt with this matter exactly in the correct way,

9. The arguments that have been laid before us are really two. One is that the application is out of time, either because the sale report was not excepted to within 14 days as required by the High Court rules or else because of Article 166, Schedule 1, Limitation Act.

10. Now, in my judgment, neither of those provisions applies here. In the mofussil an auction-purchaser purchases the right, title and interest of a judgment-debtor or of a mortgagor whatever it may be, and if the contract of sale is a good contract of sale there is only one way in which under the law that contract can fail to take effect by reason of non-performance, I refer to the provisions which allow a purchaser, when the title or the interest of the judgment-debtor is nothing, to get his money back. Consequently in the mofussil you do not get the question of title with which we are here concerned. There it is a case of setting aside a sale because of some reason which makes the auction-purchase void or voidable. But we are at present dealing with a case which arises under a rule by which a purchaser is entitled to refuse the title if it is not in accordance with the conditions of sale and the Court in execution has to decide upon the question whether title in conformity with those conditions has been shown or not. In my judgment, to that question neither of the provisions referred to has any application. Indeed, as was pointed out by the learned Judge, the whole scheme of this contract of purchase is contrary to such provisions, There is a time for the abstract being delivered, further time for requisitions and so forth, all of which will be entirely nullified by the application of Article 166. In my judgment, therefore, that argument was rightly rejected by the learned Judge.

11. Then comes the question : Is this a title which the Court will force upon a purchaser or is it a case in which, before deciding in one way or the other, we ought to direct a reference by the Registrar as to title under the rules, I am of opinion that there is no good purpose to be served, now that this matter has been fully thrashed out in two Courts, by ordering any such reference, and it appears to me that it would be entirely wrong to thrust this title upon the present respondent.

12. If was contended by Mr. Sircar that the brother of the mortgagor and another member of the family were parties to the application before the learned Judge, They were apparently joined because in the mortgage it was necessary to make them parties for the purpose of making sure that they should not set up any right or interest against the mortgage and adversely to the mortgagee; but they are not before the Court as owners of No. 6, nor, as at present advised, do I think it would be correct or reasonable in the course of an execution proceeding under a mortgage decree for No. 5 to put them to proof of their title and their boundary in respect of another piece of land as owners of which they are perfect strangers to this suit. It is not possible, therefore, to commence proceedings for the purpose of

coming to an accommodation between No. 6 on the one hand and No. 5 on the other so as to define the boundary. It seems to me that this is a case where the stipulations in the conditions of sale did not enable the mortgagee to make out the title which they were obliged to make out to lot 3 and that the auction-purchaser is not under any obligation to accept the title. That being so, I am of opinion that this appeal should be dismissed with costs.

Ghose, J.

13. I agree.