

(1914) 11 CAL CK 0001

Calcutta High Court

Case No: Appeal From Appellate Order No. 397 of 1913

Rajendra Prosad Jha,
Decree-holder

APPELLANT

Vs

Upendra Nath Jha and Others

RESPONDENT

Date of Decision: Nov. 24, 1914

Final Decision: Dismissed

Judgement

Coxe, J.

The facts in this case as I gather from the judgments of the Court below are as follows : -- The property in question was put up to sale on the 6th February, and then knocked down by the Nazir for Rs. 5,000 to the decree-holder. The papers were then submitted to the Subordinate Judge in order, apparently, that he might exercise the discretion given to him under condition No. 3 of the sale proclamation. The next day the decree-holder came in, and asked that the sale might be set aside on the ground that the proclamation had not been properly published. This application was refused. A month later he came in again and asked that he might be allowed to withdraw his bid. This has been refused both by the Subordinate Judge and by the District Judge on appeal; and the decree-holder comes up to this Court in second appeal. A preliminary objection has been taken that no second appeal lies. It certainly appears to me that there has been no adjudication of any rights of the parties, and that therefore the preliminary objection ought to succeed; but it is not necessary to decide this point, because it appears to me that on the merits the appeal must fail.

2. It has been suggested by the learned Pleader for the Appellant in reply that the property was not, as a matter of fact, knocked down by the Nazir. It is quite clear from the judgments that this was never questioned in the Courts below, and on looking into the record, I find that it was not questioned in the cross-examination of the Nazir. It was contended however that the Nazir could not finally sell the property and that the auction remained incomplete, until the Judge had decided whether or not the bid should be accepted. It may possibly be the case that in the Mofussil, the

Nazir frequently takes the orders of the Court before he completes the sale of a property. Except condition No. 3 of the proclamation of sale to which I will refer later I can find no authority for this practice. Rule 65 prescribes that the sale shall be conducted by the officer of the Court, and it is the Nazir's business under that section to carry out and complete the sale. The warrant, of which a form is given in Appendix E, No. 27, commands the bailiff of the Court to sell the property by auction and it seems clear to me that this command is not obeyed, if the Nazir as is contended on behalf of the Appellant, merely has to make a list of the offers from the various bidders, and submit the same to the Court in order that the Court may decide what bids should be accepted, and may in fact sell the property itself. The third condition of the proclamation of sale certainly gives the Court as well as the Nazir discretion to decline acceptance of the highest bid, when the price offered appears so clearly inadequate as to make it advisable to do so. In my opinion this condition must be read with r. 65 and form No. 27. It appears to me to give the Court a quasi-revisional discretion in the matter, and not to require the Court itself to knock down the property Nor do I think that, because the 3rd condition of the proclamation of sale reserves certain discretion to the Court, it necessarily follows that the bid is incomplete, as against the bidder, until the Court has exercised that discretion. If a person goes to bid at a sale and, in full knowledge of this condition, offers bids for the property, and the property is knocked down to him, the mere fact that the Court has subsequently the discretion to confirm or annul the Nazir's action does not leave it open to the bidder to withdraw his bid, That the sale was complete seems to me clear from the Appellant's petition of the 7th February. In that petition he did not ask to withdraw the bid. He asked that the sale might be set aside on the ground that the sale proclamation was not properly published. He therefore was then perfectly satisfied that a complete sale had been effected.

3. Our attention has been drawn to two cases on behalf of the Appellant. One is *Kenaram Bakshi v. Kailas Chandra Dutt* (18 C. L. J. 53 (1913)) and the other is Civil Rule No. 4314 of 1911. In the first case however the property had not been knocked down and that circumstance distinguishes the case from the present one. The second case was one under sec. 115 of the CPC and the only question was whether it was desirable to interfere in the interest of justice, and the learned Judges decided that it was not. They did not lay down any rule of law.

4. I think therefore that the decision of the Court below is right and the appeal is dismissed with costs, the hearing fee being assessed at three gold mohurs.

Richardson, J.

5. I agree. I think there is much doubt Whether the order of the first Court declining to give way to the attempt of the Plaintiff decree-holder to withdraw the bid, which he had himself made and upon which the hammer had fallen, was a decree within the meaning of the definition in sec. 2 of the Code of Civil Procedure. But let it be assumed that the order was a decree and the appeal before us is competent. Let it

further be assumed that the first Court had a discretion to allow the decree-holder (the Appellant before us) to withdraw his bid. Even so, I can find nothing in the mode in which that discretion, if a discretion exists, was exercised which would justify us in interfering in appeal or in saying that the discretion should have been differently exercised. I agree that the appeal should be dismissed with costs.