

(1924) 11 CAL CK 0023

Calcutta High Court

Case No: None

Sundi Bibi

APPELLANT

Vs

Mobarak Ali Sikdar and Others

RESPONDENT

Date of Decision: Nov. 21, 1924**Citation:** AIR 1926 Cal 56**Hon'ble Judges:** B.B. Ghose, J**Bench:** Single Bench

Judgement

B.B. Ghose, J.

The point for decision in this case depends upon the construction of Rule 90 of Order 21, Civil P.C. The learned Judge finds that the property in question was sold in execution on the 8th September 1919. The decree-holder was the purchaser and it is said that he took possession on the 28th of August 1920 after evicting the judgment-debtors. One of the three judgment debtors was one Aisha Bibi. She sold her interest by a kobala in the property to a person called Serajuddi on the 19th of February 1921. Aisha Bibi then died and her heir is one Shundi Bibi, the petitioner, before me. This Shundi Bibi made an application for setting aside the sale on the 3rd June 1921 under Order 21, Rule 90, Civil P.C. The Court of first instance made an order in her favour. The decree-holder then appealed and, on appeal, the learned District Judge held that the applicant had no locus standi to make the application and, without, therefore, entering into the merits of the case, he dismissed it. The question now is whether Sundi Bibi, the present petitioner, can be said to be a person whose interest is affected by the sale

2. It is contended by the learned vakil for the opposite party that the person who makes an application to set aside a sale must show that at the time of the application his interest was affected by the sale, and that, as in the present case, the applicant or her predecessor-in-interest had parted with her interest prior to the date of the application, the petitioner was not in a position to make the application under Order 21, Rule 90, Civil. P.C. It seems to me that that contention cannot be

accepted. The rule in question includes, in my opinion, all persons whose interests are affected by the sale at the time of the sale. Therefore, the present applicant comes within the provisions of that rule and is entitled to maintain the application. To hold otherwise would, it seems to me, be extremely anomalous because if, after the sale is effected, the judgment-debtor sells the property to a third person, it would be difficult for that person to say that his interest is affected by the sale because he would be met by the answer that he had purchased nothing and his interest, if any, accrued only after the sale, and, if it is held that the vendor is not entitled to maintain such an application, the result would be that neither the vendor nor the purchaser would be in a position to make an application for setting aside the sale, although there may be very good grounds for doing so. Several cases have been cited before me dealing with the construction of Rule 89 of Order 21 Civil P.C., in which persons in the position of the applicant in the present case were held to be entitled to have the sale set aside under the provisions of that rule. It is unnecessary for me to make any further reference to those cases in construing Rule 90. It is alleged by the learned Vakils on both sides that there is no reported case relating to the construction of this particular rule. On the grounds stated above, this Rule is made absolute. The judgment on appeal of the lower appellate Court is set aside and the case remitted to that Court for rehearing of the appeal on the merits. Costs will abide the result three gold mohurs.