Nanda Kumar Saha Vs Gobind Mohan Das

None

Court: Calcutta High Court

Date of Decision: Jan. 4, 1910

Citation: 6 Ind. Cas. 135

Hon'ble Judges: Teunon, J; Mookerjee, J

Bench: Division Bench

Judgement

1. This appeal is directed against an order of the Court below refusing to set aside a sale held in execution of a mortgage-decree. The decree was

made so far back as the 12th September, 1900, and the sale, the validity of which is now impeached, took place on the 22nd February 1908. The

properties were sold, one for Rs. 6,000 and the other for Rs. 2,025. On the 23rd February, 1903, the judgment-debtors applied to have the sale

set aside on various grounds. Of these three have been pressed before this Court and an additional ground, apparently not urged in the Court

below, has also been taken on behalf of the appellant. It has been argued on behalf of the appellant, first, that there was a deliberate mis-statement

of the value of the properties in the sale-proclamation; secondly, that the decree-holder employed a benamdar to offer fictitious bids and the effect

of this arrangement was to mislead the bidders who were present; thirdly, that the evidence of service of sale proclamation is by no means

sufficient; and, fourthly, that as the decree-holder obtained leave from the Court to bid at the sale and to purchase the properties for the decretal

debt, their conduct in purchasing the properties for a smaller price by the intervention of a benamdar is fraudulent.

2. In so far as the first of these contentions is concerned, the ground has been very satisfactorily made out. The properties sold consisted of three

and-a-half annas share of Taluk No. 837 on the Rolls of the Collectorate of the district of Khulna, and two tenures by name Shahkhali and

Panchpara the former of which bore a rental of Rs. 92-9 and the latter Rs. 79-2-9. In the sale proclamation, the approximate value of the first

property was stated to be Rs. 3,000 and the value of the second property comprising the two tenures just mentioned was stated to be, Rs. 2,000.

Now in so far as the first property is concerned, it is not disputed that the true value is considerably above Rs. 3,000. In fact the decree-holder

purchased the property through his benamdar for Rs. 5,000. The Subordinate Judge has held that it is not established that the true value exceeds

Rs. 6,000. We are not prepared, however, to accept his view as well-founded on the evidence. On behalf of the judgment-debtor it was stated by

more than one witness competent to express an opinion on the point, that the value was considerably higher, and the Tahsildar of the judgment-

debtor stated that the annual profits of the first property amounted to between seven hundred and eight hundred rupees. There was a feeble

attempt at cross-examination and the only suggestion that was made on behalf of the decree-holder was that as the collection papers were not

produced, reliance ought not to be placed upon the oral testimony of the Tahsildar of the judgment-debtors. This criticism is, no doubt, just to

some extent. But this is by no means the only circumstance to which weight ought to be attached. We know that this witness Chandra Nath also

deposed that the annual profits of the second property amounted to Rs. 414. This was not seriously challenged on behalf of the decree-holders

and the Subordinate Judge has found that the value of the second property is about Rs. 8,000, which goes to indicate that the income was about

Rs. 400 as stated by the witness. We have also the additional circumstance that there is no evidence on the side of the decree-holder as to the

income of either of the two properties. The decree-holders are not strangers to the properties. They are mortgagees and must be taken to have

ascertained their value approximately at least before they accepted them as securities. But it is also clear upon the evidence of their witness

Annoda that before they offered bids at the sale they had an opportunity to ascertain the income of these properties. Annoda says that the decree-

holders saw the settlement papers in order to know the assets of the first property and that Prosanna the naib or head officer of the decree-holders

had with him another paper which showed the assets of the second property. Under these circumstances, the decree-holders were in a position to

make an approximate, if not a definite, statement as to the value of the properties. They have made no attempt to elucidate the matter. We are of

opinion, therefore, that the Subordinate Judge ought not to have disregarded the testimony of Chandra Nath that the income of the first property

was between seven hundred and eight hundred rupees. If the income is as alleged, there is no question that Rs. 3,000, is too low an estimate of the

value of the property. Apart, however, from the circumstance that the value of the properties were deliberately mis-stated in the sale proclamation,

there is ample evidence to show that the mis-statement was made with a purpose. When the properties came to be sold on the 22nd February, the

decree-holder offered a bid of Rs. 3,000. He must have known at the time that the properties were worth Considerably more. His benamdar

offered bids successively ranging from Rs. 3,500 to Rs. 6,000. There was only one outsider present, who offered a bid for Rs. 5,700. Under these

circumstances, it is obvious that an outsider would hesitate to offer any very large bids; he would naturally assume that the decree-holder

mortgagee knew the value of the property, and as he had valued it at Rs. 3,000, and offered a bid from that sum only, the property could be worth

very much more. If the stranger bidder had been aware that the other bids were offered not by a stranger to the property but by the decree-holder

mortgagee himself, he might have been encouraged to offer larger bids. We must hold, therefore, that this conduct on the part of the decree-holder

in offering bids through a benamdar, considerably in excess of the value which he deliberately stated in the sale proclamation, was calculated to

mislead and was consequently fraudulent. On this ground alone the sale ought to be set aside.

3. In so far as the second property is concerned, upon the facts found by the Subordinate Judge, there can be no question that the property has

been under-sold. The value of the property was stated to be Rs. 2,000. The decree-holder offered a bid for that sum and then his benamdar

offered a bid for Rs. 2,025. There was no other bidder and the property was knocked down to the highest bidder. The Subordinate Judge has

found that the value of the property is Rs. 8,000. He holds, however, that the property could not fetch its proper value at the sale, as part of it had

been previously sold for arrears of rent and purchased by a third party. In this Court, this point has been elaborated on the side of the respondent

and it has been suggested that other portions of the property also had been sold previously in execution of a decree for arrears of rent. In our

opinion the materials on the record, so far as this aspect of the case is concerned, are so meagre that we are not justified in making any deduction

from the value of the property by reason of the circumstance that portions thereof had been previously sold. It may also be pointed out that the

circumstances in connection with the alleged previous sales are by no means free from suspicion. The second property as already stated consists of

two items, Sapagachi and Panchpara. The rent payable for Sapagachi is Rs. 92 and that for Panchpara Rs. 79. Assuming that the value of the

entire property was Rs. 8,000, the value of the portions would be approximately Rs. 4,300 and Rs. 3,700. It has been stated on behalf of the

respondent that Sapagachi was sold for arrears of rent on the 13th February, 1906, for Rs. 200 and Panchpara on the 21st November 1908, for

Rs. 300. We are not in a position to say under what circumstances these took place, nor is there any evidence on the record to show that the sales

were held in execution of rent decrees and that the purchaser took the property with power to annul all encumbrances. On the other hand, the very

circumstance that the property, worth Rs. 8,000, was sold for Rs. 500, justifies the inference that the purchases took the property subject to

encumbrances. If so, there would be no ground for the suggestion that the value of the property was depreciated by reason of these two sales. We

must, therefore, hold that when the second property, which the Subordinate Judge has found to be worth Rs. 8,000, was sold for Rs. 20-25, the

judgment-debtor suffered substantial loss. We must not also overlook the fact that there was no bidder for the property except the decree-holder

himself. Here also it may be observed that the device adopted by the decree-holder of the interposition of a benamdar would effectively mislead

the Court. If the benamdar had not offered a bid, the officer who conducted the sale would in ordinary course have referred the matters to the

Judge and it is not unlikely that a fresh sale might have been ordered upon service of a new proclamation. On these facts, we are of opinion that the

case is completely covered by the decision of the Judicial Committee in Saadatmand Khan v. Phul Kuar 20 A. 412 : 2.C.W.N. 550 (P.C.) : 25

I.A. 146. As the appellants are entitled to the first and second grounds, it is not necessary to investigate the third ground as to the non-service of

the sale proclamation.

4. In so far as the fourth ground is concerned, we may observe that it was not taken in the Court below and the learned Vakil for the respondent

has suggested with some force that the interpretation now sought to be put by the appellant upon the petition of the 17th February, 1908, is not

correct. It is needless, however, to discuss the question, because as we have already stated, the sale must be set set aside on other grounds.

5. The result, therefore, is that this appeal must be allowed, the order of the Court below discharged and the sale held on the 22nd February,

1908, set aside. The appellants are entitled to their costs both here and in the Court below. We assess the hearing fee in this Court at five gold

mohurs.