

(1910) 03 CAL CK 0056**Calcutta High Court****Case No:** None

Lachman Pershad Singh

APPELLANT

Vs

Ganga Prasad Singh

RESPONDENT

Date of Decision: March 11, 1910**Citation:** 6 Ind. Cas. 180**Hon'ble Judges:** Shar-ud-din, J; Brett, J**Bench:** Division Bench**Judgement**

1. This is an appeal against two orders of the Subordinate Judge of Monghyr passed on the 14th June 1909, dismissing and refusing to consider two applications made by the present appellant to have a certain sale proclamation amended by inserting in it the proper value of the property advertized for sale. The Subordinate Judge came to the conclusion that the application was premature and that no such application could be made until after the sale.

2. A preliminary objection to the hearing of the appeal has been taken on the ground that no appeal lies as the proceedings which were questioned in the petition were proceedings u/s 287 Clause (e) of the old Code of Civil Procedure. This objection it based on a decision of the Madras High Court in the case of Sivagami Achi v. Subrahmania Ayyar 27 M. 259. We are of opinion that this objection cannot be maintained. It has been held by this Court in several cases three of which are the cases of Ganga Prosad v. Raj Coomar Singh 30 C. 617, Raja Ramessar Proshad Narain Singh v. Rat Sham Krissen 8 C.W.N. 257 and Saurendra Mohan Tagore v. Hurruli Chandra 12 C.W.N. 542, that applications against proceedings u/s 287, Clause (e), Civil Procedure Code, fall under the provisions of Section 244, Civil Procedure Code, and as such they are open to appeal.

3. We are also of opinion that the Subordinate Judge was wrong in the view which he took that the application made to him was premature. In our opinion, it is part, of the duty of the Court to see that all matters, which the Court considers material for the purchaser to know in order to judge of the nature and the value of the property,

are correctly stated in the sale proclamation and it has been held by the Privy Council *Girdhari Singh v. Hurdeo Narain Singh* 26 W.R. 44 : 3 I.A. 230 Ed. that a statement in the sale proclamation of a value of the property to be sold far lower than the actual value of the property in itself constitutes an irregularity. In circumstances such as those which have occurred in the present case, where an application is made by a debtor objecting to the value of the property as stated in the sale proclamation, it is certainly the duty of the Court executing the, decree to make an enquiry and to satisfy itself that the amount stated in the proclamation is substantially correct. In this case, however, we find that since this appeal has been preferred, the property has been sold and the result is that any order which we might pass in this appeal could be perfectly infractuous for it would certainly not have the effect of setting aside the sale. We are of opinion, therefore, that the only way we can deal with the present case is to express the opinion which we have done with reference to the proceedings of the lower Court and, having done so, to dismiss the appeal. At question which was raised in the lower Court as to the value of the property is one which it will be open to the petitioner to raise and press in the application u/s 311, Civil Procedure Code, which we understand he has preferred in the lower Court and which is still pending. We make no order as to costs.

4. We direct that the record of this case be sent back to the lower Court without delay.

Rule No. 2762.

5. This rule is discharged as it has become infractuous. We make no order as to costs.