(1936) 07 CAL CK 0034

Calcutta High Court

Case No: Civil Rev. Case No. 1557 of 1935

Amullya Krishna Bandopadhya		APPELLANT
	Vs	
Dilip Kumar Roy Chowdhury and Others		RESPONDENT

Date of Decision: July 22, 1936

Judgement

1. This Rule was issued by this Court on an application made by a purchaser from the decree-holder auction-purchaser of property sold in execution of a mortgage decree, and was directed against an order passed by the learned District Judge of Khulna, on 31st of July, 1935, setting aside the sale, on appeal from an order of the Court of execution, passed on the 18th of April, 1935, rejecting an application under Or. 21, r. 90 of the Code of Civil Procedure, for setting aside the sale. It appears that previous to the application which has now been allowed by the District Judge on appeal, on the ground of fraud, three applications made by the judgment-debtors other than those whose application has been allowed by the Judge, were rejected. The effect of the order passed on appeal to which reference has been made above, is that the entire sale of the property in execution of the decree at which the Petitioner in this Court was the purchaser, has been vacated, inspite of the fact that the judgment-debtors, other than the Opposite Parties Nos. 1 and 2 in this Rule, were parties whose applications to set aside the sale had previously been rejected. "On the facts and the circumstances of the case, which are not in controversy before us, we have no hesitation in coming to the conclusion that the order of the Court of appeal below, setting aside the entire sale in question, was wholly irregular and unsupportable as such, regard being had to the position that the judgment-debtors other than those whose application under Or. 21, r. 90, C. P. C, was allowed by the Judge in the Court of appeal below, could not be allowed to have the benefit of the said application in view of the fact that their own applications for setting aside the sale were previously rejected. In the case before us, the setting aside of the entire

sale would result in failure of justice, and would operate to the prejudice of the purchaser at the sale in execution of a decree and the Petitioner in this Court; and for that reason, we are unable to affirm the order of the Court of appeal below, setting aside the entire sale.

2. In the result, the Rule is made absolute. The Order of the District Judge passed on the 31st of July, 1935, is varied to this extent that it will take effect so far as the share and interest of the two minor judgment-debtors, Dilip Kumar Roy Choudhury and Arun Kumar Roy Choudhury, are concerned, and the sale is to stand confirmed so far as the share and interest of the other judgment-debtors, Jatindra Nath Roy Choudhury, Abani Kanta Roy Choudhury and Puma Chandra Roy Choudhury, are concerned. There is no order as to costs in the Rule.