**(1911) 04 CAL CK 0017**

**Calcutta High Court**

**Case No:** Rule No. 300 of 1911

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| Dulhin Mathura Das Koer | | APPELLANT |
| | Vs | |
| Bansidhar Singh and Another | | RESPONDENT |

**Date of Decision:** April 20, 1911

**Judgement**

1. We are invited in this Rule to set aside an order, by which the Court below has dismissed an application for reversal of an execution sale under r. 89 of Or. XXI of the CPC of 1908. The circumstances under which the order in question has been made have not been disputed before this Court. The property in dispute is a house which admittedly belonged to one Naunidh Koer. The case for the Petitioner is that on the 5th November 1907 she purchased the house at a sale in execution of a certificate under the Public Demands Recovery Act issued against Naunidh Koer for recovery of arrears of road-cess. On the 21st September 1910, in execution of a money-decree held by one Bansidhari Singh against Naunidh Koer, the house was brought to sale and purchased by the decree-holder. The Court was closed from the 2nd October till the 3rd November 1910. On the 4th November, when the Court re-opened, one of the officers of the Petitioner took to the Court an application for reversal of the sale under r. 89 of Or. XXI of the Code of 1908. The presiding officer, it appears, had for some unexplained reason left the Court earlier than usual; and when the application was presented to the sheristadar, at 5 o''clock in the afternoon, he made a note upon it to the effect that it had been so presented, but refused to accept the money on the ground that he had no authority to receive it. On the next day, the petition was presented again and registered, and the money was also deposited. The decree-holder auction-purchaser objected to the reversal of the sale on three grounds, namely, first, that the application had been presented beyond the time prescribed by the law, and was consequently of no avail to the Petitioner ; secondly, that the deposit was not unconditional, and was consequently not a valid deposit within the meaning of the Rule, and, thirdly, that the Petitioner had no locus standi to make the application, because, upon her own allegation, her interest, if any, had accrued not only before the sale but so long before the execution

proceedings commenced that it could not be affected thereby. The Subordinate Judge held that the first two objections taken by the decree-holder auction-purchaser were well-founded, but that the third could not be sustained. In this view, he dismissed the application for reversal of the sale. The Petitioner has now applied to this Court, and invited us to consider the legality of the order made by the Subordinate Judge. In our opinion the order must be affirmed, but not on the grounds stated by the Subordinate Judge.

2. In so far as the first objection taken by the decree-holder auction-purchaser is concerned, we are of opinion that there is no substance in it. Upon the facts stated, it is clear that the failure of the Petitioner to make the application accompanied by the deposit on the day the Court re-opened was due to an act of the Court itself. Consequently, upon the principle explained in the case of Mahomed Akbar Zaman Khan v. Sukhdeo Pande 13 C. L.J. 467 (1911), the position of the Petitioner could not be prejudiced in any manner. She had done her best to comply with the requirements of the statute, and the difficulty which has arisen was occasioned, because the presiding officer had left the Court earlier than usual. Under such circumstances, the fresh presentation of the application and the deposit of the money on the day following would be sufficient compliance with the provisions of the law.

3. In so far as the second objection urged by the decree-holder auction-purchaser is concerned, it is in our opinion equally unsubstantial. It appears that the petition which accompanied the deposit contained a statement that the money was not to be paid out to the decree-holder auction-purchaser till the disposal of a suit which had been commenced by the Petitioner in another Court. Now, it is perfectly true that a deposit under r. 89 of Or. XXI, in order that it may be a valid deposit, must be unconditional, because the deposit is to be made for payment to the purchaser and the decree-holder. When, therefore, a deposit is made with a condition that the sum may not be drawn out at once but may be retained in Court until a certain event has happened, it is not a good deposit within the meaning of the Rule [see Shakoti v. Jotindra Mohan 1 C. W. N. 132 (1896)]. The case of Hanuman Singh v. Lachman Sahu 8 C. W. N. 355 (1904) is not opposed to this view. There the deposit when made was unconditional, and it was only subsequently that an infructuous attempt was made by the Petitioner to fasten a condition thereupon. The Court held that the deposit, if good when made, cannot be invalidated by a subsequent act on the part of the Petitioner not authorised by law. On this principle, it may well be contended that the deposit in this case ought not to be treated as valid, because a condition was annexed thereto. It appears, however, that the deposit was accepted by the Court without any question and as soon as objection was taken by the decree-holder, the Petitioner withdrew the condition, so that the money became available for payment to the decree-holder before he had made any attempt to withdraw the money from Court. Under such circumstances, we are not prepared to hold that the deposit was invalid and not sufficient for reversal of the sale. The position might have been

different if, upon objection taken by the decree-holder, the Petitioner had persisted in her effort to annex a condition to the deposit. The decree-holder was not prejudiced in any manner by the insertion of the prayer in the application of the Petitioner that the money should be retained in Court, and he was substantially in the same position in the end as if such prayer had never been made. We must consequently hold that there was substantially a valid deposit within the time limited by law, sufficient for reversal of the sale.

4. In so far, however, as the third objection taken by the decree-holder auction-purchaser is concerned, it was in our opinion erroneously overruled by the Subordinate Judge. As already stated, the case for the Petitioner is that so far back as the 5th November 1907 she had acquired, by purchase at the certificate sale, a good title to the property in question, in other words, that at the time when the property was sold on the 21st September 1910 as the property of Naunidh Koer, the latter had no subsisting interest therein. It is manifest, therefore, that the Petitioner has not been in any manner affected by the sale. Under these circumstances, the question arises whether she is entitled to make an application for reversal of the sale under r. 89 of Or. XXI. That Rule—we quote only so much of it as is relevant to our present purpose—provides as follows : "Where immoveable property has been sold in execution of a decree, any person either owning such property or holding an interest therein by virtue of a title acquired before such sale, may apply to have the sale set aside" on certain prescribed conditions. It may seem, at first sight, that the language of this Rule is comprehensive enough to include a person in the position of the Petitioner. It may be contended that here immoveable property has been sold in execution of a decree. The Petitioner is the person who owns such property by virtue of a title acquired long before the sale : she is consequently competent to apply to have the sale set aside. In our opinion, this construction, though it may be justified by the language of the Code, is not the right construction of the rule in question. R. 89 reproduces sec. 310A, which was inserted in the Code of 1882 by Act V of 1894. That section provided that any person whose immoveable property has been sold under Ch. XIX of the Code of 1882 may, at any time within 30 days from the date of sale, apply to have the sale set aside. Upon the construction of this section, it is well known, two questions arose upon which there was some divergence of judicial opinion. The first point which arose for consideration was whether a person who had acquired an interest in the property after the sale sought to be set aside had taken place was competent to avail himself of the benefit of the section: the question arose, for instance, whether a person to whom the judgment-debtor sold or mortgaged the property after the sale in execution was entitled to apply under the section. Upon this point, as we have already stated, the different High Courts were not agreed [see Hazari Ram v. Badai Ram 1 C. W. N. 279 (1897), Appaya v. Kunhati I. L. R. 30 Mad, 214 (1906) and Manickka v. Rajagopala I. L. R. 30 Mad. 507 (1907), see also Ram Chandra v. Rakhmabai I. L. R. 23 Bom. 450 (1898), Mulchand v. Govind I. L. R. 30 Bom. 575 (1906), Erode v. Pulhiedeth I. L. R. 26

Mad. 365 (1902) and Kunja v. Bhupendra 12 C. W. N. 151 (1907)]. To settle this divergence of judicial opinion, the Legislature has introduced the words "by virtue of a title acquired before such sale." The second question which arose for consideration was, whether the person who sought to avail himself of the provisions of sec. 310A must have been full owner of the property sold, or whether it was sufficient that he should have an interest in the property affected by the sale [Nityananda Patra v. Hira Lal Karmakar 5 C. W. N. 63 (1900), overruled by a Full Bench in Paresh Nath v. Nabogopal I. L. R. 29 Cal. 1 (1901), Mallikarjunadu v. Lingamurti I L. R. 26 Mad. 332(1902)]. In order to settle this divergence of judicial opinion, the Legislature has introduced the words "either owning such property or holding an interest therein." In order to give effect, however, to the policy of the Legislature upon the two points just mentioned, the rule appears to have been re-drafted with the result that the phraseology has been so altered as to lend some colour of support to the interpretation, that any person who owns the property or has an interest therein, is entitled to apply for reversal of the sale, even though his title is such as cannot be affected by the sale: in other words, the attempt to remove the two difficulties which had arisen under the old Code, has resulted in a new obscurity. It is plain, however, that a reasonable interpretation must be given to the provisions of the Statute, and it is useful in this connection to bear in mind the well-known canon of construction laid down in Stradling v. Morgan Plowden 197 (at 205 a) (1660), and quoted with approval by Lord Halsbury, L. C., in Cox v. Hakes 15 A. C. 506 at p. 518 (1890), and by this Court in the case of Narendra Nath v. Nogendra Nath 13 C. L. J. 471 at p. 475 (1911). "The sages of the law heretofore have construed statutes quite contrary to the letter in some appearance, and those statutes, which comprehend all things in the letter, they have expounded to extend but to some things, and those which generally prohibit all people from doing such an act, they have interpreted to permit some people to do it, and those, which include every person in the letter, they have adjudged to reach to some persons only, which expositions have always been founded on the intent of the Legislature which they have collected sometimes by considering the cause and necessity of making the act, sometimes by comparing one part of the act with another, and sometimes by foreign circumstances. So that they have ever been guided by the intent of the Legislature, which they have always taken according to the necessity of the matter, and according to that which is consonant to reason and good discretion."

5. It would in our opinion be an obviously unreasonable interpretation of r. 89 to hold that any person might avail himself of the benefit thereof, even though admittedly he was in no way affected by the sale sought to be reversed. In a Under the circumstances, there will be no order as to costs in this Court case of this description a reference to the history of the legislation on the subject is perfectly legitimate, as was done by the Judicial Committee in Iswati Prosad v. Chatrapati 3 M. I. A. 100 at p. 130 (1842) and Brown v. McLachlan L. R. 4 P. C. 543 at p. 550 (1872). The history of the legislation here shows conclusively that the extended construction

put upon the Rule by the learned Subordinate Judge cannot be supported : we must after all take a rational view of the scope and object of the section, and cannot attribute to the Legislature any intention such as would be obviously unreasonable ; but we need not for our present purposes determine the precise limits of the scope of the Rule or define the circumstances under which it may be applicable. The view we take as to the true interpretation of r. 89 is in accord with that taken by Stanley, C. J., and Banerjee, J., in Mahamed Ahamadulla Khan v. Ahamed Said Khan 8 All. L. J. R. 356 (1911) [see also Asmutunnissa v. Ashruff Ali I. L. R. 15 Cal. 488 (1888), which overruled the contrary view maintained by Mr. Justice Field in Panye Chunder v. Hur Chunder I. L. R. 10 Cal. 496 at p. 500 (1884)]. As the Petitioner has carried back her title to a date so far anterior to the sale and the execution proceedings that she could not possibly be affected thereby, we must hold that she had no locus standi to make an application for reversal of the sale which according to her own case does not concern her in the least.

6. The result, therefore, is that although we disagree with the Subordinate Judge upon all the three points taken by the decree-holder auction-purchaser, we must affirm his order and discharge the Rule. Under the circumstance, there will be no order as costs in this Court.