Jadoo Nath Chatterjee Vs Aswini Kumar Banerjee and Others

Court: Calcutta High Court

Date of Decision: July 4, 1910

Acts Referred: Bengal Tenancy Act, 1885 â€" Section 169

Citation: 16 Ind. Cas. 974

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

Bench: Division Bench

Judgement

1. We are invited in this appeal to set aside a sale held on the 21st August 1906, in execution of a decree for arrears of rent obtained on the 9th

March 1897. In 1901, there was an execution against the same property and on the 30th January of that year, it was sold for Rs. 26,100. It

passed into the hands of a person, named Lalit Kumar Bose, who is alleged to have been a benamidar of Rai Charan Guha. Immediately after that

sale, an application was made to set it aside on the ground of material irregularity and substantial injury. The Court held on that occasion that the

property had been under-sold and that the judgment-debtors had been prejudiced by material irregularity in publishing the sale. The sale was,

consequently, set aside. In the present execution proceedings, the property was sold for Rs. 8,000 and purchased by three persons, Aswini

Kumar Banerjee, Lalit Chander Banerjee and Rai Charan Sarkar; of these, the first two are said to be servants of the decree-holders and the third

is alleged to be the benamidar for the real purchaser at this sale of 1901. The learned Subordinate Judge in the Court below has held that the

property has been under-sold, He has also found that there was material irregularity inasmuch as the value of the property was stated at Rs. 5,000

in the sale proclamation. He has, however, declined to set aside the sale. In so far as we are able to gather the true reason of his decision from his

judgment, it appears that he has refused to set aside the sale, because, in his opinion, the applicant, an infant, was urged by the other judgment-

debtors to make this application for reversal of the sale. These other judgment-debtors had applied to set aside the sale, but their attempt proved

infructuous, and the learned Subordinate Judge appears to have thought that, therefore, the application by the infant ought not to succeed. There

can, in our opinion, be no doubt that the sale ought to be set aside upon the facts which have been established beyond the possibility of any doubt

or dispute. The property was sold in 1901 for Rs. 26,100. On that occasion, the Court found that it was worth more. On the present occasion, it

has been sold for Rs. 8,000 only. There can be no doubt, therefore, that the judgment-debtors have suffered substantial injury. The question is

whether there has been any material irregularity in the publication of the sale proclamation. As we have already stated, the property was valued at

Rs. 5,000 in the application for execution and also in the sale proclamation. This under-statement must have been deliberate. It was well known to

the decree-holders that the property was worth more than Rs. 26,000. The learned Vakil for the purchaser, however, offered an excuse on behalf

of the decree-holders. He invited our attention to a statement in the application for execution to the effect that the decree-holder held decrees

against the judgment-debtors for arrears of rent due for periods subsequent to the period covered by the decree now under execution. This

obviously was absolutely irrelevant. The suggestion, no doubt, is that the property was subject to the charge created by the decree now under

execution as also to other charges and that the purchaser would take the property subject to these subsequent decrees. That, of course, is not the

law. u/s 169 of the Bengal Tenancy Act, the property passes into the hands of the purchaser free of all charges of arrears of rent and the landlord

decree-holder is entitled to satisfy his claim for arrears of rent, which have accrued since the date of the institution of the suit, form the surplus sale-

proceeds. In fact, it is quite likely that this statement in the application for execution may have misled bidders, and that may be the reason why no

bidders were present excepting the decree-holder and the three persons who offered joint bids and subsequently became purchasers. It may

further be pointed out that although the decree-holder had stated the value of the property to be Rs. 5,000, he himself offered bids to the extent of

Rs. 7,500, which shows that he could not have acted honestly in putting the value of the property at Rs. 5,000, in the application for execution and

the sale proclamation. The matter, in our opinion, is completely covered by the decision of the Judicial Committee in the case of Saadatmand Khan

v. Phul Kuar 20 A. 412 : 25 I.A. 146 : 2 C.W.N. 550.

2. The result, therefore, is that this appeal must be allowed and the sale reversed. The appellant is entitled to costs both here and in the Court

below. We assess the hearing fee in this Court at five gold mohurs.

3. As the sale is set aside, the execution proceedings will be taken up again, and a fresh sale proclamation issued; the decree-holders must take

steps to have the proclamation properly served