
(1878) 03 CAL CK 0018

Calcutta High Court

Case No: None

Sardar Doyal Singh

APPELLANT

Vs

Shib Prokash Singh

RESPONDENT

Date of Decision: March 20, 1878

Citation: (1878) ILR (Cal) 545

Hon'ble Judges: White, J; R.C. Mitter, J

Bench: Division Bench

Judgement

White, J.

The result of the release of this portion was, that the description of the property which was advertised to be sold was no longer an accurate description.

2. Now Section 249 of the Code, in prescribing what the proclamation is to contain, makes express mention of "the property to be sold," and there can be no doubt that that particular, is one of the greatest importance. In a case where, as here, a variation had arisen between the property advertised to be sold and the property actually sold, in consequence of the release obtained by Nursing Roy, it was necessary and proper that a fresh proclamation should have issued in order to comply with the requirement of the section to which I have referred. No such fresh proclamation, however, issued; but on the day of sale, those who had assembled for the purpose of bidding for the property were informed at the time and place of sale that a portion of the advertised property had been released, and that the sale would, therefore, only extend to a 2-anna 8-pie share of the talook, less that portion, it is obvious that this was not a compliance with the Code, and that serious injury may have resulted to the appellant from the adoption of such a course. The judgment-debtor is entitled to have a proclamation issued which shall state accurately the property to be sold, and which is published thirty days before the sale. The method adopted deprived him of the benefit of the thirty days' advertisement, and is open to the further objection that intending purchasers were left in the dark as to the extent of the portion which Nursing Roy had procured to be

released, and as to how much it reduced the value of the 2-anna 8-pie share of the talook which was advertised for sale. That the proceeding, under these circumstances, to sell the appellant's property under the proclamation of the 11th January 1877 amounted to a material irregularity, we think there can be no doubt. The way in which the Subordinate Judge has dealt with the objection is this. He says: "No rule has been pointed out and urged that in a case like this the writ of attachment and sale proclamation should be served and published anew under that rule it being so, to call such an omission an irregularity, is altogether false and improper." The objection is not pointed to the omission to issue a fresh writ of attachment, but to the omission to issue a fresh proclamation. A reference to Section 249 of the Code¹ would have satisfied the Subordinate Judge that a fresh proclamation was, in strictness, required, inasmuch as the property actually sold did not correspond with that which was proclaimed to be sold.

3. The irregularity being in our opinion material, we have next to determine whether the judgment-debtor has proved that he has sustained substantial injury by reason of that irregularity. We can easily suppose that he may have done so, and it is an irregularity of such a sort that very little evidence would satisfy the Court on the point. It is necessary, however, for him to give some evidence of substantial injury, but this he is unable to do upon the present application, because he cannot show what is the value of the 12 kalums which have been deducted from the 2-anna 8-pie share of the talook.

4. The Court below does not appear to have examined the evidence with a view to this point, nor indeed did the question properly arise there, because it held that the objection on the score of irregularity failed, in which case, of course, it would be unnecessary to consider whether substantial injury had or had not been suffered by the judgment-debtor.

5. This question now becomes material, and we think, considering the course which the application took in the Court below, that the judgment-debtor should have an opportunity of substantiating this part of his case. We shall, therefore, with these remarks, remand the case to the Subordinate Judge, and direct him to ascertain from the evidence on the record, and from any further evidence that may be adduced by the parties, whether the appellant has sustained substantial injury by reason of the occurrence of the irregularity complained of. The appellant and respondent respectively will have liberty to produce such further evidence.

6. The costs of this appeal will abide the result of the remand.