

**(1920) 12 BOM CK 0017**

**Bombay High Court**

**Case No:** First Appeal No. 291 of 1920

Shantmurti Devappa Kalyanpur

APPELLANT

Vs

Narayan Ramchandra Prabhu

RESPONDENT

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**Date of Decision:** Dec. 6, 1920

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 68

**Citation:** AIR 1921 Bom 209(1) : (1921) 23 BOMLR 476

**Hon'ble Judges:** Norman Macleod, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

Norman Macleod, Kt., C.J.

This is an application to get aside a sale in Darkhast No. 286 of 1916. The mortgage decree was passed 1980 in favour of the plaintiff in the original suit and the sale was held of the 20th June 1919. Defendant No. 7 was a party to " the suit. On the 7th July 1919 he made an application to the Collector to set aside the sale on the ground that he had been prejudiced by the sale of a certain Survey Number, which was sold in priority to other Survey Numbers in which he had no interest. Under Rule 17 on page 106 of the Manual of Circulars, the Collector should have at once referred the applicant to the Court executing the decree. Unfortunately, the Collector did not read Rule 17 in the right way. He appears to have inquired into the matter on the complaint of defendant No. 7 and then referred the application to the First Class Subordinate Judge for him to set aside the sale on the 28th August 1919.

2. It is difficult to imagine how the Collector came to make such a mistake. The rules are perfectly clear, that is to say, the rules which regulate the procedure to be followed when decrees are transferred for execution to the Collector under the provisions of Section 68 of the Code of Civil I Procedure. At that time Rule 17 was in force which says : " If any application to set aside a sale be made within the time

limited by law to the Collector or other officer aforesaid, he shall refer the applicant to the Civil Court." It was pointed out by this Court in *Tipangavda v. Ramangavda* (1919) 22 Bom L.R. 35. that it is the duty of the Collector to return the application to the applicant and tell him that the application should be made to the Court. We have no doubt that if there was anything on the merits of the case in the applicant's favour it would be extremely hard if he were debarred from having his application dealt with by the Court, because the Collector by an error of judgment retained the application and did not even forward it to the Court within the thirty days allowed to a person to make an application to set aside a sale. But in this case, the applicant has no grievance on the merits, so that the appeal must be dismissed with costs.

3. We think it is advisable that the attention of the District officers should be called to Rule 17. We also think that in every proclamation for sale carried out under the rules it should be notified that any person wishing to set aside the sale under Order XXI of the Code has to make his application to the Court, and not to the Collector, to whom the decree has been sent for execution, within thirty days from the date of the sale. We also point out that if in spite of that notification any applicant still makes an application to the Collector to set aside the sale, he should be referred to the Court without a moment's delay.