Haladhar Mitra Chowdhuri Vs. Prafulla Nath Tagore and ors.

LegalCrystal Citation : legalcrystal.com/866901

Court : Kolkata

Decided On : Apr-15-1920

Reported in : 57Ind.Cas.892

Judge : Newbould and ;Panton, JJ.

Appellant : Haladhar Mitra Chowdhuri

Respondent : Prafulla Nath Tagore and ors.

Judgement :

1. These two appeals are against orders rejecting applications to set aside two sales held in execution of decrees for rent.

2. The judgment-debtor held certain Mouzahs under the decree-holder, half by virtue of Patni right and the other half by virtue of Dar-patni right, and his Patni and Dar patni interests in these Mouzahs have been sold in execution of rent decrees obtained against him.

3. The question that has to be decided is whether there has been material irregularity or fraud in publishing or conducting the sale and also whether the judgment-debtor has sustained substantial injury by reason of such irregularity or fraud. We must hold with the Subordinate Judge that the judgment debtor has failed to. prove substantial injury which would justify the setting aside of the sales even if there was any material irregularity. The two properties were valued in the sale proclamation at Rs. 20,000 each. The Patni interest was sold for Rs. 30,000 and the DAR patni interest for Rs. 26,000. The learned Subordinate Judge, relying on the Settlement records, has found the annual income of the property to be about Rs. 4,106. After deducting the rent payable to the superior landlord and 10 per cent. as collection charges, he has valued the property at 10 times the annual nett profit, which he says comes to about Rs. 42,000. So far as this calculation goes it is not disputed. But what is said is that in addition to the income shown in the Settlement papers there were other items from which the judgment-debtor drew considerable sums annually and which would greatly enhance the value of the property. It is said that there was a Pucca Cutchery of considerable value as well as khas lands, fisheries and a hat from which this extra income could be derived and for these an additional sum should be added to the valuation calculated from the Settlement papers.

4. But the difficulty in the way of the appellant is that he has failed to produce the collection papers, which alone can give us satisfactory evidence on which we can decide the income derived from these properties. The learned Subordinate Judge has estimated there might be an extra Rs. 400 to be added to the annual income on account of khas lands and has pointed out that even taking this into consideration the

total value will not go above Rs. 46,000, which is Rs. 10,000 less than the price at which the property was sold. On the material on the record we certainly cannot say that these unconsidered items of property were of such value that more than another Rs. 10,000 should be added to the valuation of the lower Court. Reliance is also placed on the evidence of the witness Surendra Nath Sen. He stated that 'there was a proposal of buying the property. We did not make the judgment-debtor any offer but amongst ourselves we had a talk that we might buy for Rs. 80,000.' We agree with the lower Court that when in fact no offer was made to the judgment-debtor, this evidence is of very little value as to the proper prises of the property.

5. If we hold that the price fetched Rs. 56,000 was adequate, we should hold that the valuation of the property at Rs. 40,000 in the sale proclamation was not a material irregularity. It is, therefore, unnecessary to consider at length whether other irregularities have been established. We may, however, remark that as regards the omission to give notice to the judgment-debtor before the issue of sale proclamation as required by Rule 66 of Order XXI, this objection appears to have been taken for the first time in this Court.

6. As regards the question of due service of notice, we are in entire agreement with the lower Court that there was no suppression. The evidence proves that notices were duly served. Our attention has been particularly drawn to the evidence of Nurul Huq who signed the peon's return as a witness, though he was not really present at the time of the service. To our minds the story told by this witness is extremely probable and should be believed, and though he was not present during the service shows clearly that there was no suppression of the notices.

7. The appellant has failed to prove substantial injury. His application was rightly rejected and these appeals must be dismissed with costs.

8. We assess the hearing fee in each case at two gold mohurs.