

APPELLATE CIVIL.

Before Mukerji and Mitter JJ.

DAULAT BHUIYA

v.

RAHISA BANU.*

1930

Aug. 13, 21.

Sale proclamation—Material irregularity—Valuation, omission of—Code of Civil Procedure (Act V of 1908), O. XXI, r. 90.

The omission in a sale proclamation to state the value of the properties to be sold, when all other particulars have been given, is not always a material irregularity within the meaning of Order XXI, rule 90, of the Code of Civil Procedure.

Saadatmand Khan v. Phul Kuar (1) explained.

APPEAL FROM ORIGINAL ORDER by the judgment-debtor.

The facts of the case, out of which this appeal arose, appear in the judgment under report herein.

Annadacharan Karkun for the appellant.

Satindrachandra Khasnabis for the respondent.

Cur. adv. vult.

MUKERJI AND MITTER JJ. This is an appeal by a judgment-debtor from an order refusing to set aside a sale of certain properties. Several questions were raised, but all of them, with the exception of one, had to be eventually given up. The only question, which requires consideration, is whether the omission to state the value of the properties to be sold, when all other particulars have been given, is a material irregularity within the meaning of Order XXI, rule 90, Civil Procedure Code.

Now the particulars to be given in a sale proclamation are those mentioned in clauses (a) to (e) of sub-rule (2) of rule 66. Clause (e), upon which reliance

*Appeal from Original Order, No. 299 of 1929, against the order of Shib-charan Sil, Subordinate Judge of Mymensingh, dated Feb. 28, 1929.

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is placed, as indicating the necessity of stating the value of the property, runs in these words: "Every other thing which the court considers material for a purchaser to know in order to judge of the nature and value of the property." The clause cannot, in our opinion, be interpreted as meaning that the value, as put by the decree-holder or as assessed by the court, is a thing, which the purchaser must in all cases know in order to judge for himself the value of the property. It cannot be contended that the purchaser would necessarily look upon the court as an expert in valuation for his guidance or regard the decree-holder's valuation as in all cases reliable. The purchaser will have to form his own estimate of the value and, if other sufficient particulars are there in the sale proclamation, omission to state a valuation assessed by the court or guessed by the decree-holder may not matter. It is true that there may be cases; in which the court considers it material—and so it does in a large majority of cases—to let the purchaser know what value the parties put upon the property or what in its own opinion its value is. And, if it considers it material for the purchaser to know the same, it must be careful to see that it does not err too much on one side or the other but that the valuation, that is put down, is as approximately correct as possible, so that the purchaser may not be misled.

In support of the contention that the insertion of a value in the sale proclamation is obligatory, reliance has been placed upon the following words of the Judicial Committee in the case of *Saadatmand Khan v. Phul Kuar* (1)—"Whatever material fact is stated in the proclamation (and the value of the property is a very material fact) must be considered as one of these things 'which the court considers material for a purchaser to know,' and it is enacted in terms (though express enactment is hardly necessary for such an object) that those things shall be stated as 'fairly and accurately as possible.'" Their Lordships, however, in a preceding passage in their judgment

(1) (1898) I. L. R. 20 All. 412 ; L. R. 25 I. A. 146.

said that "it was made gratuitously by the decree-holder and the court." In our opinion, what their Lordships meant by the passage relied upon was that, when a valuation has been stated in the sale proclamation, it is a material fact within sub-section (e). Of course, when the court considers it material for the purchaser to know its own or the decree-holder's or the judgment-debtor's value the same must be stated fairly and accurately. If it considers it material to insert its own valuation in the proclamation, it is bound to hold an investigation for ascertaining the value, if such investigation be necessary [*Lachman Pershad v. Ganga Pershad Singh* (1), *Saurendra Mohan Tagore v. Hurruk Chand* (2), in which the observations to the contrary in *Kashi Pershad Singh v. Jamuna Pershad Sahu* (3) were held to be *obiter*]. In exceptional cases it may be considered necessary to put down the valuation as given by both parties, instead of the court itself trying to value the property. [*Bejoy Singh Dudhuria v. Asutosh Gossami* (4).] In the cases of *Thiruvengadaswamy Ayyangar v. Govindaswamy Udayar* (5) and *Rup Kishore v. Collector of Etah* (6), the words of the Judicial Committee in *Saadatmand's* case (7) referred to above have been understood in the same way. It may be noted here that the former was a case, in which the valuations as given by decree-holder and by the judgment-debtor were inserted in the sale proclamation and the court did not proceed to fix its own valuation, and in the latter case no valuation at all was given. It is true that there may be circumstances present in a particular case, which indicate that the valuation fixed by the court is a thing which a purchaser ought to know, and if that be established an omission to give such valuation may amount to a material irregularity. In the case of *Jashimuddin Sarkar v. Manmohini Dasya* (8) it was said that an

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(1) (1910) 15 C. W. N. 713.

(2) (1907) 12 C. W. N. 542.

(3) (1904) I. L. R. 31 Calc. 922.

(4) (1923) 28 C. W. N. 552.

(5) (1927) I. L. R. 51 Mad. 655.

(6) (1929) I. L. R. 52 All. 115.

(7) (1898) I. L. R. 20 All. 412 ;

L. R. 25 I. A. 146.

(8) [1922] A. I. R. (Calc.) 93 ;

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omission to state the value in the sale proclamation is an irregularity, but its omission does not necessarily vitiate the sale, unless it had a material effect upon the number of bidders and upon the price. What perhaps was meant in the decision was that the omission was an irregularity, but to be a material irregularity the consequences aforesaid should have been established.

As we are unable to hold that there was any material irregularity we must dismiss this appeal, which we do, but without any order for costs.

Appeal dismissed.

G. S.