

APPELLATE CIVIL.

Before B. B. Ghose and Panton JJ.

AMBIKA RANJAN MAJUMDAR

v.

MANIKGANJ LOAN OFFICE, LTD.*

1929.

Feb. 22.

Execution of Decree—Execution of decree for money—Sale of properties outside the local jurisdiction of the executing court—Gross undervaluation in sale proclamation a ground for setting aside sale—Civil Procedure Code (Act V of 1908), s. 39; O. XXI, r. 64.

Section 39 of the Code of Civil Procedure, 1908, does not authorise a court executing a decree for money to sell properties situate outside the local limits of its jurisdiction.

Prem Chand Dey v. Mokhoda Debi (1) followed.

Order XXI, rule 64 of the Code of Civil Procedure does not authorise a court to sell properties situated outside the local limits of its jurisdiction, even if the properties had been attached by it before judgment and fresh attachment was unnecessary under Order XXXVIII, rule 11.

There is no analogy in this respect between the case of a decree for sale under a mortgage and an attachment before judgment, where a decree for money is passed.

Moti Lal v. Karrabuddin (2) referred to.

Gross undervaluation in the sale proclamation brings a case within the decision of the Privy Council in *Saadatmand Khan v. Phul Kuar* (3).

APPEAL FROM ORDER, by the judgment-debtor.

This was an appeal by the judgment-debtor against an order of the Subordinate Judge, 4th Court, Dacca, dismissing his application under Order XXI, rule 90, for setting aside the sale of his properties, on the grounds that the attachment process and sale proclamation were suppressed, that the Dacca court has no jurisdiction to sell properties at Pabna and Rangpur and their sale by auction at Dacca had caused him substantial loss. These properties along with other properties of the judgment-debtor at

*Appeal from Order, No. 497 of 1927, against the order of Nata Bihari Ghosh, Subordinate Judge of Dacca, dated Feb. 28, 1927.

(1) (1890) I. L. R. 17 Calc. 699. (3) (1898) I. L. R. 20 All. 412;

(2) (1897) I. L. R. 25 Calc. 179; L. R. 25 I. A. 146.

L. R. 24 I. A. 170.

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Dacca had been attached by the Subordinate Judge, Dacca, before judgment. It was also contended that unduly low prices were given in the sale proclamation and this deterred intending buyers and thus enabled decree-holder to purchase valuable properties at nominal prices. The Subordinate Judge dismissed the application holding against the applicant on all the above grounds. The judgment-debtor appealed to the High Court.

Mr. Atulchandra Gupta (with him *Mr. Satishchandra Singha*), for the appellant. The matter is covered by the Full Bench case of *Prem Chand Dey v. Mokhoda Debi* (1). In Mulla's Civil Procedure Code, under section 38, the matter has been fully dealt with. So far as properties situated at Pabna or Rangpur are concerned, the sale should have been set aside. Further, on the strength of the Privy Council case of *Saadatmand Khan v. Phul Kuar* (2) and *Basanta Kumari Guha v. Ramkanai Sen Poddar* (3), I say that an understatement or a misstatement in the sale proclamation is a material irregularity. In the case of the 8 properties also the sale should have been set aside.

Mr. Sharat Chandra Ray Chaudhuri (with him *Mr. Ramgati Sarkar*), for the respondents. The attachment being made before judgment makes all the difference. Under Order XXXVIII, rule 11, no further attachment was necessary and under Order XXI, rule 64, the court could sell them. The principle of mortgage-decrees applies to these cases. All that is necessary for me is to make an application under Order XXI, rule 64, for selling a property already under attachment.

Prem Chand Dey v. Mokhoda Debi (1) was a case where the application for attachment was made after decree.

Mr. Atulchandra Gupta, in reply.

(1) (1890) I. L. R. 17 Calc. 699.

(3) (1910) 13 C. L. J. 192.

(2) (1898) I. L. R. 20 All. 412;

L. R. 25 I. A. 146.

B. B. GHOSE AND PANTON JJ. This is an appeal by the judgment-debtor against an order refusing to set aside the sale of certain properties in execution of a decree for money obtained by the respondent and purchased by him. The first objection refers to certain properties within the districts of Pabna and Rangpur. The properties were sold by the Subordinate Judge having jurisdiction in the district of Dacca. The learned Subordinate Judge has held that, under section 39 of the Code of Civil Procedure, the court which passed the decree for money could sell properties belonging to the judgment-debtor situate outside its jurisdiction. He came to this conclusion, because in section 39 the language is that "the court which passed a decree may send it for execution to another court." He held that the word "may" does not mean "shall" or "must." Having come to that conclusion, he held that the court which passed the decree could execute the decree by selling properties situate outside its territorial jurisdiction. There cannot be any doubt that this construction is not correct. Where it is necessary, in execution of a decree for money, to sell properties not within the local limits of the jurisdiction of the court which passed the decree, the sale of the properties can only be effected by the court within the local limits of which the property is situate. It is only necessary to refer to the Full Bench case of *Prem Chand Dey v. Mokhoda Debi* (1). The learned advocate for the respondent sought to support the decision of the Subordinate Judge, not on the ground on which he put it, and in fact he stated that that ground cannot possibly be supported, but on a different ground. His argument was that these properties had been attached at the instance of the decree-holder before judgment, and that being so, under Order XXXVIII, rule 11, of the Code of Civil Procedure, it was not necessary to attach these properties afresh in execution of the decree obtained

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(1) (1890) I. L. R. 17 Calc. 699, 703.

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by the respondent. He next referred to Order XXI, rule 64 and his argument was that the Dacca court was the court executing the decree, because there were other properties situate within the territorial jurisdiction of the Dacca court. He then laid stress upon the opening words of Order XXI, rule 64, namely, "any court executing a decree may order that any property attached by it and liable to sale.....shall be sold." He contended that as the Dacca court was the court executing the decree and the properties in question were attached by it, it can sell the properties. It was further argued, in support of this contention, that, where a court passes a decree on a mortgage by which the properties situated within the local limits of the jurisdiction of that court and also those outside such local limits are mortgaged, the court which passed the decree can sell the properties situated within both the jurisdictions. Similarly, as properties were attached by the Dacca court before judgment, both within and outside the local limits of its jurisdiction, that court might sell all the properties attached by it before judgment. This argument would imply that the effect of attachment is the same as a mortgage. But that is not so. It has been pointed out by their Lordships of the Privy Council in the case of *Moti Lal v. Karrabuldin* (1), that attachment confers no title. It only prevents a person from alienating the property. There is no analogy, therefore, between the case of a decree for sale of properties passed on a mortgage and a mere attachment before judgment, where a decree for money is passed in favour of the plaintiff. The argument, based on the wording of Order XXI, rule 64, also seems to me to be incapable of the construction which is sought to be put upon it. That rule is one of a series of rules which deals with the mode of execution of a decree by a court having jurisdiction to execute the decree and it has no reference to the question as to the jurisdiction of the court which should execute

(1) (1897) I. L. R. 25 Calc. 179; L. R. 24 I. A. 170.

a decreë. The question of jurisdiction must be governed by the Full Bench case of *Prem Chand Dey v. Mokhoda Debi* (1) cited above. It is also expedient that, in such a case as this, the property should be sold by the court within the territorial limits of which it is situate. The disadvantage which a judgment-debtor is likely to suffer by a sale effected by a court situated at a great distance from the property can very well be imagined. One cannot expect to find a bidder for properties situated within the districts of Pabna and Rangpur, particularly of small shares, if those properties are sold at Dacca. We are of opinion that the Dacca court had no jurisdiction to sell the properties outside the local limits of its jurisdiction. The sale of the properties within the districts of Pabna and Rangpur must, accordingly, be set aside.

The next objection on the part of the appellant is with regard to the sale of eight items of property given at pages 6 and 7 of the paper-book. The contention of the appellant with regard to these properties is that the valuation given in the sale proclamation by the decree-holder was unconscionably low. It is not necessary to give in detail the valuations given with regard to all the properties. It would be sufficient to say that a property, the value of which is given as Rs. 2, was purchased by the decree-holder himself for Rs. 300 : another property, which was valued at Rs. 5, was purchased by the decree-holder for Rs. 150 and so on. The judgment-debtor gave evidence to the effect that the value of these properties was considerably higher. This evidence was supported by two documents, one of which was a sale certificate, by which a three-annas' odd share of property No. 10, given at page 7 of the paper-book, was purchased for Rs. 5,700. The appellant's share would be worth according to that valuation Rs. 950. The decree-holder purchased it for Rs. 150. The other seven properties were purchased by a *kabala* for Rs. 13,000 and odd in 1916. According to that,

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the plaintiff's one-sixth interest would be valued at Rs. 2,000 and odd. The decree-holder purchased those properties for Rs. 515 by adding up the prices he paid for each item. Whether the present price of the properties has increased or diminished, they having deteriorated, we need not consider. The important fact is that the decree-holder himself purchased the properties at many times more than the value given in the sale proclamation. That itself brings the case within the decision of their Lordships of the Privy Council in the case of *Saadatmand Khan v. Phul Kuar* (1). See also *Basanta Kumari Guha v. Ramkanai Sen Poddar* (2). The gross under valuation of the properties must have deterred intending purchasers from bidding at the sale and offering reasonable value. The sale of those properties, therefore, should also be set aside.

The appeal with regard to these properties must, accordingly, be allowed. The appellant is entitled to his costs—ten gold mohurs.

Appeal allowed.

R. K. C.

(1) (1898) I. L. R. 20 All. 412; (2) (1910) 13 C. L. J. 192.
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