

ORIGINAL CIVIL.

Before *McNair J.*

SHUSHAMABALA DASEE

v.

POORNACHANDRA DE*

1935

Aug. 13, 27.

Sale by sheriff—Sheriff's poundage, Basis of—Proclamation of sale—Arrears of municipal taxes—Deduction by sheriff—Practice—High Court (Original Side) Rules, Ch. XXXVI, r. 77 (22)—Code of Civil Procedure (Act V of 1908), O. XXI, r. 66. (2) (c).

Where property is sold by the sheriff in execution of a decree and a sum, greater than the amount due to the decree-holder, is realised, the sheriff is entitled to charge poundage only upon the sum payable to the execution creditor.

Pickford v. Janaki Nath Roy (1) relied on.

Evans v. Manero (2) and *Rex v. Robinson* (3) referred to.

On such sale, the sum due to the municipality for arrears of rates and taxes should be set out in the proclamation of sale and deducted by the sheriff out of the sale-proceeds.

Bibhutibhushan Majumdar v. Majibar Rahman (4) referred to.

APPLICATION.

The facts of the case will appear from the judgment.

P. C. Ghosh for the applicant.

S. K. Basu for the guardian-*ad-litem* of the infant defendants.

Tulshikumar Banerji of Messrs. S. K. Ganguly & Co. for the plaintiff.

Sourendramohan Basu of Messrs. C. C. Bosu & Co. for the sheriff.

Cur. adv. vult.

(1) (1921) 26 C. W. N. 673.

(2) (1841) 7 M. & W. 463;

151 E. R. 848.

(3) (1835) 2 Cr. M & R. 334;

150 E. R. 144.

(4) (1934) I. L. R. 61 Cal. 956.

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MENAIR J. This is an application by the receiver in suit No. 410 of 1934 for payment of a sum of Rs. 1,133-14-0 with interest at 6 per cent. per annum from August, 1932, until realisation, and for payment of the sum of Rs. 2,278-14-0 with interest at 6 per cent. from 15th June, 1933, for taxed costs and for payment to the applicant's attorney and to the attorney for the guardian-*ad litem* of their costs of the execution proceedings.

By an order of the 27th July, 1934, certain attached properties were directed to be sold for the recovery of the abovementioned sums and for the costs of the execution proceedings. The sale was effected by the sheriff, who sent in a statement of account, deducting from the sale-proceeds: (i) the sheriff's poundage based on the total amount of the sale-proceeds and (ii) the charges of the Corporation of Calcutta for owner's and occupier's share of taxes.

The questions which are now before me for determination are—

(i) Whether the sheriff is entitled to charge poundage upon the sum paid to the execution creditor, or upon the amount realised by the sale, and

(ii) whether the arrears of taxes should or should not be set out in the sale proclamation on a sale by the sheriff.

I am informed that the practice has been for the sheriff to charge poundage upon the amount realised by the sale and not upon the amount paid to the execution creditor.

The practice appears to me to be wrong.

Chapter XXXVI, rule 77, item 22, of the Original Side Rules and Order grants to the sheriff poundage on sums levied in execution, or, in the event of the claim being satisfied, compromised, or settled, upon the amount of such satisfaction, compromise or settlement.

This rule was discussed by Sir George Rankin C. J. in *Pickford v. Janaki Nath Roy* (1) where the learned Chief Justice said:—

The wording of the rule begins by granting to the sheriff poundage “on sums levied by the sheriff in execution”. So far it is doing exactly what was done by the Statute 28 Eliz. c. 4 and it is keeping the old name for the old charge. It is maintaining also the principle of the old charge, *viz.*, that it is to be a payment upon results.

That decision turned upon whether the sheriff’s poundage was payable when a claim was paid on a compromise after an attachment before judgment, but the words which I have quoted from the judgment show that the basis of the sheriff’s charge is a payment upon results and that the rule in these Courts is founded on the English statute. The interpretation of that rule in England is set out in *Edwards on Execution*, page 158, as follows:—

The poundage is not calculated on the sum which the sheriff is directed to levy, nor upon the sum realised by a sale, but on the amount paid to the execution creditor as the proceeds of the execution.

In *Evans v. Manero* (2), where the sheriff claimed poundage on the whole sum marked on the writ, which was inaccurate, it was held that he was only entitled to poundage on the smaller amount which was really due.

In *Rex v. Robinson* (3), the Crown obtained judgment for penalties amounting to £1,000 under the Excise Laws and the sheriff seized the defendant’s goods valued at £824. The excise authorities ultimately agreed to take £500 in satisfaction of the penalties and it was held that the sheriff was entitled to poundage only on £500. Baron Alderson in his judgment said:—

The very principle on which the sheriff is entitled to poundage at all, shows that he is not entitled to more than on the sum actually received.

These authorities appear to me to lay down clearly that the sheriff is entitled to poundage, not

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(1) (1921) 26 C. W. N. 673, 676. (2) (1841) 7 M & W. 463; 151 E. R. 848.

(3) (1835) 2 Cr. M. & R. 334; 150 E. R. 144.

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on the amount realised by the sale, but upon the sum payable to or received by the execution creditor as the result of the levy and it must be so calculated in the present instance.

The other question is as to the propriety of the deduction by the sheriff of municipal taxes. The practice, so I understand, is that arrears of taxes are not mentioned in the sale proclamation unless they are notified by the Corporation or disclosed at the time the sale proclamation is settled.

In my view, the sheriff is entitled to make this deduction, and I am also of opinion that any arrears of taxes should be mentioned in the sale proclamation.

Order XXI, rule 66 of the Civil Procedure Code, which deals with proclamations in execution sales, provides under sub rule (2) (c) that the proclamation shall specify "any incumbrance to which the property "is liable", and arrears of rates are under the Calcutta Municipal Act a statutory charge on the premises. It is the duty of the party having the carriage of the proceedings to find out any arrears and to have them mentioned in the proclamation.

This matter was dealt with so far as a sale by the Registrar is concerned, in the case of *Bibhutibhushan Majumdar v. Majibar Rahman* (1) and it is desirable that the same practice should be observed in sales by the sheriff.

(1) (1934) I. L. R. 61 Cal. 956, 960.