

Before Mr. Justice Pontifex and Mr. Justice Field.

1881
May 6.

WOOPENDRO NATH SIRCAR AND ANOTHER (JUDGMENT-DEBTORS) *v.*
BROJENDRONATH MUNDUL (DECREE-HOLDER).*

Material Irregularity—Setting aside Sale—Dissuading Purchaser from Bidding—Civil Procedure Code (Act X of 1877), s. 311—Leave to Bid—Decree-holder related to Manager of Defendant.

When liberty is given to a decree-holder to bid at the sale of the judgment-debtor's property, he is bound to exercise the most scrupulous fairness in purchasing that property, and if he or his agent dissuades others from purchasing at the sale, that of itself is a sufficient ground why the purchase should be set aside.

Where a decree-holder was joint in family with the manager of an infant defendant, and the defendant's property was to be sold in execution of the decree,—

Held, that the decree-holder ought not to be granted leave to purchase at the sale, because any purchase made by him would be for the benefit of the family of which the manager of the infant defendant was one of the members; and it would in fact be a purchase by an agent of the property of his principal.

Baboo Umbica Churn Bose for the appellants.

Baboo Bhowany Churn Dutt for the respondent.

The facts of this case fully appear from the judgment of the Court (PONTIFEX and FIELD, JJ.), which was delivered by

PONTIFEX, J.—In this case the appellants are the judgment-debtors, and they sought under s. 311 to set aside a sale made under a mortgage decree on the ground of irregularity, alleging that they had sustained substantial injury by reason of that irregularity, the full price for the property not having been obtained. The plaintiff in the suit in which the property was sold was a mortgagee, and he obtained leave to bid, and purchased two lots at that sale.

Now it appears that his uncle, Radhamohun, who is joint in estate and lives in commensality with him, had been appointed by the Court of Wards the manager of one of the infant defendants; and this purchase by the plaintiff Brojendronath, the decree-

Appeal from Original Order, No. 52 of 1881, against the order of Baboo Bhoobun Chunder Mookerjee, First Subordinate Judge of the 24-Pargannas, dated the 29th January 1881.

holder, was in fact a purchase for the benefit of the joint family, as is not denied by the pleader for the decree-holder. Now some evidence was read before us, showing that there was irregularity with respect to one of these lots, in publishing the proclamation of sale on the premises, and that the full price was not obtained for the properties; but we think it is not necessary to proceed upon that ground. It appears from the evidence adduced by the decree-holder that the am-mukhtear of Radhamohun, the uncle of the decree-holder, and manager of the infant defendant, at the time when the sale was taking place, discouraged other bidders from bidding for the property. The evidence of the decree-holder's own witnesses is, that this am-mukhtear went about at the sale stating that the decree-holder would bid up to Rs. 1,000 per cotta, and both these witnesses say that they were dissuaded from bidding in consequence of this statement. The first witness says, that this statement was made to him by the am-mukhtear himself. The second witness does not say that the am-mukhtear informed him that he was prepared to bid Rs. 1,000 for every cotta, but he says that some one at the time of the sale did tell him that. We think that when liberty is given to a decree-holder to bid at the sale of the judgment-debtor's property, he is bound to exercise the most scrupulous fairness in purchasing that property; and if he or his agent dissuades others from purchasing at the sale, that of itself is a sufficient ground why the purchase should be set aside. We find that the judgment-debtor summoned Radhamohun, the uncle of the decree-holder, who, as I have said, was joint with him, and for whose joint benefit the purchase was made, as a witness upon this proceeding; but Radhamohun refused to attend, and the judgment-debtor, therefore, was unable to examine him upon this point. We think, however, that there is ample evidence to show, that, at the sale, the am-mukhtear of Radhamohun did go about discouraging bidders from purchasing, and that the bidders were dissuaded from bidding at the auction; and that, therefore, the sale should be set aside. We are of opinion that, at any future sale, inasmuch as the decree-holder is joint in family with the manager of one of the defendants, leave ought not to be granted

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to him to purchase at the sale, because any purchase made by him would be for the benefit of the family of which the manager of the infaut defendant is one of the members; and it would in fact be a purchase by an agent of the property of his principal, a purchase which this Court cannot recognize. Under the circumstances, we think the appellant should have the costs of this appeal.

Appeal allowed.

Before Mr. Justice Morris and Mr. Justice Prinsep.

1881
 May 10.

SHAMA SOONDARY (PLAINTIFF) v. HURRO SOONDARY
 AND OTHERS (DEFENDANTS).*

Valuation of Suit—Duty of Appellate Court—Court Fees Act (VII of 1870), s. 12—Civil Procedure Code (Act X of 1877), s. 578.

A suit was instituted and tried on the merits in the Court of a Subordinate Judge without any objection being taken, either by the defendants or by the Court, that the plaint was insufficiently stamped. The defendants appealed on the merits, and the District Judge, being of opinion that the stamp on the plaint was inadequate, called upon the plaintiff to pay the additional fee which would have been payable, had the objection been taken and the question rightly decided in the Court of first instance.

Held, on second appeal, that the order of the Judge was properly made under s. 12, cl. ii of the Court Fees Act, VII of 1870.

Kala Chand Sen v. Anund Kristo Bose (1) dissented from. Section 578 of the Civil Procedure Code, explained.

In this case the plaintiff sued to obtain from the defendants certain *nikas*, or general adjustment papers and account books of a business, which the plaintiff alleged had been carried on by the defendants on behalf of the plaintiff's deceased husband. The plaint was stamped with a ten-rupee stamp, though the plaint stated that "the presumed loss for not rendering to me the account papers sought for may amount to more than

* Appeal from Appellate Decree, No. 917 of 1879, against the decree of J. C. Geddes, Esq., Judge of Tippera, dated the 6th January 1879, reversing the decree of Baboo Kully Dass Dutt, Second Subordinate Judge of that district, dated the 16th May 1877.