

APPELLATE CIVIL.

*Before Mr. Justice Philips and Mr. Justice
Srinivasa Ayyangar.*

THIRUVENGADASWAMY AYYANGAR (RESPONDENT-
PETITIONER AND APPELLANT)

1927,
November 3.

v.

GOVINDASWAMY UDAYAR AND OTHERS (PETITIONERS),
RESPONDENTS.*

Civil Procedure Code (Act V of 1908), O. XXI, r. 66, cl. (2) (e)
—Market value of the property—No duty on Court to
determine market value and state it in the proclamation of
sale—Valuation of the decree-holder and of the judgment-
debtor as well as of the Commissioner stated in the sale
proclamation, whether proper and legal.

Under Order XXI, rule 66, of the Civil Procedure Code, the
Court is under no obligation whatever to fix, and state in the
proclamation of sale, its own valuation of the property to be
sold.

C.M.A. No. 345 of 1926, followed; *Munshi Raghunath Singh
v Hazari Sahu*, (1917) 2 P.L.J., 130, dissented from; *Saadatmand
Khan v. Phul Kuar*, (1898) I.L.R., 20 All., 412 (P.C.),
explained.

Where the Court, without itself determining the market
value of the property to be sold and stating it in the sale
proclamation, ordered that the valuations of the decree-holder
and of the judgment-debtor as well as that of the Commissioner
appointed in the case, should be mentioned in the sale proclama-
tion, held that there was no irregularity.

APPEAL and revision petition under section 115, Civil
Procedure Code, against the order of the Court of the
Subordinate Judge of Tanjore, passed in E.P. No. 215
of 1926 in O.S. No. 73 of 1925.

The material facts appear from the judgment.

K. V. Krishnaswami Ayyar (with *A. V. Viswanatha Sastri*)
for respondents, raised a preliminary objection that no appeal

* Appeal against order No. 197 of 1927, and Civil Revision Petition No. 587
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lay against an order, settling a proclamation of sale, and referred to the Full Bench case in *Sivagami Achi v. Subrahmania Ayyar*(1). The revision petition is not maintainable, as there is no question of jurisdiction, or material irregularity.

K. S. Krishnaswami Ayyangar (with *V. N. Venkatavarada-chariyar*) for the appellant.—An appeal lies in this case. The decision in *Sivagami Achi v. Subrahmania Ayyar*(1) was under the old Code of 1882; the language of the new Code of 1908, in Order XXI, rule 66, is different from the language of section 287 of the old Code. Clause (2) of rule 66 of Order XXI of the new Code, provides for notice to the judgment-debtor, not so section 287 of the old Code; clause 3 in rule 66 of Order XXI is also new. It is not an administrative order under the new Code. See *Arukapalli Narasimha Rao v. Arumilli Subbarayudu* (2). It is a judicial order. Though a matter falls under Order XXI, rule 66, still it falls under section 47, Civil Procedure Code. The latter section is wide enough to include all orders relating to execution and not merely orders determining rights of parties. See *Rajah Kamesher Parshad Narain Singh v. Ram Sham Kishen*(3). The valuation of the property to be sold is a material circumstance under rule 66 and non-mention of it affects the rights of the parties. The decision of the Privy Council in *Saadatmand Khan v. Phul Kuar*(4) holds that valuation is a material circumstance to be stated. The decision in *Munshi Raghunath Singh v. Hazari Sahu*(5) holds that the decision by the Court as to valuation is necessary. See *Rai Beni Prasad v. Edal Singh*(6). In this case notice to judgment-debtor was not given and the order is bad; it is a material irregularity; the revision is maintainable.

K. V. Krishnaswami Ayyar for respondent.—Civil Miscellaneous Appeal No. 345 of 1926 holds that the Court is not bound to state its valuation.

The JUDGMENT of the Court was delivered by

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SRINIVASA AYYANGAR, J.—The judgment-debtor under a mortgage decree directing the sale of mortgaged properties has raised the question in controversy in two forms in the form of a Civil Miscellaneous Appeal and

(1) (1904) I.L.R., 27 Mad., 259.

(3) (1904) 8 C.W.N., 257.

(5) (1917) 2 P.L.J., 130.

(2) 1923) 51 M.L.J., 135.

(4) (1898) I.L.R., 20 All., 412.

(6) (1919) 4 P.L.J., 37.

in the form of a Civil Revision Petition. The main point relates to the duty of the executing Court with regard to the determination of the market value of the property ordered to be sold. The complaint before us was that the lower Court was wrong in not determining for itself the market value of the property for the purpose of the same being inserted in the proclamation of sale and further in directing that in the proclamation of sale the valuation of the property as stated both by the decree-holder and the judgment-debtor as well as that reported by the Commissioner appointed in the case should be set out without indicating any determination by the Court itself.

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We shall later on refer to the argument that was specially addressed to us with regard to this manner of setting out in the proclamation of sale various estimates made by different parties or persons. Mr. K. S. Krishnaswami Ayyangar, the learned Counsel for the appellant, assumed for the purpose of his argument that the Court executing the decree was bound to determine and set out in the proclamation of sale, the valuation of the property as arrived at by itself. Our attention in this connexion has been drawn to the judgment of their Lordships of the Judicial Committee of the Privy Council in the case of *Saadatmand Khan v. Phul Kuar*(1) and also to that decision having been regarded by many Courts in India as laying down such an obligation on the part of the Court. It seems to us impossible to regard the judgment of their Lordships as comprehending any such proposition. When their Lordships referred to the statements being made gratuitously either by the decree-holder or the Court, there can be no doubt that their Lordships did not consider that there was any

(1) (1898) I.L.R., 20 All., 412.

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obligation on the Court to fix any such value. It seems to us that what their Lordships decided in that case was merely that it is a material irregularity in the conduct of the sale, if it should be found that the market value of the property set out by the Court in the proclamation of sale should be grossly inadequate or incorrect. It is difficult to spell from the judgment of their Lordships a proposition that the Court is under any obligation to determine the market value of the property and set out the same in the proclamation of sale. It is one thing to say that if the Court should launch on the process of determining the market value and set it out for the information of the intending purchasers, it should do so correctly, and another thing to state that it is under any obligation at all to determine and fix the market value of the property. We do not see that the question was raised or discussed before their Lordships or that the decision can in any wise be regarded as one on this aspect of the question.

It may also be observed that in all the judgments in this country wherever a similar view seems to have been taken it was done without any argument or discussion. The question then has to be and indeed could be determined only with reference to the provisions in the Civil Procedure Code relating thereto. Sub-clause (e) of clause (2) of rule 65 of Order XXI of the Code provides, with respect to the proclamation of sale, that the proclamation shall specify as fairly and accurately as possible every other thing which the Court considers as material for a purchaser to know in order to judge of the nature and value of the property. No other clause or sub-clause in that rule has any reference either directly or indirectly to the value of the property. Sub-clause (e) is therefore the only clause which has to be looked at. When the legislature speaks of the purchaser

judging of the nature and value of the property the implication is not unreasonable that the legislature could not have intended that the Court should do the judging for him. Again when the rule says "every other thing material for a purchaser to know in order to judge of the value", the indication seems to be clear that what the Court has to do is merely to provide all the requisite material on which the intending purchaser might form his own judgment of the value of the property. When the direction therefore is that the Court in the proclamation should furnish the materials for judging the value, the inference would appear not to be unreasonable that the legislature does not require the Court to come to any judgment itself about the value. No doubt if in any case the Court should find and fix the value, such finding and fixing may itself be regarded as material on which the intending purchaser can form his own judgment. But even that can only be by some stretch of language. It would therefore seem to follow that the Court itself is under no obligation whatever to fix in the proclamation of sale its own valuation of the property to be sold. Our attention has also been drawn to an unreported Judgment in C.M.A. No. 345 of 1926 in which the learned Judges have held, though without much discussion, that there was no obligation on the Court to fix and proclaim the value of the property to be sold. We agree entirely with that view. There can however be no doubt that if a Court sets out to find and fix the value of the property for being inserted in the proclamation of sale, it must be regarded as a judicial act more especially after the amendments that have been introduced in re-enacting section 287 of the old Code as rule 66 of Order XXI. In the present case before us, however, the complaint is not that the Court fixed a wrong valuation, but being

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bound to fix a proper valuation it has not itself fixed any value but merely directed that in the proclamation reference should be made to the estimated value of the property as stated on one side by the decree-holder and on the other by the judgment-debtor and also as fixed by the Commissioner appointed in the case. As held in the case of *Arukupalli Narasimha Rao v. Arumilli Subrayudu*(1), while every order under rule 66 of Order XXI will not amount to an order under section 47 of the Code, some orders may so come and in such a case, no doubt, there will be an appeal. The question, when some value has been fixed by the Court, what such value should be, may possibly be contended to be a question arising between the parties relating to the execution of the decree. The matter is not by any means free from difficulty but when the Court did not mean or purport to fix any value, it is impossible to say that any such question arises. Having regard therefore to the manner in which the lower Court has treated the matter, it cannot possibly be inferred that any question between the parties and relating to execution of decree has arisen so as to entitle the appellant to prefer the miscellaneous appeal.

The learned Counsel for the appellant referred to some cases where it has been held that the Court is under a legal obligation to find and fix the actual market value of the property to be sold. The case of *Rajah Ramessur Prashad Narain Singh v. Rai Sham Krishen*(2) cannot be regarded as an authority for the position.

In *Munshi Raghunath Singh v. Hazari Sahu*(3) a special bench of the Patna High Court after holding that an order under rule 66 of Order XXI, Civil Procedure Code, settling the proclamation is a judicial order, state

(1) (1926) 51 M.L.J., 185.

(2) (1904) 8 C.W.N., 257.

(3) (1917) 2 P.L.J., 130.

that in view of the decision of their Lordships of the Judicial Committee in the case of the *Saadatmand Khan v. Phul Kuar*(1) it is not open to any Court in India to hold that it is not the duty of a Court preparing a proclamation to state as fairly and accurately as possible in the proclamation the value of the property. With all respect to the learned Judges it does not appear that the distinction was borne in mind between the obligation to fix the value accurately if any value is fixed and the obligation to fix any value at all. Further, the question in that case does not appear to have been considered on the terms of the rule. Chief Justice CHAMBER in that case held that the reference in the proclamation to the two estimates of Rs. 7,000 and Rs. 70,000 is more calculated to cause confusion in the minds of bidders than to be of any help to them in the matter. That may undoubtedly be so. The learned CHIEF JUSTICE made that observation having regard to the great disparity between the two figures and the same observation would not obviously be applicable to a case where the disparity is not so great.

Further in the present case, in addition to the figure mentioned by the judgment-creditor which may be regarded as a sort of a minimum and that fixed by the judgment-debtor which may be regarded as a sort of maximum, there is also inserted the valuation fixed by the Commissioner. It is impossible to say that, having regard thereto, the figures set out are not helpful to intending bidders to form a judgment of their own regarding the value of the property.

In *Rai Beni Prasad v. Eidal Singh*(2), CHAPMAN and ATKINSON, JJ., held that the insertion in the sale proclamation of the value assessed by the decree-holder in addition to that fixed by the Court was calculated to

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mislead intending bidders and therefore wrong. It is possible to doubt the correctness of that view and in any case the decision there apparently proceeded on the view of the Full Bench of that Court in *Munshi Ragunatha Singh v. Hazari Sahu*(1) above referred to. We are therefore unable to agree with the view that in all sale proclamations the Court is under an obligation under the terms of rule 66 of Order XXI to fix its own estimated market value of the property and that the mere setting out in the proclamation of the values fixed by the judgment-debtor and the decree-holder respectively is in all cases calculated merely to confuse intending bidders instead of being helpful to them and therefore offends against the principle of that rule.

Having regard to the fact that in this case the Commissioner's calculation has also been set out in the proclamation, the criticism based on the ground of possible confusion is not open. On the reason of the thing also, we are unable to see why it should be necessary for the Court to fix the valuation more especially when the reserve price is also generally fixed by the Court, and the price fetched at a sale often depends not on what may be called the intrinsic value of the property but on the demand for the property at the time of the sale.

The Civil Miscellaneous Appeal does not therefore lie and is not sustainable.

A Civil Revision Petition has also been filed by the same appellant as petitioner. Apparently that was done to provide against the contingency of the Court holding that no appeal lies. Even if the order did not come under section 47 of the Code we could no doubt have interfered, if there was some question of jurisdiction or some

grievous blunder committed by the Court such as was held to be calculated to cause only confusion amongst bidders in the case of *Munshi Ragnatha Singh v. Hazari Sahu*(1), but in the view we have taken that the Court is under no legal obligation to ascertain and fix the market value of the property, no question of jurisdiction arises, and as already stated we are not satisfied that the figure stated in the proclamation, although of considerable disparity, cannot be helpful to the intending bidders. The Civil Revision Petition is therefore incompetent.

One last point also referred to by the learned counsel for the petitioner may be briefly disposed of. It was argued that there was no notice given to the judgment-debtor before the lower Court ordered that in the place of the valuation originally given the various figures as now inserted should be set out. We find that the order was made on a date to which the matter stood adjourned by special order of Court. If the judgment-debtor did not choose to be present on the occasion, it was his own fault.

Further, we are not satisfied that the order made by the Court in the circumstances was wrong so as to justify the interference of this Court on revision.

Both the Civil Miscellaneous Appeal and the Civil Revision Petition are therefore dismissed with costs.

K.R.

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