

APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao and Mr. Justice Reilly.

1932,
October 5.

SRI RAJAH SATRUCHERLA SIVASKHANDARAJU
BAHADUR GARU AND TWO OTHERS (PETITIONERS—
JUDGMENT-DEBTORS 4, 5 AND 6), APPELLANTS,

v.

SRI SRI SRI RAMACHANDRA DEO GARU, MAHA-
RAJAH OF JEYPORE SAMASTHANAM AND FIVE OTHERS
(RESPONDENTS—AUCTION PURCHASERS 1 AND 2 AND JUDGMENT-
DEBTORS 2, 8 AND 9), RESPONDENTS.*

Code of Civil Procedure (Act V of 1908), O. XXI, r. 90—Material irregularity—Sale proclamations inaccurate and misleading, though superfluous—Affixing of—Material irregularity if—Substantial loss by reason of irregularity—Direct evidence of—Necessity—Execution sale—Conduct of—Spreading over sale for a long period and continuing it from day to day during that period—Termination of sale—Fixing of date for—Impropriety of—Court-hours—Continuance of sale beyond—Order for continuing sale until a particular day does not mean.

In a case in which two estates comprising a number of villages were ordered to be sold in two lots, i.e. each estate in one lot, a proper proclamation, stating that each estate would be sold as a whole in one lot, was duly published in accordance with law; it was put up in the Court-house, in the Collector's office and in the proper place in each of the two estates. Proclamations of sale were however also affixed in every village in the two estates, but what was described in each of those proclamations as the subject of the sale was the particular village in which that copy was affixed and not the lot of which that village was a part.

Held that the affixing in the villages of such inaccurate and misleading, though superfluous, proclamations was a material irregularity within rule 90 of Order XXI of the Code of Civil Procedure.

* Appeals against Orders Nos. 412 and 413 of 1930.

Under rule 90 of Order XXI of the Code, as it now stands, the absence of direct evidence, that is the evidence of some witness coming before the Court and saying that an irregularity in the conduct or publication of a sale has caused substantial loss, will not necessarily prevent a reasonable inference being drawn that by such an irregularity substantial loss has been caused to the judgment-debtor.

A Court-auction ought not to be spread over a long period and continued from day to day during that period.

Per VENKATASUBBA RAO J.—It is wrong to fix a date for the termination of a Court-auction.

Per REILLY J.—An order of Court that a sale shall be continued until a particular day means that it shall be stopped at the end of Court-hours on that day and not that it should be continued beyond the Court-hours on that day.

APPEALS against the orders of the District Court of Vizagapatam, dated the 7th day of October 1929, and made in Execution Application No. 469 of 1928 (Execution Petition No. 9 of 1927) and in Execution Application No. 470 of 1928 (Execution Petition No. 9 of 1927).

K. Ramanath Shenai for appellants.

Advocate-General (Sir A. Krishnaswami Ayyar) and *P. Somasundaram* for respondents.

JUDGMENT.

VENKATASUBBA RAO J.—The first question with which I propose to deal is, whether the judgment-debtors have sustained a substantial injury within the meaning of Order XXI, rule 90. If this point is answered in the negative, the consideration of the other questions raised becomes unnecessary. In regard to the injury alleged, there is one puzzling feature in the case, to which I shall presently refer. But, apart from that, we have to decide whether the lower Court's finding that no damage has been sustained is correct or not. The sale commenced by order of Court on the 27th June

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1928; leave to bid was granted to the decree-holders on the 12th July and on the last-mentioned date an order was made directing that the sale was to proceed from day to day to the end of July. On the 17th July the zamindar of Andra bid Rs. 2,50,000 for each of the two lots. It may be mentioned that the zamindar is a near relation of one of the judgment-debtors. On the 31st July there was no further bid made until the decree-holders offered for each lot a sum of Rs. 1,000 more. At 5 p.m. on the 31st of July the sale was concluded and the decree-holders were declared the purchasers, their bid for Rs. 2,51,000 for each of the two lots having been accepted by the Court. [His Lordship considered the evidence and held that the statement as to the price in the proclamation was not an underestimate and that there was no inadequacy in the sale price realised at the auction.] This finding would be enough to dispose of these appeals. But I cannot help adverting to certain irregularities in the conduct of the sale brought to our notice in the course of the hearing. In the lower Court several objections were taken by the judgment-debtors, but it is regrettable that a most patent irregularity that occurred has not been noticed. The sale was ordered to be made in two lots, each lot comprising several villages. The proclamation was published in the usual way, and, as I have said, the sale was widely announced also in the leading newspapers. But the decree-holders affixed proclamations of sale in each village, and the fact has now come to light that what was described in each copy as the subject of the sale was the particular village at which that copy was posted and not the lot of which that village was but a part. That it is a material irregularity within the rule admits in my opinion of no doubt. If I was satisfied that the judgment-debtors have sustained

substantial injury by reason of this irregularity, I should without doubt have set aside the sale. I think it necessary in this connexion to notice one contention put forward by the learned Advocate-General. It is argued that only by *direct, as opposed to circumstantial, evidence* an applicant under Order XXI, rule 90, can show that the injury is the result of the irregularity. This contention does not require serious notice. He has cited cases which cannot be held to be authorities on the interpretation of the rule as it now stands. As a matter of fact those very cases, I presume, have led to an important amendment of the rule by the Legislature. In the view I have taken, this question of law does not assume any importance, but I have been obliged to refer to it on account of the contention put forward by the learned Advocate-General. As I pointed out in the course of the arguments, if the property to be sold is 1,000 acres of valuable wet land, say in the Godavari delta tract, and the proclamation describes it as dry land, would any Court insist upon direct evidence for proving that the injury is the result of this irregularity? Or again, as has happened in one of the cases to which our attention has been drawn, if a sale announced to take place at 11 o'clock is held at 7, can nothing short of direct oral evidence satisfy the Court that the loss is due to that patent and obvious irregularity? It is unnecessary, as I have said, in the view I have taken to pursue this matter.

There remains another argument to which I must now advert. Mr. Ramanath Shenai complains against the manner in which the sale was conducted. I must observe that the learned Judge attended to several matters in connexion with the sale with great care, but allowed the sale to spread over a long period; in fact he made an order, as I have said, that the sale was

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to continue from day to day from the 27th June to the 31st July. Mr. Ramanath Shenai contends that it is wrong to fix a date for the terminating of the sale. I entirely agree. It is not only proper, but necessary, to fix the time when the sale is to commence; but what possible purpose can be served by fixing in advance the time when the sale is to come to an end? The person or authority in control of the sale must be free to decide, as the person most competent to do so, when the sale is to terminate. This fixing of time for the bringing of the sale to an end is allied to the pernicious system, to which I have adverted, that of directing the sale to be conducted from day to day. A sale by auction fundamentally differs from a sale by private contract. In a private sale negotiations move slowly, the parties consult and deliberate at leisure; but in the case of an auction-sale investigations are made and inquiries are pursued beforehand; at the moment of the auction the various bids offered in quick succession are intended to stimulate competition, and rapid decisions have to be made, and are made, on the spot. If the sale is lengthened out (in this case the duration was over a month) the bidders, who are diligent enough to attend on the first day, may not care to attend on the second, and may never dream of waiting till the last; and the very object of adopting this method of sale would be completely defeated. Moreover, what prevents a person, who has made under the stimulus of competition a good bid, from holding himself not bound by it when he finds that the sale is protracted and prolonged? It is not my intention to lay down at once that the conducting of a sale in this manner necessarily amounts to a material irregularity, but I must most strongly condemn and deprecate the practice that has grown up.

Lastly, I am not prepared to believe that the Andra zamindar came to the Court on the 31st July after 5 p.m. with a *bona fide* desire to purchase the property.

In the result, the appeals fail and are dismissed. Ordinarily I should direct the unsuccessful party to pay the costs, but in this case to mark my disapproval of the manner in which the case was conducted for the decree-holders, I deprive them of costs. Each party shall therefore bear his own costs.

REILLY J.—I agree with the result at which my learned brother has arrived, though I have reached it perhaps by a slightly different road.

In the first place I should like to say that I agree with what my learned brother has said about the extraordinary prolongation of this sale, which began on the 27th June 1928 and was closed on the 31st July of that year, being continued from day to day. That appears to me to be a very bad and unbusinesslike way of conducting a Court-auction; and it is not the intention, I think, of the Code of Civil Procedure that an auction should be so conducted. There are many obvious disadvantages in such a method of conducting an auction. Bidders may come at the beginning, as my learned brother has pointed out, and may go away in despair; they cannot wait for weeks. They may change their minds. Some, who have money at the beginning of the auction, may not have money at the end. Nobody at first considers the matter at all as serious; there is plenty of time, and intending bidders need not make up their minds what they are going to bid. I agree that a Court-auction should not be conducted in that way. But in this case I understand that no complaint has been made by the judgment-debtors on the ground of the extraordinary

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extension of the sale. Their complaint, as put before us, has been rather that it was not extended a little longer. In the circumstances I do not think we can say that the sale is vitiated by the length of time over which it was spread in this case. At any rate we cannot come to such a conclusion in favour of the judgment-debtors.

But it has been urged before us that these two estates, which were put up for auction, were eventually sold much below their real value, that they were very much undervalued in the sale proclamation and that thereby substantial loss was caused to the judgment-debtors. [His Lordship considered the evidence and proceeded:—] I think we must take it therefore that on the evidence there was an under-valuation of each of these estates in the sale proclamation and a considerable under-valuation.

Does it follow that the sale is vitiated? I do not see any reason to suppose that there was fraud in the under-valuation. The District Judge did his best to arrive at a proper valuation of both the estates after hearing all the judgment-debtors had to say. I do not see how fraud can be made out in that matter. But so seriously to under-value property announced for sale in such a proclamation is undoubtedly an irregularity. Can we say that that irregularity led to the estates being sold for less than what they would otherwise have fetched in this case? That in my opinion the judgment-debtors have been unable to make out.

[His Lordship considered the evidence on the point and concluded:] Although these estates were eventually sold in this auction for comparatively low prices—Rs. 2,51,000 in each case—in the circumstances I am not at all satisfied that that was due to the unduly low values entered in the sale proclamation.

It has been suggested for the judgment-debtors also that there was some fraud towards the close of the auction in regard to the dewan of Andra, who was somehow prevented by the dewan of Jeypore from bidding more than rupees two and a half lakhs for each estate in accordance with his master's directions. There is really no evidence in support of that suggestion, and it is destroyed I think by the fact that the dewan of Andra was still in the service of the zamindar of Andra when this case was tried by the District Judge more than a year after the sale.

As my learned brother has pointed out, in the course of the hearing before us a very curious feature of the case was discovered, namely that in every village in the two estates a proclamation in regard to the sale was put up in April or May, but that proclamation was inaccurate. We find from the specimen proclamations at which we have looked that what was put up in the villages in each case was a proclamation that the sale would be held for the decree debt. That was correct; but the property described as for sale in each of those proclamations was the village itself and nothing more. That would undoubtedly be misleading to anybody who paid any attention to it. It was a very curious and careless irregularity. But it has not been denied before us, and it has not been denied at any stage, that a proper proclamation, stating that each estate would be sold as a whole in one lot, was duly published in accordance with law; it was put up in the District Court-house, in the Collector's office and in the proper place in each of the two estates. Although no doubt there was a proper proclamation made in accordance with all the prescribed rules in regard to the auction as it was actually held, that is to say for the sale of each estate in one lot, there were these superfluous notices in the villages, notices which were both superfluous and inaccurate and would

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have misled anybody who had paid attention to them. But there is no evidence whatever that anybody, who was at all likely to be a bidder, ever imagined that the villages would be sold individually and not the estates in one lot each. And in the absence of any such evidence, we could not find, I think, that the publication of these superfluous and inaccurate notices, as indeed they were, in the villages had any effect upon the result of the sale. I do not wish it to be understood that the absence of direct evidence in such a case as this, that is the evidence of some witness coming before the Court and saying that he was misled by such a notice as these which were published in the villages, would in all cases prevent a reasonable inference being drawn that by such an irregularity in the publication of the proclamations substantial loss had been caused to the judgment-debtors. Whatever may have been declared in any decision to have been the law before what corresponded to rule 90 of Order XXI of the Code of Civil Procedure assumed its present form, certainly it is not necessary now to rule out reasonable inferences from evidence in order to establish that an irregularity in the conduct and publication of a sale has caused substantial loss. In this case however there is not only no direct evidence, but I see no sufficient ground for an inference that the result of these sales was affected by the inaccurate proclamations published in the villages. And, as I mentioned, the publication of these notices in the villages was discovered in this Court. The judgment-debtors said nothing about it at any stage and felt no grievance on this account. Indeed it would be a proper objection, which their opponents might well raise, that the point was never taken by the judgment-debtors in their petition to the District Court, that it was not taken in the grounds of appeal here, and that, unless it had been noticed by us accidentally during the course of the hearing

of this appeal, the judgment-debtors would have known nothing about it. There is no reason to interfere with the sales on that account.

There is one other matter to which Mr. Ramanath Shenai referred as being of some importance. He objected to the eventual closing of this long protracted sale at 5 p.m. on the 31st July 1928. The Judge had ordered that the sale should be continued until the 31st July of that year. That was long enough. But it is suggested by Mr. Ramanath Shenai that we ought not to understand the order that the sale was to continue till the 31st July as meaning that it should stop at the end of Court-hours on that day, but that it should have been continued until some unspecified hour in the night. I can see no basis whatever for any such suggestion. It is urged that the zamindar of Andra came to the Court-house after 5 p.m. on the 31st July anxious to make some belated bid for these estates. If he did intend to bid at that hour, he had nothing to complain of when he found that the sale had stopped, as it was obviously intended that it should stop, at the close of the Court-hours on the 31st July. The judgment-debtors can have no reasonable grievance whatever in the fact that the sale at last came to an end when the working Court-hours for the 31st July ended.

In my opinion there were irregularities in this case and some very curious irregularities, but there is no sufficient reason why we should interfere with the decision of the District Judge. I agree that these appeals should be dismissed, and I agree also with the order which my learned brother has proposed as to costs.

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