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suit, is not liable to any court fee. To hold otherwise might, in our opinion, be productive of great injustice and hardship. For instance, in the present case the pauper plaintiff in order to get her application for a review of judgment admitted would have to pay something, like Rs. 2,500 in court fees, while her plaint is not liable to any court fee. The second matter which was argued for the appellants in this case was that the order admitting the application for review was in contravention of the provisions of section 626 of the Code of Civil Procedure. The only provision of section 626 on which the learned vakil relied was the second, and as to that it is sufficient to say that he has failed to show anything which would have brought the case within that provision. For the above reasons we dismiss this appeal.

Appeal dismissed.

PRIVY COUNCIL.

P.C. 1898 *April* 20*th*. *May* 3*rd*.

SAADATMAND KHAN (APPELLANT) v. PHUL KUAR (RESPONDENT).

On appeal from the District Court of Farrukhabad.

Civil Procedure Code, section 287—Misrepresentation of value in the proclamation of intended judicial sale—Substantial injury within section 311.

The value of property of which the sale has been ordered in execution of a decree, when stated in the proclamation of the intended sale, is a material fact within sub-section (*e*) of section 287 of the Code of Civil Procedure.

An under-statement of the value of the property having been made in such a proclamation, which was calculated to mislead bidders, and to prevent them from offering adequate prices, or from bidding at all, and the sale having resulted in a price altogether inadequate.—*Held*, that such misstatement was a material irregularity in publishing or conducting the sale, although there might be no rule requiring publication of the value in that proclamation; and that the special remedy, provided in section 311, was applicable, as substantial injury had resulted.

APPEAL from an order (30th January 1892) of the District Judge of Farrukhabad reversing an order (13th July 1891) of the Munsif of Kaimganj.

Present :—Lords WATSON, HOBHOUSE and DAVEY and SIR R. COUCH.

The appellant was the auction purchaser of property sold on the 20th April 1891 in execution of a decree, dated the 8th April 1890, held by one Chunni Lal against Musammat Phul Kuar, the present respondent, in whose hands the property, which was land, had been attached; she being the heiress, and representative in estate, of her husband, deceased in 1888.

Her petition, dated the 16th May 1891, was rejected by the Munsif, but the district judge, Mr. R. S. Aikman, reversed that order, and set aside the sale under section 311 of the Code of Civil Procedure on the ground that the proclamation of intended sale, issued under section 287, had so much misrepresented the actual value of the property that substantial injury to the petitioner had resulted. The District Judge's order was not appealable to the High Court, under section 588 of the Code of Civil Procedure.

The petition alleged irregularity in the auction sale, whereby property worth Rs. 10,000 was sold for Rs. 670; that ancestral land had been sold as not ancestral; that notices had not been properly placed and that the petitioner had no knowledge of the execution proceedings. Chunni Lal, the decree-holder, was named as objector and served, but did not appear. The other objector, Saadatmand Khan, the present appellant, denied the alleged irregularities, and the statements in the petition generally.

Among the Munsif's reasons for disallowing the petition, he was of opinion that, although the Rs. 800 stated in the sale proclamation as the value of the property was incorrectly stated, and the real value was much greater, still it was not by law obligatory that any entry of value should have been made at all. The fact of a wrong value having been mentioned in the schedule was not, in his judgment, a material irregularity upon which the sale should be set aside.

The District Judge's finding was as follows :—

"This is an appeal under the provisions of section 588, "clause (16), Civil Procedure Code, against an order of the

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"Munsif of Kaimganj refusing to set aside a sale of immovable "property.

"It is proved and admitted that an estate belonging to the "appellant, a wealthy parda-nashin lady, was sold in execution "of a decree for Rs. 652-3-9; that the value of the estate is "not less than Rs. 8,000 or Rs. 9,000, and that notwithstanding "this, and the fact it has no incumbrances on it, it was sold "by auction to a mukhtar practising in the Collector's court "for Rs. 670, or less than one-twelfth of its value.

"The first ground of the appeal is that all the proceedings "were taken behind the back of the appellant, the judgment "debtor. The decree-holder, at whose instance the property "was sold, does not appear to defend. It is argued on behalf "of the auction-purchaser that the mere fact of a decree having "been passed is sufficient notice to her. I cannot assent to this "contention. Rule V, paragraph 9, of the Civil Rules and "Orders, if properly carried out, secures that due notice of an "impending sale shall be given to the judgment-debtor. In "this case due notice was not given: all that was done was to "affix a notice to the wall of the house of the judgment-debtor's "deceased husband". After adverting to the evidence that the petitioner was not there at the time, and intimating that the Court below ought not to have accepted the imperfect mode of service reported by the peon, the District Judge continued :—

"It is pointed out, in the next place, that the decree-holder "in his affidavit put down the value of the property at Rs. 800 "*i.e.*, about one-tenth of the real value, and that this was the "value notified in the sale-proclamation. This, I must hold, was "a gross misrepresentation on the part of the decree-holder. "The last clause of section 245 of the Code of Civil Procedure provides that in the case of a decree for money, the 'value "'of the property attached shall, as nearly as may be corres-"'pond with the amount for which the decree has been made.' I "have found that Subordinate Courts appear to be under the

"impression that the inquiry prescribed by Rule VI, page 9, Civil "Rules and Orders, should be confined to finding out whether "the property proposed to be sold is ancestral or not. But "this is a mistake. The inquiry should be for the purpose "of ascertaining the particulars specified in section 287 of the "Code of Civil Procedure. Amongst the heads which, accord-"ing to section 287, should be specified in the sale-proclama-"tion 'as fairly and accurately as possible' is 'every other "'thing which the Court considers material for the purchaser "'to know in order to judge of the nature and value of the "'property.' Had the inquiry held by the Munsif under "Rule VI been worthy of the name, I think he could not "fail to have been struck by the very peculiar circumstance "that whilst the annual land revenue of the property was put "down at Rs. 543-10-6, its estimated value was entered as "only Rs. 800. The utter absence of proportion between the "amount of Government revenue and the estimated value "entered in the sale-proclamation would of itself be enough "to deter intending purchasers, and induce them to think that "there was something wrong with the title." On this, the sale was set aside.

On an application to the District Judge for a certificate under section 598 of the Code of Civil Procedure he referred to the judgment of the Full Bench of the High Court in *Azim-ud-din* v. *Baldeo* (1), and decided that the above order was final within section 595.

Mr. *R. C. Saunders*, for the appellant, argued that the grounds on which the District Judge had reversed the order of the first Court were insufficient. Saadatmand Khan was a purchaser, for all that appeared, in good faith, and for value, who had been no party to any misrepresentation. He was in no way responsible for what was stated in the decree-holder's affidavit as to the value of the property, that having been the cause of the subsequent official statement, which was entered

(1) (1881) I. L. R., 3 All., 554.

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in the column of particulars as to the nature and value of the property in the schedule attached to the sale-proclamation. Whatever irregularity there might have been in the under-statement of value, there was no direct evidence that, in consequence of that error in the statement, the property was sold for an inadequate price. Accordingly, there was no sufficient evidence of the "substantial injury" of which section 311 required proof as occasioned by the irregularity. The sale therefore, should not, under the circumstances, have been set aside.

Mr. *H. Cowell*, for the respondent, was not called upon.

On the 3rd May their Lordships' judgment was delivered by LORD HOBHOUSE:—

The respondent is the proprietor of an estate in the mauza of Jira Rahimpur in Farrukhabad. In April 1890 one Pati Ram obtained a decree for the sum of Rs. 565-9 against her and another as heirs of a recently deceased owner who was Pati Ram's debtor. This decree was transferred to Chunni Lal. On the 10th December in the same year Chunni Lal applied for the attachment and sale of the property. It was put up for sale on the 20th April 1891, and was bought by the appellant for the sum of Rs. 670. The property is valued at eight or nine thousand rupees.

In May 1891, within the time allowed by law, the appellant filed a petition in the Court of the Munsif of Kaimganj for the purpose of setting aside the sale under section 311 of the Code. The Munsif held that, notwithstanding the inadequacy of price, there had been no irregularity within that section which justified him in setting the sale aside, and accordingly he dismissed the petition. On appeal the District Judge took a contrary view and decreed that the sale should be set aside. That is the decree appealed from.

The respondent alleged several irregularities in the execution proceedings, as to the existence or the effect of which the two Courts took opposite views. Their Lordships do not

think it necessary to mention more than one ground for impeaching the sale. It is indeed something more than the kind of irregularity which is commonly alleged, for it is a mis-statement of the value of the property which is so glaring in amount that it can hardly have been made in good faith, and which, however it came to be made, was calculated to mislead possible bidders, and to prevent them from offering adequate prices, or from bidding at all.

Section 287 of the Code orders that the Court shall cause a proclamation of the intended sale to be made. The proclamation is to specify "as fairly and accurately as possible" several enumerated particulars; and, finally, "every other thing "which the Court considers it material for the purchaser to "know in order to judge of the nature and value of the property."

The proclamation in this case appears to have followed an affidavit of Chunni Lal, the decree-holder, in which he stated that the property is valued at about Rs. 800. It states, among other things, that the sale is for the recovery of Rs. 652-3-9 and interest, and that the particulars specified in the schedule are filled in to the best of the knowledge of the Court. The schedule contains several columns. One shows that the jama of the property is Rs. 543-10. Another is headed, according to the English translation,—"Other particulars, whatever ascer-"tained regarding the nature and value of the property," and it contains the figures Rs. 800. This means that the value of the property to sell was estimated by the Court at Rs. 800.

The Munsif considered that this misrepresentation of value was not a material irregularity for which a sale could be set aside. His reason was, that no rule required that the value of the property should be mentioned in the proclamation; and that as the entry was uncalled for and not legally obligatory, to give a wrong value is no reason for setting aside a sale.

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This is a very mistaken view. It is true, as before observed, that the mis-statement is something more grave than an ordinary irregularity of procedure, but the fact that it is so, and that it was made gratuitously by the decree-holder and the Court, does not prevent it from being "a material irregularity in publishing or conducting" the sale, such as to bring the case within the special remedy provided by section 311. Whatever material fact is stated in the proclamation (and the value of the property is a very material fact) must be considered as one of those things "which the Court considers material for the purchaser to know," and it is enacted in terms (though express enactment is hardly necessary for such an object) that those things shall be stated as fairly and accurately as possible. It must have been possible to state the value of this property with very much greater approach to fairness and accuracy than was done in the proclamation. The learned District Judge holds that there was a gross misrepresentation on the part of the decree-holder, and he intimates his opinion that the Court ought to have seen from the amount of the jama that the value could not be as stated. Certainly it seems that there must have been blameable carelessness on the part of whatever officer was responsible for the terms of the proclamation.

The learned District Judge points out two circumstances calculated to enhance the amount of injury done to the debtor by such a mis-statement. One is, that section 245 of the Code orders that the value of the property attached "shall, "as nearly as may be, correspond with the amount for which "the decree has been made;" so that an intending purchaser would readily accept the assurance of the Court that an estate attached for Rs. 565 was worth no more than Rs. 800. Another is, that the disproportion between the jama and the total value was calculated to excite suspicion of something wrong with the title, and so to deter biddings. Their Lordships have to express entire agreement with the learned District

Judge, and they humbly advise Her Majesty to dismiss the appeal. The appellant must pay the costs.

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Appeal dismissed.

Solicitor for the appellant *Mr. H. Percy Becher.*

Solicitors for the respondent *Messrs. Ranken, Ford, Ford and Chester.*

APPELLATE CIVIL.

1898 *May* 10.

Before Mr. Justice Burkitt and Mr. Justice Dillon.

NARAIN DAS AND ANOTHER (DEFENDANTS) *v.* RAM SARAN DAS (PLAINTIFF).*

Pre-emption—Wajib-ul-arz—Co-sharers in the Khalisa Mahal distinguished from owners of separate plots of muafi lands in the mahal.

The co-sharers in a mahal and the owners of separate plots of muafi land included in the area of the mahal have as a rule no connection with one another, and it by no means follows that the custom adopted by or existing among the members of the khalisa co-parcenary body would be applicable to the owners of the muafi plots. Strict evidence is always necessary to prove that the same custom is applicable to each. *Kalyan Mal* v. *Madan Mohan* (1) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Pandit *Sundar Lal* and Pandit *Moti Lal,* for the appellants.

Munshi *Ram Prasad* and Babu *Jogindro Nath Chaudhri* for the respondent.

BURKITT and DILLON, JJ:—This is an appeal in a suit for pre-emption. The suit was brought by a share-holder in one of several resumed *muafi* plots situate in mauza Hapar to pre-empt a sale of a portion of the same plot. The suit was resisted on the ground that no custom of pre-emption has been established in respect of the *muafi* plots. That view was accepted by the Court of first instance, which dismissed

* First Appeal No. 15 of 1898 from an order of H. G Pearse, Esq., District Judge of Meerut, dated the 4th February 1898.

(1) I. L. R., 17 All., 447.