

APPELLATE CIVIL.

1912
October, 28.*Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.*

MUNSHI LAL AND ANOTHER (JUDGEMENT-DEBTORS) v. RAM NARAIN (AUCTION PURCHASER).*

Civil Procedure Code, 1908, order XXI, rules 84, 89, 92—Execution of decree—Sale of immovable property—Acceptance of final bid deferred—Application to set aside sale—Limitation.

Held that a sale of immovable property in execution of a decree is not complete until the sale officer has accepted the final bid and the purchaser has paid in the deposit of 25 per cent. of the purchase money required by rule 84 of order XXI of the Code of Civil Procedure, 1908. The period of thirty days prescribed by rule 92 will not, therefore, begin to run against a person applying under rule 89 if for any reason the final bid remains for a time unaccepted by the sale officer.

The facts of this case are fully stated in the judgement of the Court.

Mr. M. L. Agarwala, for the appellants.

Babu Jogindro Nath Chaudhri and Babu Sarat Chandra Chaudhri, for the respondent.

TUDBALL and MUHAMMAD RAFIQ, J.J. :—The circumstances out of which the present appeal has arisen are as follows :—Certain property was put up for sale in execution of two decrees, one of which was for Rs. 11,521 and the other was for Rs. 2,521. Apparently, when the decrees were sent to the Collector for execution, there was an error in the *rubkar* sent and Rs. 1,521 was shown as the amount due under the one decree instead of Rs. 11,521. The property was duly notified for sale, and on the 22nd of August it was put up for sale. Ram Narain was the highest bidder and offered Rs. 6,400. The sale officer, as his order of the 22nd of August shows, seeing that the total amount apparently due under the decrees was Rs. 3,673, was of opinion that it was unnecessary to sell the whole of this property, and made up his mind to sell it in two lots of one-half each. It is equally clear from his order of the same date that the decree-holder at once informed him that the amount due under the one decree was Rs. 11,521 and not Rs. 1,521. The sale officer made up his mind to verify this statement from the civil court, and in his order of the 22nd of August, he distinctly states that he does not conclude the sale—“*ekhtetam-i-nulam manzur nahin kia ja sakta*”—and he postponed the matter till he received

* First Appeal No. 47 of 1912 from an order of Muhammad Husain, First Additional Subordinate Judge of Meerut, dated the 20th of January, 1912.

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information. On the 28th of August he received information that the correct amount due under the decree was Rs. 11,521. He accordingly noted this in his order, which distinctly states that he concludes the sale as it is unnecessary to sell the property afresh in two lots. On that same date he received from Ram Narain the one-fourth deposit which it is necessary to make under order XXI, rule 84, of the Code of Civil Procedure. On the 23rd of September, on an *ex parte* application, the civil court confirmed the sale. From the 24th of September till the 26th of October the court closed for vacation. On the 26th of October the judgement-debtor deposited the amount of the decree *plus* 5 per cent. of the purchase money as required under order XXI, rule 89, and he asked that the sale should be set aside. The learned Subordinate Judge refused to set aside the sale, being of opinion that it was impossible for him to do so after he had once confirmed the sale. The judgement-debtor comes here in appeal, and it is urged, we must admit, with considerable force that the auction sale was not concluded until the 28th of August; that the deposit made on the 26th of October was a deposit made within time, i.e., within thirty days of the sale, omitting the vacation, and that the learned Subordinate Judge was not debarred from setting aside the sale merely because he had, on the 23rd of September, by an *ex parte* order, confirmed it. It is contended on behalf of the respondent that the sale in the present instance took place on the 22nd of August, and that if the judgement-debtor wished to make a deposit, he was bound to do so before the 22nd of September. In our opinion, in view of what took place on the 22nd of August and the lengthy order passed by the sale officer on that date, and the action that he took in the meantime, and his order of the 28th of August, it is quite clear that the sale was not concluded until August the 28th. We cannot accept the contention that directly a bid is made the sale is concluded. In his order of 22nd August the sale officer distinctly and in very clear language stated that he did not conclude the sale; that the final bid was not there, and that it was his intention to split up the property into lots and put up the same afresh. Under order XXI, rule 84, a person who is declared to be the purchaser at a sale has immediately after such declaration to make a deposit of 25 per cent. on the amount of his purchase money to the officer conducting the sale. It is, therefore,

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quite clear that for the conclusion of a sale it is necessary for the sale officer to accept the final bid and to make a declaration as to who is the purchaser and to order that purchaser to forthwith pay 25 per cent. of the purchase money. It is clear that if such deposit is not made immediately, it is open to the sale officer to continue the sale afresh, and such auction purchaser who fails to make the deposit is liable for the difference between the amount of his own bid and that of the final bid which may be accepted by the sale officer. Our attention has been called to a ruling in *Chowdhry Kesri Sahay v. Giani Roy* (1). It is of no assistance whatsoever to us in the present case, nor was the point which now arises, before the court at the hearing of that case. It seems to us that the matter is simply one for the exercise of a little common sense. The mere making of the last bid does not conclude the sale, and in our opinion in the present case the sale was concluded on the 28th of August, which is evidenced by the fact that on that date the sale officer declared Ram Narain to be the purchaser and made him pay 25 per cent. of the deposit under order XXI, rule 84. It is equally clear that the judgement-debtor could not have made a deposit and applied to have the sale set aside prior to the 28th of August. In this view it is quite clear that the deposit made on the 26th of October by the appellant was made within time. The learned Subordinate Judge was not precluded by reason of his order of the 23rd of September from accepting this deposit and setting aside the sale. An *ex parte* order passed on that date could not deprive the present appellant of his rights under the law, and it was the Subordinate Judge's duty to set aside the sale. We, therefore, allow the appeal and set aside the order of the court below. The sale of the 28th of August, 1911, will be set aside. The appellants will have their costs in both courts.

Appeal allowed.

(1) (1902) I. L. R., 29 Cal., 626.