

APPELLATE CIVIL.

Before Sir Cecil Walsh, Acting Chief Justice, and
Mr. Justice Banerji.

BABU RAM (JUDGEMENT-DEBTOR) v. IMAN-UJLAH
(DECREE-HOLDER).*

1926
December,
21.

Civil Procedure Code, order XXI, rules 69 and 90—Execution of decree—Adjournment of sale—Necessity for publication of date and hour of adjourned sale.

When a sale in execution of a decree has been adjourned it is essential that due notice of both the day and the hour of the adjourned sale shall be given to the public. The hour is only of slightly less importance than the day. *Mahabir Pershad v. Dhanukdhari Singh* (1), referred to.

THIS was an appeal arising out of proceedings in execution of a decree. The facts of the case, so far as they are necessary for the purposes of this report, appear from the judgement of the Court.

Munshi *Panna Lal*, for the appellant.

Munshi *Harnandan Prasad*, for the respondent.

WALSH, A. C. J., and BANERJI, J. :—It is unfortunate that this Court should be compelled to interfere twice after an interval of more than one year with the order of the court below, but we feel that we have no alternative in this case and that there ought to be a fresh sale. There are several unsatisfactory features about the case. First the property is valued at Rs. 1,000 in the sale proclamation. The judgement-debtors originally gave over Rs. 12,000 for it. Some shops have collapsed and some buildings are obviously dilapidated. This would depreciate the value of the property very much, and the Judge in this case says : "It can hardly be worth more than half," which would be Rs. 6,000. He then goes on to say that in his opinion the property would be worth a little more

* First Appeal No. 32 of 1926, from an order of Syed Ittikhar Husain, Subordinate Judge of Budaun, dated the 8th of December, 1925.

(1) (1904) I.L.R., 31 Cal., 815.

than Rs. 3,000. This is rather a big jump from Rs. 6,000, but it explains a specific finding by the Judge that the property fetched a low price and the judgement-debtors have suffered. The low price was Rs. 1,550, and, therefore, the figure in the sale proclamation was too low. When a fresh sale proclamation is issued, this matter ought to be carefully considered by the court below.

The next point is that the provisions of order XXI, rule 69, were ignored. The rule distinctly says that the sale shall be adjourned to a specified day and hour. In the ordinary way those are the only two important things to be known, after the property has been properly advertised by a sale proclamation. It is admitted that no hour was fixed on this occasion. The learned Judge says this is a thing which is hardly ever done by the courts, and elsewhere it is said "it is more honoured in the breach than in the observance." We can only say that this honoured breach must stop. It is a very serious matter. The hour is only of slightly less importance than the day and ought to be clearly announced to the public, and we think it right to draw the attention of the English Judge to this matter, with a view to intimating to the courts below that this provision in the rule must be followed. The learned Judge himself attached importance in his judgement to the hour of the adjourned sale, but he attributes to proposing purchasers a knowledge that the sale would take place at the same hour. Why would-be purchasers should be supposed to know this, when the rule says that the hour is to be specified in the order of adjournment, it is difficult to follow, unless would-be purchasers must be taken to know that the subordinate courts invariably break the rules in the Code which direct them how to conduct the

1926

BABU RAM
2.
IMAN-ULLAH

1926

BABU RAM
v.
IMAN-ULLAH.

sales. But in this particular instance, if it be the fact that the would-be purchasers knew that the sale would take place at 12, there could hardly have been any body of persons in Budaun on that day who were more surprised and deluded by the difference between the actual facts and what they were supposed to know, because, although according to the learned Judge, by the practice of the courts the sale ought to take place at 12, and everybody in Budaun ought to know that it would take place at 12, the sale officer did not arrive till 3. How it happened that there were ten bidders still left at 3 o'clock for the sale, which everybody knew was going to take place at 12, is a matter which is left somewhat mysterious. But the learned Judge has not had the courage of his opinions in holding that the appellants ought to have called the purchasers who were misled by the time of the sale taking place, when he himself holds that everybody ought to have known it.

Under the circumstances, closely following the direction contained in the decision of the Privy Council, to which we have been referred, namely, *Mahabir Pershad Singh v. Dhanukdhari Singh* (1), we think that we, differing from the lower court, are bound to draw the inference that, assuming that the learned Judge is right when he says that the property fetched a low price, the real explanation of that low price is the breach of the law, and the muddle and misdirection to the proposing purchasers which was allowed to take place about the hour of the sale.

Now without direct evidence, a strong clear case is required to establish the connexion between the irregularity and the inadequate price. In our opinion the circumstances in this case are strong and leave no doubt as to the proper inference which ought to be

drawn. We are confirmed in this view by the fact that an experienced Judge, on a previous occasion, although for somewhat unusual reasons, which did not approve themselves to this Court, was satisfied that the sale was not a fair one, and ought to be set aside. We will leave the costs of this appeal to abide the result of the sale in this way, if the price fetched is more than Rs. 1,550 the judgement-debtor must have his costs. If it fetches only Rs. 1,550 or a smaller price, each party must pay his own costs of this appeal.

1926

BABU RAM
v.
IMAN-ULLAH.

Appeal allowed.

Before Mr. Justice Lindsay and Mr. Justice Sulaiman.

MATHURA KURMI (DEFENDANT) v. JAGDEO SINGH
AND OTHERS (PLAINTIFFS).*

1926
December,
21.

*Act No. IV of 1882 (Transfer of Property Act), section 58(c)—
Sale—Mortgage by conditional sale—Sale accompanied by
synchronous agreement for re-purchase at the end of a
fixed period.*

Three documents were executed by the same parties on the same day. The first purported to be a deed of sale of certain landed property comprising a good many plots of *sir* and *khudkasht* land. The second was described as a deed of relinquishment, and by it the vendor proposed to relinquish all his rights in the *sir* and *khudkasht* in favour of the purchaser. The third was an agreement by the purchaser by which he gave the vendor an option of re-purchasing the property which had been sold, at any time after the expiration of seven years from the date of the sale, but with this stipulation that the re-purchase was not to be made by means of funds borrowed for the purpose. The three documents were registered a few days later, but all on the same day. Before this transaction, also, the parties had for some time occupied the relative positions of debtor and creditor.

* First Appeal No. 459 of 1923, from a decree of Piere Lal Rastogi, Additional Subordinate Judge of Basti, dated the 2nd of May, 1923.