1881

GUMANI v. HARDWAR PANDEY.

it muafi land. At any rate it is impossible to hold that the land No. 28, comprising 3 bighas 15 biswas, bought by plaintiff was attached under the order. Besides the very material misdescription of the land as applied to the land plaintiff bought, entered in the order of attachment, will protect a *bonâ fide* purchaser like the plaintiff from having his purchase set aside under s. 276, as the attachment cannot under the circumstances be held to have been "duly intimated and made known" as required by the section. We decree the appeal and set aside the decrees of the lower Courts, and decree the claim with costs.

Appeal allowed.

1881
April 26.

Before Mr. Justice Oldfield and Mr. Justice Straight

RAM DIAL (PLAINTIFF) *v.* MAHTAB SINGH AND OTHERS (DEFENDANTS)*

Sale in execution—Order of attachment and sale-notifications not signed by Judge but by munsarim—Sale set aside—Suit to have sale confirmed—Act VIII of 1859 *(Civil Procedure Code), ss.* 222, 256, 257*—Equitable estoppel.*

On the 21st August, 1876, certain immoveable property belonging to *M* was put up for sale and was purchased by *R*. On the 20th April, 1877, such sale was set aside under s. 256 of Act VIII of 1859, on the ground that the order attaching such property and the notifications of sale had not, as required by s. 222, been signed by the Court executing the decree but by the munsarim of the Court. On the 27th June, 1877, *M* conveyed such property to *H*, who purchased it *bonâ fide*, and for value, and satisfied the incumbrances existing thereon. On the 15th April, 1878, *R* sued *H* and *M* to have the order setting aside such sale set aside, and to have such sale confirmed in his favour, on the ground that it had been improperly set aside under s. 256 of Act VIII of 1859, the judgment-debtor not having been prejudiced by the irregularities in respect whereof such sale had been set aside. *Held* by OLDFIELD, J., that, although such sale might have been improperly set aside, yet inasmuch as the order of attachment and the notifications of sale could have no legal effect, having been signed by the munsarim of the Court executing the decree, and not by the Court, as required by s. 222 of Act VIII of 1859, and inasmuch as it would be inequitable, after the incumbrances on such property had been satisfied and the state of things changed, to allow *R*, after standing by for a year, and permitting dealings with the property, to come in and take advantage of the change of circumstances and obtain a property become much more valuable at the price he originally offered, *R* ought not to obtain the relief which he sought.

---

* First Appeal, No. 113 of 1879, from a decree of Maulvi Farid-ud-din Ahmad, Subordinate Judge of Aligarh, dated the 30th June, 1879.

1881

RAM DIAL v. MAHTAB SINGH.

Held by STRAIGHT, J., that the fact that the Court executing the decree had not signed the order of attachment and the notifications of sale vitiated the proceedings in execution *ab initio*, and rendered the sale which *R* desired to have confirmed void, and *R*'s suit therefore failed, and had properly been dismissed.

CERTAIN immoveable property was put up for sale on the 21st August, 1876, in execution of a decree held by one Jag Ram against one Mahtab Singh, and was purchased by the plaintiff in this suit for Rs. 1,725. Mahtab Singh objected to the sale; and on the 20th April, 1877, the Court executing the decree set the sale aside on the ground that the order of attachment and the notifications of sale had not been signed by the Court itself but by the Munsarim of the Court. On the 27th June, 1877, Mahtab Singh conveyed the property to the defendants in this suit for a consideration of Rs. 29,000. The purchase-money consisted of the following items, namely, a set-off of Rs. 5,182 due on a decree, and of Rs. 10,418 due on a mortgage, by the vendor to the defendants; a set-off of Rs. 8,000, the purchase-money of certain property purchased by the vendor from the defendants; Rs. 1,000 left with the defendants, to be paid in satisfaction of a decree held by one Munna Lal against the vendor; and Rs. 4,400 left with the defendants to be paid in satisfaction of two decrees held by Jag Ram against the vendor. On the 15th April, 1878, the plaintiff instituted the present suit against the defendants to have the order setting aside the sale set aside, and to have the sale confirmed in his favour. The defence set up by the defendants, the grounds on which the Court of first instance dismissed the suit, and on which the plaintiff appealed to the High Court, are fully stated in the judgment of Oldfield, J.

Pandit *Ajudhia Nath* and Lala *Harkishen Das*, for the appellant.

Mr. *Howell*, Munshi *Hanuman Prasad*, and Babu *Jogindro Nath Chaudhri*, for the respondents.

The following judgments were delivered by the High Court:—

OLDFIELD, J.—The plaintiff bid for the property in suit at an auction-sale in execution of a decree against Mahtab Singh, and it

1881

RAM DIAL v. MAHTAB SINGH.

was knocked down to him on the 21st August, 1876, for Rs. 1,725. Mahtab Singh urged objections to the sale, one objection being that the sale was void by reason of irregularity in the warrant for attachment and notices of sale, inasmuch as they bore the signature of the Munsarim or Clerk of the Court, and not of the Judge, and the Judge allowed the objection and set aside the sale on the 20th April, 1877. The plaintiff instituted this suit on the 15th April, 1878, to have the Judge's order set aside and his right declared to have the sale confirmed in his favour, on the ground that the Judge failed to determine if the judgment-debtor had sustained any material injury from the irregularity complained of and alleging that he had not suffered thereby. Since the date the sale was set aside Hira Lal and others have purchased the property from Mahtab Singh, and discharged the liabilities due on it, and they are the principal defendants in the case, and pleaded, *inter alia*, that the suit is not maintainable, having regard to the provisions of s. 257, Act VIII of 1859, as the order setting aside the sale was final, and that the irregularity complained of afforded a valid ground for setting aside the sale, and they pleaded that the plaintiff could not succeed against them, the purchasers from the judgment-debtor. The Subordinate Judge has held that the Judge in setting aside the sale was acting within his jurisdiction under the provisions of s. 256, Act VIII of 1859; that he dealt with the objections as coming within the scope of the section and as establishing material irregularity and substantial injury to the judgment-debtor; and his order being made in the exercise of the powers vested in him by s. 256, a regular suit cannot be instituted, the order setting aside the sale being final. He further held that the sale had been properly set aside on the facts shown, and that it would be a hard injustice to the answering defendants to allow the claim, as they are *bonâ fide* purchasers from Mahtab Singh, and have discharged his liabilities, and it would not be equitable to allow the plaintiff to come in, after standing by so long since the sale was set aside, and obtain the property now free from liabilities, at the price he bid for it when incumbered, and he dismissed the suit. The plaintiff has appealed. The decision of the majority of this Court in *Dewan Singh* v. *Bharat Singh* (1) has been pressed upon us as

(1) I. L. R., 3 All. 206.

1881

RAM DIAL v. MAHTAB SINGH.

an authority for holding that the present suit is not barred by the terms of s. 257, Act VIII of 1859. I myself dissented from the view taken by the majority of the Court in that case, but I feel myself bound to accept the ruling so far as it is applicable to the case before us. Assuming, however, that it is an authority for holding that the present suit is maintainable, and we are at liberty to determine if the Judge's order setting aside the sale was properly made or not, and if not to set it aside and declare plaintiff's right to have the sale confirmed to him, I am not disposed to do so with reference to some of the grounds on which the Subordinate Judge proceeds. The fact that the order of attachment and notices of sale were not issued under the signature of the Judge but of the Munsarim, as though emanating from him, constituted serious irregularities of procedure. Orders so issued could, properly speaking, have no legal effect, since s. 222, Act VIII. of 1859, requires that the warrants for execution shall be signed by the Judge; the Munsarim had no power to sign them, having regard to his duties as declared in s. 24, Act VI. of 1871 (Bengal Civil Courts Act), and the orders of the Court made in pursuance of the provisions of s. 24.—(Circular Order No. 9, dated the 19th August, 1870.) Moreover the sale could not now be confirmed in plaintiff's favour without serious injustice to the respondents who have purchased the property from Mahtab Singh, *bonâ fide*, and for value, and to whom at the time of the sale Mahtab Singh was able to confer a good title, since the sale at which plaintiff bid could not become absolute without confirmation. Since the date of the auction-sale also the liabilities on the property have been satisfied, and the state of things has materially changed, and it would be inequitable to allow plaintiff, after standing by for a year, and permitting dealings to be made with the property, to come in and take advantage of the change of circumstances and obtain a property become much more valuable at the price he originally offered. I refuse therefore to give a declaration of his right to have the sale confirmed to him, and I would dismiss the appeal with costs.

STRAIGHT, J.—I concur with my honorable colleague that the plaintiff's claim should be disallowed and this appeal dismissed. I am of opinion that the sale in execution at which the plaintiff

bought was wholly void, and that the absence of the signature of the Judge from the warrant of attachment vitiated the proceedings in execution *ab initio*. The language of s. 222, Act VIII of 1859, is plain and positive, and it seems to me impossible to hold that the order directing attachment is not a warrant within the meaning of that section. Whether it was directed to the Nazir or other person to seize the moveable property of a judgment-debtor, or to the judgment-debtor himself prohibiting him from alienating his immoveable property, it was an order essentially in the nature of a warrant, and as such required the Judge's signature under the old law. It was contended for the appellant at the hearing that this objection was not taken by the judgment-debtor in the grounds upon which he asked for cancelment of the sale, and the Judge had no right to entertain it by his own motion. I am by no means sure that this plea has any foundation in fact, for I find the Judge remarks in his judgment that "the first contention on the appellant's part is that no sale properly so called took place, that is, that all proceedings were vitiated *ab initio* by the irregularity of the warrant of execution, which ought not only to bear the seal of the Court, but also shall be signed by the Judge." Even if this point had not been started by the judgment-debtor, I think it would have been competent for the Judge himself to take notice of it, going as it does to the very root of the proceedings. But under any circumstances, we in a suit like the present, which practically invites us to confirm a sale by declaring the plaintiff's right to have it confirmed, are in my opinion not only entitled but bound to closely scrutinize all the proceedings in execution to ascertain whether such sale was a valid and binding one. This I have already said it was not, and the foundation of the plaintiff's claim therefore falls away. I say nothing as to his conduct in holding back until almost the very last moment from instituting his suit, though I am glad to think that, from the point of view from which I regard the case, the subsequent innocent purchasers from the judgment-debtor will obtain the property, they have not only brought and paid for, but the incumbrances upon which they have discharged.

Appeal dismissed.