

APPELLATE CIVIL.

Before Das and Ross, J.J.

MAHARAJ KUMAR JAGAT MOHAN NATH SAH DEO

v.

JAIPAL SINGH.*

1923.

December 21.

Execution of Decree—Decree under Chota Nagpur Tenancy Act, 1908 (Ben. Act VI of 1908)—assessment of valuation not necessary—wrong value entered in sale proclamation—application to set aside sale on ground of material irregularity in publishing and conducting the sale.

Under the Chota Nagpur Tenancy Act, 1908, it is not necessary that the value of the property sought to be sold in execution of a decree should be entered in the sale proclamation, but if the decree-holder, in his application for sale, does purport to state the value of the property and if such value is entered in the sale proclamation and results in the property being sold for an insignificant sum, the sale is liable to be set aside on the ground that there was a material irregularity in publishing and conducting the sale.

Saadatmand Khan v. Phul Kuer(1), referred to.

Appeals by the auction-purchaser and decree-holders, respectively from an order setting aside an execution sale held under the Chota Nagpur Tenancy Act, 1908, on the ground of irregularity in publishing and conducting the sale.

The facts of the case material to this report are stated in the judgment of Das, J.

Sultan Ahmed (with him *Murari Prasad* and *Ambica Prasad Upadhya*), for the decree-holder.

Susil Madhab Mullick, *Bankim Chandra De* and *Jadubans Sahay*, for the auction-purchaser.

DAS, J.—I think that these appeals must fail on the short ground that there was a material

*Appeals from Appellate Orders Nos. 213 and 214 of 1922, from an Order of H. Foster, Esq., I.C.S., Judicial Commissioner of Ranchi, dated the 16th July, 1922, affirming an order of Babu Narendra Lal Bose, Munsif, Deputy Collector of Palamau, dated the 16th July, 1921.

(1) (1908) I. L. R. 20 All. 412; L. R. 25 L. A. 146.

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irregularity in publishing or conducting the sale of a property which, being of a very considerable value, has been sold for Rs. 2,000. In his application for sale the decree-holder stated that Rs. 2,000 was the value of the property and it is for Rs. 2,000 that he has purchased the property.

It has been pointed out before us, on behalf of the respondents, that under the Chota Nagpur Tenancy Act, it was not the duty of the decree-holder to give the valuation of the property sought to be sold and if it was the fault of anybody at all it was the fault of the Court. It seems to me that the circumstances present in this case are similar to those which were present in the case of *Saadatmand Khan v. Phul Kuer* (1). It was argued in that case that the value of the property should not have been mentioned in the sale proclamation; and that as the entry was uncalled for and not legally obligatory, to give a wrong value was no reason for setting aside the sale. The Judicial Committee pointed out that this was a mistaken view, and proceeded to say as follows: "that the misstatement 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."

I am not deciding that this case is any authority under the present Civil Procedure Code for the Code requires the Court to come to a decision as to the value of the property. But under the Chota Nagpur

(1) (1898) I. L. R. 20 All. 472; L. B. 25 I. A. 146.

Tenancy Act there is no provision requiring the Court to assess the value of the property sought to be sold. It is quite true that there are no rules in the Chota Nagpur Tenancy Act which require the parties to assess the value of the property sought to be sold; but the value was undoubtedly given by the decree-holder with the result that the property, which was of very great value, has been sold for an insignificant sum of money.

In these circumstances I am of opinion that the order of the learned Judicial Commissioner should be affirmed

I would accordingly dismiss these appeals with one set of costs.

Ross, J.—I agree.

Appeals dismissed.

APPELLATE CIVIL.

Before Jwala Prasad and Kulwant Sahay, J.J.

SOMAR SINGH

v.

MUSSAMMAT PREMDEI *

1924.

January 4.

Limitation Act (Act IX of 1908), Article 182(2)—Execution of decree—decree against several defendants—appeal by some defendants—decree set aside—appeal to Privy Council by plaintiffs—decree restored—Civil Procedure Code, Order XLI, rule 33.

In a contribution suit a decree was passed against three different sets of defendants making them liable for different sums of money, and only one set appealed to the High Court while the others did not appeal. The High Court decided the case after the period of limitation for execution of the decree had expired, allowed the appeal and dismissed the entire suit of the plaintiffs. The plaintiffs appealed to His Majesty in Council and obtained an order restoring the original decree. In an application for execution of the order of His

*Appeals from Original Orders Nos. 68 and 74 of 1923 from an order of Maulavi Ghalib Husnain, Subordinate Judge, 2nd Court, Patna, dated the 10th March, 1923.