

APPELLATE CIVIL.

Before Das and Adami, JJ.

MURLIDHAR KHETAN

v.

NAWAB SAIYID MUHAMMAD.*

1926.

Dec., 18.

Code of Civil Procedure, 1908 (Act V of 1908), Order XXI, rules 69(2) and 72—decree-holder allowed to bid—absence of express permission by the court, effect of—property under hammer for more than a week—whether “adjourned” sale—Order XXI, rule 69(2), applicability of.

Where the decree-holder filed a petition before the executing court asking for permission to bid at the sale and no order was passed on the petition but the decree-holder was allowed to bid throughout the course of the sale,

held, that although there was no express permission in writing, the court must be deemed to have permitted the decree-holder to bid, and that the decree-holder could not be made to suffer on account of the mistake of the court unless it could be shown that the properties were not sold for a proper price.

Where property was put up to sale on the 16th January and, the highest bid being Rs. 25,000, the court ordered the nazir to endeavour to obtain a higher bid, and unsuccessful attempts to increase the bid were made on several days between the 16th and 27th, on which latter date the property was knocked down for Rs. 25,000, *held*, that the sale had not been “adjourned” within the meaning of Order XXI, rule 69(2), Code of Civil Procedure, 1908, and, therefore, no fresh sale proclamation was required.

Appeal by the judgment-debtor.

The facts of the case are stated in the judgment of Adami, J.

Kailaspati, (with him *Sarjoo Prasad*), for the appellant:—The decree-holder having purchased the property without the express permission of the court

* Appeal from Original Order no. 45 of 1926, from an Order of Babu Sheo Nandan Prasad Singh, Subordinate Judge of Gaya, dated the 6th February, 1926.

the sale is void and must be set aside. The provisions of Order XXI, rule 72, Civil Procedure Code, 1908, are mandatory, failure to comply with them renders the sale void.

[*Das, J.*—The sale is simply voidable as has been laid down in *Rai Radha Krishna v. Bisheshar Sahay* (1). The question is whether the property has been realized to the best advantage.]

My second contention is that the sale was attended with material irregularities by reason of the fact that there was no compliance with the provisions of Order XXI, rule 60(2). A fresh sale proclamation was necessary at each stage of the adjourned sale.

In *Jamini Mohan Nundy v. Chandra Kumar Roy* (2) a fresh sale proclamation was held to be necessary where there was a series of short postponements for less than seven days which, taken together, in the aggregate amounted to more than seven days.

[*Das, J.*—But the distinction lies in the fact that in the present case the sale was a continuing sale and not an adjourned sale.]

Lastly I submit that the decree-holder having failed to deposit 25 per cent. of the purchase money the sale is void under Order XXI, rule 84(1) and must be set aside.

In *Amir Begum v. Bank of Upper India, Limited* (3), it has been ruled that a sale in such a case is a nullity.

[*Khurshaid Husnain—Amir Begum v. Bank of Upper India, Limited* (3) has been overruled by the decision of a Full Bench in *Sita Ram v. Janki Ram* (4).]

I also rely on *Ali Muhammad v. Alia Khanum* (5) where it was held that the failure to make a deposit

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(1) (1922) I. L. R. 1 Pat. 733 P. C.

(2) (1901-02) 6 Cal. W. N. 44.

(3) (1908) I. L. R. 30 All. 278.

(4) (1922) I. L. R. 44 All. 266 F. B.

(5) (1915) 30 Ind. Cas. 230.

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under Order XXI, rule 84, is not only an irregularity but renders the sale void.

Khurshaid Husnain, (with him *Syed Ali Khan*),
for the respondent was not called upon to reply.

S. A. K.

ADAMI, J.—The grounds on which the appellant seeks to set aside the sale of the two properties mauza Tajpur Bishunpur and mauza Itwa are that an inadequate price was fetched at the sale owing to certain material irregularities. It is urged that the value of these properties was no less than Rs. 50,000 and they fetched at the sale only Rs. 32,000. The irregularities complained of are, first, that the decree-holder had not the express permission of the court to bid at the sale, and, secondly, that the sale was adjourned without issue of fresh sale proclamation. Another ground put forward is that the decree-holder failed to deposit the 25 per cent. of the purchase money on the day of the sale.

With regard to the permission granted to the decree-holder to bid at the sale, admittedly the decree-holder filed a petition before the executing court asking for permission to bid. No order was passed on his petition, but the decree-holder was allowed to bid throughout the course of the sale. The bid-sheet shows that on the several days on which the sale was held, a note was made that the decree-holder's pleader had bid a certain amount and on this note there was the order by the Subordinate Judge to try again to get a better price. There is no doubt that the Subordinate Judge gave tacit permission for the bidding by the decree-holder, and it can be taken, I think, that the court gave permission to the decree-holder to bid himself. It is true that there is no express permission in writing, but this was a mistake made by the court and not by the decree-holder and there is no good reason why the decree-holder should suffer by the court's mistake, unless it can be shown that the properties were not sold for a proper price and that question I will deal with later.

The next ground is that there was no sale proclamation with regard to the later stages of the sale. It is admitted that the sale was fixed for the 14th November, 1925, and on that date the bidding took place but the judgment-debtor appellant filed a petition asking that the sale might be adjourned to the 16th January and in that petition the appellant undertook to make no objection on the ground of any irregularities if the adjournment were allowed. The adjournment was allowed and bidding took place on the 16th January. The decree-holder's bid was the biggest, amounting to Rs. 25,000. The learned Subordinate Judge was not satisfied with the bid and gave directions to the nazir "to try again". The four following days were holidays and on the 20th January the order on the bid-sheet is—

"decree-holder's pleader bid Rs. 25,000 and there is no further increase."

The learned Subordinate Judge then ordered that the sale should be kept on hammer till the 22nd. On the succeeding days up to the 27th attempts were evidently made each day to obtain a higher bid but the attempts were unsuccessful, and on the 28th the bid of the decree-holder of Rs. 25,000 for mauza Tajpur Bishunpur was accepted. It is argued that on each of these days there was an adjournment of the sale but the bid-sheet clearly shows that there was no such adjournment at all. The property was kept on hammer throughout from the 16th January to the 28th January. On none of those dates did the bidding start afresh from the beginning, only an attempt was made to obtain some bid higher than the Rs. 25,000 bid by the decree-holder. It was a continuous sale and the provisions of sub-rule (2) of Rule 69 of Order 21 do not apply. This ground, is, I think, untenable.

With regard to the failure to deposit the 25 per cent. of the purchase money on the date of sale, the learned Subordinate Judge has given very good reasons why the money was not deposited on that day. All the proper steps were taken by the decree-holder and the reasons shown are good ones.

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Then, finally, as to the price fetched. The bid-sheet and the order sheet show quite clearly that the Subordinate Judge was doing his very best to help the judgment-debtor to get a better price but no bidders came forward to outbid the decree-holder and of necessity the two mauzas had to be sold for Rs. 32,000 which was offered. There is nothing to show that this price was an inadequate price under the circumstances. It can never be expected that at an auction sale it is possible that the full value of the property can be obtained. The learned Subordinate Judge had good local knowledge, and it is clear that in his opinion the best price available had been obtained for the properties. I see no reason to think that an inadequate price was obtained or that such inadequate price was due to any material irregularity.

I would, therefore, dismiss the appeal with costs in both courts.

DAS, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Dawson Miller, C.J. and Adami, J.

BARA HAPAN MANJHI

v.

GOPI MANJHI.*

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Dec., 17.

Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908), sections 139(5) and 139A—possession of land voluntarily given up by tenant—suit by tenant to recover possession not barred.

The plaintiff was a tenant of certain lands to which the Chota Nagpur Tenancy Act, 1908, applied. He placed those lands in charge of the defendants during his absence. On his

* Miscellaneous Appeals nos. 223 to 225 of 1925, from a decision of Babu Narendra Lal Bose, Additional Subordinate Judge of Purulia, dated the 3rd June, 1926, reversing a decision of Babu Manindra Nath Mitra, Munsif of Raghunathpur, dated the 9th November, 1925.