

APPELLATE CIVIL.

Before Sir Guy Ruddle, Kt., K.C., Chief Justice and Mr. Justice Brown.

MAUNG OHN TIN

v.

P.R.M.P.S.R.M. CHETTYAR FIRM AND OTHERS.*

1929

Mar. 25.

Civil Procedure Code (Act V of 1908), O. 21, rr. 65, 69, 84, 90—Receiver of immoveable property—No proprietary right or interest vests in a receiver—Receiver not in possession, and no party to execution proceedings not entitled to notice of sale—Presiding officer at Court-sale declares highest bidder—Judge's sanction unnecessary for completion of contract of sale.

A receiver is merely an officer of the Court, he acquires no proprietary rights or interest in the property of which he is appointed receiver. In execution proceedings, in which the receiver is not a party and who is not in possession of the property, no notice need issue to such receiver in case of sale, and absence of notice is not a material irregularity or fraud in publishing or conducting the sale.

Po Shan v. Maung Gyi, 5 L.B.R. 213—referred to.

Neither the provisions of Order 21 of the Civil Procedure Code, nor the rules of the High Court or of the Courts Manual require a bid to be accepted by a Judge before the contract of sale can be held to be complete. The officer conducting the sale can declare the highest bidder to be the purchaser.

Jaibahadar v. Matukdhari, 2 Pat. 548—distinguished.

Afazuddin v. Howell, 6 Ran. 609—dissented from.

Burjorjee and Clark for the appellant.

N. N. Sen for the 5th respondent.

K. C. Bose for the decree-holders.

RUTLEDGE, C.J., and BROWN, J.—This is an appeal from an order of the Original Side of this Court, setting aside the sale of a mill by auction in Civil Execution Case No. 605 of 1927 on the ground that the Official Receiver was not given notice of the auction. It is not alleged that the Official Receiver was the receiver in possession of the mill property,

* Civil Miscellaneous Appeal No. 119 of 1928 from the order of the Original Side in Civil Execution No. 605 of 1927.

1929

MAUNG
OHN TIN
v.
P.R.M.P.S.
R.M.
CHETTIAR
PRIN.

RUTLEDGE,
C.J., AND
BROWN, J.

but in 1926 he was appointed receiver of the estate of one U Maung Gyi, and U Maung Gyi had a half interest or share in the mill. The learned trial Judge states that the Official Receiver was in legal possession of U Maung Gyi's half share in the mill. That may be but it is not alleged that either U Maung Gyi, before his death, or the Official Receiver, was in actual possession of either the mill or its compound, the possession and management being in the hands of the other partners.

The learned Judge proceeds on the analogy of an administrator to an estate, but in our view such an analogy is dangerous and not helpful, as the legal position of an administrator is very different to that of a receiver. Unless special powers have been given to a receiver, in the words of Sir Charles Fox in *Po Shan's* case (1) :—

"The status of a receiver is merely that of an officer of the Court. He is sometimes referred to as the 'hand of the Court'. He acquires no proprietary rights or interest in the property of which he is appointed receiver. Having no title to the property he cannot convey or assign any title to it to any other person."

"A receiver has no proprietary rights or interest whatever. Notwithstanding his appointment the proprietary rights in the estate remain in the persons who are by law entitled to the estate. The receiver's possession is not a possession by any personal right. It is the possession of the Court and he is totally devoid of any interest in the property." (*Woodroffe on Receivers*, 3rd edition, page 4.)

The heirs and legal representatives of U Maung Gyi, deceased, in whom the legal title to the estate is vested, were parties to the proceedings. The Official Receiver was not a party and never applied to be made a party. We have not been referred to any provision of the Civil Procedure Code requiring notice to issue to a receiver of an estate, who has an interest

(1) (1910) 5 L.B.R. 213 at p. 215.

in the property in question but who is not himself in possession of such property.

In the absence of such a provision, we are unable to agree that the absence of notice to the official receiver was a material irregularity or fraud in publishing or conducting the sale.

Reliance has been placed on what the learned trial Judge calls, "a grossly inadequate price" which the mill and its premises fetched to satisfy the proviso to Rule 90 of Order XXI, Civil Procedure Code, and it is mentioned that the mill was mortgaged for a lakh of rupees in 1921. The mortgage, however, is dated 1921, and the evidence of Mr. David shows that the mill was in a very bad condition and would require an expenditure of something like Rs. 31,000 and odd to put it in proper condition. In a climate such as Rangoon, rice mill machinery deteriorates very rapidly if not properly looked after, and there is nothing intrinsically improbable in a mill which, though it might be worth a lakh of rupees in 1921, at an auction sale would not fetch more than Rs. 21,000, after several years of neglect.

The decree-holders, respondents Nos. 1 and 2, had leave to bid and were present at the auction sale, and we must presume that they would have exercised their power if they were satisfied that the property was going to be sold for a grossly inadequate price. We are not satisfied and cannot accept the explanation that they were so persuaded that the auction was going to be postponed through paucity of would be buyers that they did not pay due attention to the auction. But, if Mr. David's estimate is at all near the mark, namely, that Rs. 31,000 and odd would have to be spent on the mill, we can understand the Chettyar's reluctance to bid any higher price for it.

1929

MAUNG
OHN TIN
v.
P.R.M.P.S.
R.M.
CHETTYAR
FIRM.

RUTLEDGE,
C.J., AND
BROWN, J.

1929

MAUNG
CHN TIN
P.R.M.P.S.
R.M.
CHETTYAR
FIRM.

RUTLEDGE,
C.J. AND
BROWN, J.

Reliance was placed on the decision of a single Judge in the case of *Fraser and Ross v. Krishnaswami Aiyer and others* (1), but that decision, even if correct is easily distinguishable from the present. There the receiver was in actual possession of the whole partnership property and had applied to be made a party.

Mr. N. N. Sen states that there is a further objection in that his client, Ba U, had not been served with notice. It is true that Ba U was not personally served, but the notice was affixed to his house and we find a diary entry in the Execution record dated the 23rd March, 1928, which the Deputy Registrar held to be good notice. The objection does not seem to have been strenuously urged in the trial Court, and the learned Judge makes no mention of it.

We see no reason for differing with the Deputy Registrar, and hold that the service on Maung Ba U was good.

A further point has been raised before us on behalf of the respondent. It is contended that when the applications for setting aside the sale were before the trial Judge, the trial Judge had not accepted the highest bid at the auction or declared the bidder to be the purchaser and that therefore the bid had not been accepted. It was therefore open to the trial Judge to refuse to accept the bid whether there were grounds for setting aside the sale under rule 90 of Order XXI or not. The contention is based on the judgment of a single Judge of this Court in the case of *Afazuddin v. Howell and others* (2). It was there held that the highest bidder at a Court-sale of immoveable property becomes the purchaser thereof not when the bid is accepted by the fall of the hammer, but when the presiding officer of the Court has accepted the bid and declared the bidder to be the

(1) (1924) 47 Mad. 47.

(2) I.L.R. 6 Ran. 609.

purchaser. Reliance was placed on the case of *Jaibahadar Jha v. Matukdhari Jha* (1). In that case the properties had been sold in execution by the *nazir* of the Court. The bid-sheet was sent to the Munsiff who wrote, "Close against the last offer," but never signed the declaration that the property had been knocked down in favour of the bidder. It was held that in the circumstances the Munsiff had the power to refuse to accept the bid and to order property to be resold. It would appear however from the judgment that the practice in carrying out such Court sales was for the *nazir* only to conduct the sale and record the bids, but for acceptance of the bid to be with the Munsiff.

There has been no such practice in the Courts of this Province. Under rule 65 of Order XXI of the Code of Civil Procedure every sale in execution of a decree shall be conducted by an officer of the Court or by such other person as the Court may appoint in this behalf, and shall be made by public auction in manner prescribed. Under Rule 258 of the Rules of this Court published at page 126 of the High Court Rules and Orders sales of immoveable property in execution of a decree for money are to be conducted by the Bailiff under the direct supervision of a Registrar. There is no provision in the Rules which requires a Judge to accept a bid. Under Rule 259 if the highest bid be equal to or higher than the reserved price (if any), the Bailiff shall make an entry in the sale-book to the following effect :—

"I declare to have been the highest bidder for the purchase of the property above set forth (or of lot No. for the sum of Rs."

1929
 MAUNG
 OHN TIN
 &
 P.R.M.P.S.
 R.M.
 CHETTYAR
 FIRM.
 ———
 RUTLEDGE,
 C.J., AND
 BROWN, J.

(1) (1923) 2 Pat. 548.

1929

MAUNG
OHN TIN
v.
P.R.M.P.S.
R.M.
CHETTYAR
FIRM
—
RUTLEDGE,
C.J., AND
BROWN, J.

And under Rule 260 an application for an order confirming a sale of immoveable property is not necessary. If no application to set aside the sale is made within the period allowed therefor a Registrar may pass an order confirming the sale. It is quite clear therefore that the rules of procedure on the Original Side of this Court do not contemplate the highest bid at an auction sale being placed before the presiding Judge for acceptance, nor does it seem to us that the provisions of Order XXI of the Code of Civil Procedure require a bid to be accepted by a Judge before the contract of sale can be held to be complete.

Rule 84 of Order XXI provides that on every sale of immoveable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent. on the amount of his purchase-money to the officer or other person conducting the sale, and, in default of such deposit, the property shall forthwith be resold. Rule 69 of Order XXI quite clearly recognises that a sale elsewhere than in the precincts of the Court house is regular and when the sale is held elsewhere than in the precincts of the Court house the officer conducting the sale has a discretion to adjourn it without reference to the Court. On the failure of the payment of the deposit, rule 84 requires that the property should forthwith be resold. It is quite clear that, if the property were sold away from the Court house, it would be impossible to comply with the provisions of this rule in many cases, if the reference had to be made to the presiding Judge for acceptance of the bid. The Bailiff of the Court is appointed to be the officer to conduct the sale, and in our opinion the reasonable interpretation of rule 84 of Order XXI is that the officer conducting the sale

shall be the person to declare the highest bidder to be the purchaser.

In *Afazuddin's* case the sale was not in this Court but in a Court in Pegu District. But in our opinion the same considerations would apply in both cases. There is no rule in the Burma Courts Manual corresponding to Rule 259 of the High Court Rules and Orders. But it is clear from the rules laid down in paragraphs 219 to 222 of the Manual, that the necessity of a declaration as to the highest bidder by the presiding Judge is not contemplated as part of the procedure of a sale. We must therefore dissent from the decision in *Afazuddin's* case.

For the reasons already given, we set aside the order appealed from and confirm the sale.

The appellant is entitled to costs of this appeal and also in the trial Court, advocate's fee ten gold mohurs in this Court.

1929
 MAUNG
 OHN TIN
 v.
 P.R.M.P.S.
 R.M.
 CHETTYAR
 FIRM.
 RUTLEDGE,
 C.J., AND
 BROWN, J.

APPELLATE CIVIL.

Before Mr. Justice Brown.

MAUNG BA OH

v.

THE MOTOR HOUSE COMPANY, LTD.*

1929
 Mar. 25.

Hire-purchase agreement—Object of such agreement—Clause enabling owner to seize property—Stipulation that amount to be credited to hirer not to exceed balance due, a penalty—Relief against penalty—Contract Act (IX of 1872), s. 74.

A hire-purchase agreement relating to a motor truck provided for payment in nine monthly instalments. The hirer could become the owner of the truck on payment in full of the instalments and a rupee extra. On failure on the part of the hirer to pay any instalment as it became due, the owner was entitled to seize the truck and credit its value as against the amount due but

* Special Civil First Appeal No. 128 of 1928 from the judgment of the Small Cause Court of Rangoon in Civil Regular No. 6659 of 1927.