

THE INDIAN LAW REPORTS LAHORE SERIES.

LETTERS PATENT APPEAL.

Before Shadi Lal C. J. and Broadway J.

NIHAL CHAND-GOPAL DAS (DECREE-HOLDERS)
Appellants

versus

PRITAM SINGH (AUCTION-PUR-
CHASER), RAM DIAL-MULK RAJ } Respondents.
(JUDGMENT-DEBTORS) Respondents. }

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April 15.

Letters Patent Appeal No. 21 of 1931.

Civil Procedure Code, Act V of 1908, Order XXI, rule 90: Auction-purchaser—whether competent to make an application under the rule.

Held, that the auction-purchaser is not competent to make an application to the Court to set aside the sale under Order XXI, rule 90 of the Code of Civil Procedure, he not being a person whose interests are affected by the sale within the meaning of that rule; the interests therein referred to are interests which must exist at the time of the sale and not interests which are created by the sale itself.

Surendra Nath Das v. Alauddin Mistry (1), K. V. A. L. Chettyar Firm v. M. P. Maricar (2), Khetro Mohon Datta v. Sheikh Dilwar (3), Kartik Chandra Chatterji v. Nagendra Nath Roy (4), Kalumal Tolaram v. Ahmad Nur Muhammad (5), and Balwant v. Ratanlal (6), followed.

Bhavisetti Gopala Krishnayya v. Pakanati Padda Sanjeeva Reddy (7), Ravinandan Prasad v. Jagannath Sahu (8), and Sheoprasad v. Santooji (9), dissented from.

(1) 1928 A. I. R. (Cal.) 828.

(5) 1931 A. I. R. (Sind) 107.

(2) (1928) I. L. R. 6 Rang. 621.

(6) (1922) 68 I. C. 429.

(3) (1918) 3 Pat. L. J. 516.

(7) (1920) 55 I. C. 333.

(4) (1923) 74 I. C. 760.

(8) (1925) I. L. R. 47 All. 479.

(9) (1922) 65 I. C. 875.

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NIHAL CHAND-
GOPAL DAS
v.
PRITAM SINGH:

Appeal under clause 10 of the Letters Patent against the order of Jai Lal J. passed in Civil Appeal No. 2145 of 1930, on the 16th March, 1931, reversing that of Bawa Kanshi Ram, Senior Subordinate Judge, Amritsar, dated the 15th November, 1930, and remanding the case to the lower Court for rededecision in accordance with law.

ANANT RAM KHOSLA, and M. C. MAHAJAN, for Appellants.

FAKIR CHAND, for Respondents.

BROADWAY J.

BROADWAY J.—The firm of Nihal Chand-Gopal Das obtained a money decree against the firm of Ram Dial-Mulak Raj for Rs. 18,000 and in execution of that decree brought certain property to sale.

This property was purchased by Pritam Singh for Rs. 5,250.

Subsequently Pritam Singh discovered that the property was encumbered—a fact that had not been set out in the proclamation of sale. He thereupon made an application under Order XXI, rule 90, Civil Procedure Code, praying that the sale be set aside on the ground that the failure to mention the encumbrance in the proclamation of sale was a material irregularity which had caused him substantial injury, as he would not have made the bid he had made if he had been aware that the property was encumbered.

His application was dismissed on the ground that he had no *locus standi* to make it, the provisions of Order XXI, rule 90, Civil Procedure Code, not being applicable to auction-purchasers as their “interests” could not be said to be “affected” by the sale.

Pritam Singh thereupon preferred an appeal to this Court and the case came before Mr. Justice Jai

Lal, who came to the conclusion that though certain decisions of the Calcutta, Patna and Rangoon High Courts supported the view taken by the Court below, an opposite view had been taken by the Allahabad and Madras High Courts which view he agreed with. He accordingly accepted the appeal and remanded the case to the Court below for disposal on the merits.

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Against that order of remand the firm of Nihal Chand-Gopal Das (decree-holders) have now preferred this appeal under clause 10 of the Letters Patent and the question for determination is whether an auction purchaser is competent to make an application to set aside an auction sale under Order XXI, rule 90.

Rule 90 is as follows:—

Where any immoveable property has been sold in execution of a decree * * * * any person * * * whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.

The question is therefore whether an auction purchaser has any "interests" which are affected by the sale. Admittedly there is a conflict of authority on this point. In *Bhavisetti Gopala Krishnayya v. Pakanati Padda Sanjeeva Reddy* (1) a Division Bench of the Madras High Court held that inasmuch as an auction purchaser is affected by an order setting aside a sale under Order XXI, rule 92, Civil Procedure Code, and was entitled to notice of proceedings taken under that rule and Order it was difficult to see why he was not a person whose "interests" were not "affected" by the sale itself within the meaning of rule 90.

(1) (1920) 55 I. C. 338.

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In Ravinandan Prasad v. Jagannath Sahee etc.
 NIHAL CHAND- (1) an auction purchaser was held to be a person whose
 GOPAL DAS "interests" were "affected" by an auction sale and
 v. PRITAM SINGH. was, therefore, competent to make an application under
 BROADWAY J. rule 90.

In Surendra Nath Das v. Alauddin Mistry (2)
 Mitter J. very fully considered this question and hav-
 ing discussed the two cases cited above came to the
 conclusion, that notwithstanding the fact that the
 words in rule 90 are wider than those employed in the
 old Act the "interests" referred to in the rule must
 be interests not created by the sale itself.

A similar view was taken in *K. V. A. L. Chettyar
 Firm v. M. P. Maricor* (3) where a Division Bench
 of the Rangoon High Court dissented from the Allah-
 abad case referred to above.

Mullick and Thornhill JJ. in *Khetro Mohon
 Datta v. Dilwar* (4), agreed in holding that an appli-
 cation under rule 90 by an auction purchaser was not
 competent, he having his remedy by suit for damages
 if he had suffered. They were of opinion that the
 "interests" referred to in the rule must exist inde-
 pendently of the sale it was sought to impugn.

Precisely the same view was taken by Mullick and
 Bucknell, JJ., in *Kartik Chandra Chatterji v.
 Nagendra Nath Roy* (5), where it was held that rule
 90 did not cover an interest which had been created
 by the sale itself. The Madras authority above cited
 was considered in this case.

Again in *Kalumal Tolaram v. Ahmad Nur
 Muhammad* (6), Rup Chand A. J. C. after considering
 the Allahabad and Madras cases came to the conclu-

(1) (1925) I. L. R. 47 All. 479.

(4) (1918) 3 Pat. L. J. 516.

(2) 1928 A. I. R. (Cal.) 828.

(5) (1923) 74 I. C. 760.

(3) (1928) I. L. R. 6 Rang. 621.

(6) 1931 A. I. R. (Sind) 107.*

sion that the correct view was that by Patna and Rangoon and held the interests referred to in rule 90 were interests which existed at the time of the sale and not interests which were for the first time created by it.

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In *Sheoprasad v. Santooji* (1), a Nagpur case, Batten J. C. referred to *Khetro Mohon Datta v. Sheikh Dilwar* (2) and *Bhavisetti Gopala Krishnayya v. Pakanati Pedda Sanjeeva Reddy* (3) and preferred to follow the Madras authority.

A more recent pronouncement of the Nagpur Court, however, is to be found in *Balwant v. Ratanlal* (4) where Prideaux A. J. C. held that an application by an auction purchaser could not be made under rule 90.

The question is not free from difficulty but after a consideration of these authorities it seems to me that the correct view is that taken by the Calcutta, Rangoon and Patna High Courts and that the interests referred to in rule 90 must be interests independent of the sale and not such as come into existence as a result of the sale itself.

I would, therefore, accept the appeal and dismiss the application but would leave the parties to bear their own costs.

SHADI LAL C. J.—I concur.

A. N. C.

SHADI LAL C. J.

Appeal accepted.

(1) (1922) 65 I. C. 875.

(3) (1920) 55 I. C. 333.

(2) (1918) 3 Pat. L. J. 516.

(4) (1922) 68 I. C. 429.