

APPELLATE CIVIL.

Before Ram Lall J.

LADLI PARSHAD (JUDGMENT-DEBTOR) Appellant,

versus

CHAMAN LAL (DECREE-HOLDER) Respondent.

1939

June 27.

Execution First Appeal No. 82 of 1939.

Civil Procedure Code (Act V of 1908), O. XXI, rr. 22 and 66 — Execution proceedings — Notice under O. XXI, r. 22 not issued but judgment-debtor appeared and contested proceedings in pursuance of notice under O. XXI, r. 66 — Failure to issue notice under O. XXI, r. 22 as well as failure to record reasons for dispensing with such notice — Whether such a defect fatal to the proceedings — Decree based on an award in which land was hypothecated — Mortgage decree within the provisions of O. XXXIV.

On an application for execution of a mortgage decree a notice of proclamation was issued under O. XXI, r. 66, Civil Procedure Code. The judgment-debtor appeared and contested the maintainability of the execution proceedings on the ground, *inter alia*, that no notice under O. XXI, r. 22, Civil Procedure Code, had been issued and in the absence of such a notice or of reasons for his dispensing with such a notice the Court had no jurisdiction to proceed with the execution proceedings and to sell the property.

Held, that, though in ordinary circumstances such a defect would be fatal and a sale concluded in such circumstances would be void, but in the present case notice of the execution proceedings and sale thereunder was issued under O. XXI, r. 66, and the judgment-debtor appeared and contested those proceedings and therefore, in such circumstances, it was not necessary to give the judgment-debtor notice of proceedings that he was already well aware of and failure to give notice under O. XXI, r. 22, and the omission to record reasons dispensing with such a notice was no more than an irregularity which did not take away the jurisdiction of the Court.

The object of O. XXI, r. 22, is obviously to give an opportunity to the judgment-debtor to urge any objection to

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the maintainability of execution proceedings, to prevent his being taken by surprise and to afford him an opportunity to satisfy the decree before execution issues, and where a person contests a notice under O. XXI, r. 66, he is aware of the proceedings, is not taken by surprise and can, if he so desires, satisfy the decree before the property is brought to sale in the course of execution proceedings.

Kora Lal v. Punjab National Bank, Ltd. (1), *Fakhrul Islam v. Rani Bhubaneshwari Kuer* (2) and *Chandra Nath Bagchi v. Nabadwip Chandra Dutt* (3), relied upon.

Raghunath Das v. Sundar Das Khetri (4), referred to.

Where the decree, as in the present case, was based on an award and in it agricultural land was hypothecated and the decree-holder was expressly authorised to get the amount due under the decree realised by sale of the property, this brought the decree within the purview of O. XXXIV of the Civil Procedure Code and the decree was, in substance, a mortgage-decree and it was not necessary to effect attachment of the land before ordering its sale in execution.

Execution First appeal from the order of Lala Balak Ram, Subordinate Judge, 1st Class, Karnal, dated 23rd January, 1939, over-ruling the pleas of the judgment-debtor.

SHAMAIR CHAND, for Appellant.

F. C. MITTAL, for Respondent.

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RAM LALL J.—One Chaman Lal who had a mortgage decree against Ladli Parshad for Rs.14,632 with future interest made an application for realisation of the decretal amount by sale of agricultural land which is described as 515 *bighas*, 7 *biswas*. The decree was passed on the 2nd September, 1935, and one of the conditions laid down therein was that the decretal amount was payable within three years of

(1) 1921 A. I. R. (Lah.) 384.

(3) 1931 A. I. R. (Cal.) 476.

(2) I. L. R. (1928) 7 Pat. 790.

(4) L. L. R. (1915) 42 Cal. 72 (P. C.)

the date of the decree. The application for execution was made on the 5th October, 1938, and a notice of proclamation of sale was issued under Order 21, rule 66, Civil Procedure Code. The judgment-debtor appeared and contested the maintainability of the execution proceedings. It appears that no notice under Order 21, rule 22, Civil Procedure Code, ever issued and the judgment-debtor objected that in the absence of the issue of such a notice or of reasons for dispensing with this notice the Court had no jurisdiction to proceed with the execution proceedings and to sell the property. The learned Subordinate Judge to whom the execution application was made over-ruled this objection holding that the failure to record reasons for not issuing a notice was only an irregularity not amounting to a defect in jurisdiction.

It was also objected on behalf of the judgment-debtor that the decree in question was not really a mortgage decree and therefore attachment of land was necessary before orders for its sale were issued, as the decree was based on an award.

The third objection which was taken was that only 448 *bighas*, 16 *biswas* of land were hypothecated but now 515 *bighas* and 7 *biswas* were intended to be sold.

The learned Subordinate Judge over-ruled these objections and an appeal has been preferred to this Court through Mr. Shamair Chand who has reiterated these objections. The main point on which the greatest stress has been laid by learned counsel in arguments is the objection based on the failure to record reasons for not issuing a notice under Order 21, rule 22. In ordinary circumstances such a defect would be fatal and a sale concluded in such circum-

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stances would be void but in the present case notice of the execution proceedings and sale thereunder was issued under Order 21, rule 66, and the judgment-debtor appeared and contested these proceedings. In such circumstances it appears to me that it was unnecessary to give the judgment-debtor notice of proceedings that he was already well aware of and failure to give notice under Order 21, rule 22, and the omission to record reasons dispensing with this notice is no more than an irregularity which does not take away the jurisdiction of the Court. The matter appears to me to be covered by authority. In *Kora Lal v. Punjab National Bank, Ltd.* (1) Sir Shadi Lal, C. J., held that where the Court did issue a notice to the judgment-debtor though it was issued not under Order 21, rule 22, but under rule 66, and the latter was afforded an opportunity to show cause why the decree should not be executed against him the object aimed at by rule 22 should be held to be carried out and the mere fact that the notice was not under that rule does not vitiate the proceedings. It appears to me that this case is very similar in facts to the case before me. The object of the rule is obviously to give an opportunity to the judgment-debtor to urge any objection to the maintainability of execution proceedings, to prevent his being taken by surprise and to afford him an opportunity to satisfy the decree before execution issues. It appears to me that where a person contests a notice under Order 21, rule 66, he is aware of the proceedings, is not taken by surprise and can if he so desires satisfy the decree before the property is brought to sale in the course of execution proceedings. In *Fakhrul Islam v. Rani Bhubaneshwari Kuer* (2)

(1) 1921 A. I. R. (Lah.) 384.

(2) I. L. R. (1928) 7 Pat. 790.

the facts were that a notice was ordered to be issued under Order 21, rule 22, but it did not in fact issue and was suppressed. It was held on an application to set aside a sale in execution on the ground that a fresh notice should have been issued, that no fresh notice was necessary. Kulwant Sahay J. held that if notice was issued but not served and yet the judgment-debtor appeared and raised objection the object of the rule was satisfied. This proposition was laid down with greater emphasis by a Division Bench of the Calcutta High Court in a case reported as *Chandra Nath Bagchi v. Nabadwip Chandra Dutt* (1). There too instead of issuing a notice under Order 21, rule 22, a notice under Order 21, rule 66, was issued and the judgment-debtors appeared and objected to the valuation to be inserted in the proclamation of sale and later the sale could not proceed because originally no notice under rule 22 had been issued. Referring to a dictum of their Lordships of the Privy Council in *Raghunath Das v. Sundar Das Khetri* (2), Rankin C. J. in delivering the judgment of the Division Bench observed that it was quite unnecessary to push the abstract logic of the dictum of the Privy Council in *Raghunath Das v. Sundar Das Khetri* (2) to the ridiculous extreme that in all circumstances a notice under rule 22 was a condition precedent to the sale before which the Court had no jurisdiction. The learned Judge went on to observe as follows:—

“ I do not in any way seek to throw doubt upon the proposition that where such a notice had not issued and the party who is entitled to notice does not in substance get notice and is not given or does not take an

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(1) 1931, A. I. R. (Cal.) 476.

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opportunity to object to the execution of the decree, the sale which follows will be without jurisdiction..... The parties in the present case have been litigating actively upon the question whether this execution should proceed and how it should proceed..... It appears to me to be merely piling unreason upon technicality to hold upon the circumstances of this case that it is open to the judgment-debtors on these grounds to object to the jurisdiction of the Court because they have not got a formal notice to do something, namely to dispute the execution of the decree when in point of fact they were busy disputing about it in all the Courts for the best part of the last two years. I decline to push the doctrine so far as that and it seems to me that the execution should proceed.”

I am in respectful agreement with the above exposition of law and I hold, therefore, that there is no substance in the objection based on the failure to record reasons for not issuing notice. It may be observed that the Lahore High Court has by notification of 1932 amended rule 22 of Order 21 by adding to the second paragraph thereof words to the effect that failure to record reasons shall be considered an irregularity not amounting to a defect in jurisdiction.

So far as the second objection is concerned the decree was based on an award and in it agricultural land was hypothecated and the decree-holder was expressly authorised to get the amount due under the decree realised by sale of the property. This, in my

opinion, brought the decree within the purview of Order 34, Civil Procedure Code. The decree being thus in substance a mortgage decree it was not necessary to effect attachment of the land before ordering its sale in execution. I see no substance in the third objection either because the area hypothecated was 448 *bighas* in the decree and this has now become 515 *bighas* by the addition of *shamilat* land which was allotted to the judgment-debtor on partition. The *shamilat* was also hypothecated and the decree-holder is, therefore, entitled to get his decree satisfied out of the whole area hypothecated including the *shamilat* land which fell to the share of the judgment-debtor.

In these circumstances I see no substance in this appeal which I dismiss with costs.

A. N. K.

REVISIONAL CRIMINAL.

Before Blacker J.

SURAIN SINGH (ACCUSED) Petitioner,

versus

THE CROWN—Respondent.

Criminal Revision No. 604 of 1939.

Punjab Municipal Act (III of 1911), SS. 172, 175, 195-A, 215 — Notice under S. 195-A — signed "for" the Executive Officer — whether valid — Presumption — Absence of details of contravention of sanctioned plan — Whether invalidates notice — Notice "delivered to" the owner — Whether connotes the same meaning as "served upon."

The petitioner was fined Rs.100 under s. 195-A of the Punjab Municipal Act, 1911, for failing to comply with the terms of the notice requiring him to discontinue the building operations from the date of service of such notice. It was contended on behalf of the petitioner that the notice was invalid (i) as it was not signed by the Executive Officer but

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