

1887.

GOVIND
LAKSHMAN
JOSHI
v.
RÁMKRISHNÁ
HARI JOSHI.

as the reward for personal service is not liable to attachment—*Ganesh Rámchandra Dáte v. Shankar Rámchandra*⁽¹⁾. The right of the *vyvahára joshi* is of this character⁽²⁾; and even though he may have authority in some cases to name a *gumástá*, or substitute, that does not imply that he can be forced to do so, still less that in consequence his rights are alienable by a forced sale under a decree. We, therefore, confirm the decree of the District Court with costs.

Decree confirmed.

(1) I. L. R., 10 Bom., 395.

(2) Steele's L. C., 83, 84.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

1887.
June 28.

PEDRO ANTONIO DE PENHA, (ORIGINAL APPLICANT), APPELLANT, v.
JÁLBHOY ARDESHIR SET, (ORIGINAL OPPONENT), RESPONDENT.*

Sale—Proclamation—Civil Procedure Code (Act XIV of 1882), Secs. 274 and 289—Property broken up into lots—Separate proclamations when necessary.

Where property intended to be sold in execution of a decree is divided into a number of small lots, as a means of obtaining a better aggregate price, the law does not require that a separate proclamation of sale should be made on each lot into which the property is so divided.

A mere breaking up of a property into lots does not necessarily make it several properties for the purposes of a proclamation of attachment or sale.

Where estates, though embraced in the same process, are really at such a distance that there is no moral certainty of communication to persons on, or interested in, the one of what is publicly done on the other, there should, no doubt, be a separate proclamation on each, in order that full intimation may be given of what is to be done.

APPEAL from the order of Ráv Bahádúr Chunilál Maneklál, First Class Subordinate Judge of Thána, in Application No. 85 of 1886.

One Jálbhoy Ardeshir Set obtained a decree to enforce his mortgage lien by sale of the property mortgaged. The property consisted of land measuring 10 or 11 acres in area. At the request of the judgment-debtor the property was put up to sale

* Appeal, No. 9 of 1887, from order.

in 22 small lots, in order to realize a better aggregate price. The decree-holder purchased the property for Rs. 14,000.

Before the confirmation of the sale, the judgment-debtor applied to the Court to have the sale set aside chiefly on the ground that the proclamation of sale was not properly made on the spot by beat of drum, so that many intending purchasers did not receive timely intimation of the sale, and the property was knocked down at a grossly inadequate price.

The Subordinate Judge rejected this application, on the ground that no irregularity in publishing the sale was proved.

Thereupon the judgment-debtor appealed to the High Court.

Shámráo Mánchji Rele for the appellant :—The sale is vitiated by a material irregularity in publishing it. The proclamation of sale was not made where the property was situated. The property was divided into a number of lots, and each lot was put up to sale separately. There ought to have been a separate proclamation on each lot. Refers to sections 274 and 289 of the Code of Civil Procedure (Act XIV of 1882), and cites *Tripura Sundari v. Durga Churn Pal*⁽¹⁾; *Gopee Náth Dobey v. Roy Luchmeeput Singh Bahádur*⁽²⁾; *Kalytara Chowdhraín v. Rámcoomár Goopta*⁽³⁾; *Showers v. Seth Gobind Dass*⁽⁴⁾.

Kirkpatrick for the respondent :—The land was going to be sold in one lot, but at the request of the appellant it was put up to sale in 22 small lots. The property is situated within a small area, and the distance between the lots was less than half a mile. The mere breaking up of a property into lots does not make it several distinct properties, so as to require a separate proclamation to be made on each separate lot. Section 274 of the Code of Civil Procedure provides that the proclamation should be made “on or adjacent to the property.” This was done in the present case. There was, therefore, no irregularity in publishing the sale. Nor has any loss been shown to have arisen from any irregularity.

WEST, J. :—The proclamation of sale in this case was made without a prior attachment, because the suit had been brought by

1887.

PEDRO
ANTONIO DE
PENHA
v.
JÁLEHOY
ARDESHIR
SET.

(1) I. L. R., 11 Calc., 74.

(3) I. L. R., 7 Calc., 466.

(2) I. L. R., 3 Calc., 542.

(4) I. L. R., 1 All, 400.

1887.

PEDRO
ANTONIO DE
PENHA
v.
JALBHOY
ARDESHIR
SET.

a mortgagee to enforce payment of the mortgage-debt with which the property was charged. At the request of the mortgagor, the property, which was of an area of between 10 and 11 acres, was divided into 22 small lots as a means of obtaining a better aggregate price. The only objection to the regularity of the proceedings connected with the sale, that has been left in contention at the end of the arguments, is this, that a separate proclamation of the intended sale ought to have been made on each lot into which the property was or was to be divided. Section 289 of the Code of Civil Procedure requires the proclamation to be made where the property is attached. There being here no attachment, we must read the section by analogy as saying "where the property would or might be attached," and that is, by section 274, a spot on or adjacent to the property to be sold. A proclamation orally made on any part of so small an area with beat of drum would be made on a spot "adjacent to" every one of the sub-divisions, *i. e.*, near each one of them, so that even if they are to be regarded as separate properties, the necessities of the law would seem to have been satisfied. A mere breaking up of an area into lots, however, does not necessarily make it several properties for the purposes of a proclamation of attachment or sale. Where estates, though embraced in the same process, are really at such a distance that there is no moral certainty of communication to persons on or interested in the one of what is publicly done on the other, there should, no doubt, be a separate proclamation on each, in order that full intimation may be given of what is to be done.

We confirm the Subordinate Judge's order with costs.

Order confirmed.