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is a minor will not prevent time running against all the members of the family. We, therefore, dismiss the appeal with costs.

MIRZA, J. :—I concur.

Decree confirmed.

J. G. R.

APPELLATE CIVIL

Before Mr. Justice Fawcett and Mr. Justice Mirza.

1928
 February 24

KRISHNARAO AMBADAS PIMPLADKAR JAHAGIRDAR (ORIGINAL DEFENDANT 1), APPELLANT v. KRISHNARAO RAGHUNATH TALEKAR, AND OTHERS (ORIGINAL PLAINTIFFS 1 AND 2 AND DEFENDANT 2), RESPONDENTS.*

Civil Procedure Code (Act V of 1908), section 47—Order refusing to alter valuation in proclamation of sale or to adjourn sale—Order not appealable.

An order refusing to alter the valuation of the property as entered in a proclamation of sale or to adjourn the sale in order to have a further inquiry as to its value is not appealable under section 47 of the Civil Procedure Code, 1908.

Sivagami Achi v. Subrahmaniam Ayyar,⁽¹⁾ relied on.

Deoki Nundan Singh v. Bansi Singh⁽²⁾; *Ajudhia Prasad v. Gopi Nath*⁽³⁾; *Deokinandan Singh v. Raja Dhakeswar Prasad Narain Singh*⁽⁴⁾; *Saurendra Nath Mitra v. Mritunjay Banarji*⁽⁵⁾; *Ramanathan Chettiar v. Venkatchellam Chettiar*⁽⁶⁾; *Kaveribai Ammal v. Mehta & Sons*⁽⁷⁾ and *Lanka Rama Naidu v. Lanka Ramakrishna Naidu*,⁽⁸⁾ referred to.

FIRST APPEAL against the decision of R. B. Khangaonkar, First Class Subordinate Judge at Nasik.

In Darkhast No. 605 of 1925, the defendant No. 1 made an application on September 25, 1926, to the Court complaining of certain irregularities in the proclamation of sale issued by the Court, namely, that the mention of the area and assessment of the Jahagir village and the statement that the village would be sold in four lots would not be sufficient for the general public to ascertain how those lots were made by the Court; that the words

*First Appeal No. 441 of 1926.

⁽¹⁾ (1903) 27 Mad. 259.

⁽²⁾ (1911) 16 W. N. 124.

⁽³⁾ (1917) 89 All. 415.

⁽⁴⁾ (1916) 2 Pat. L. J. 13.

⁽⁵⁾ (1920) 5 Pat. L. J. 270.

⁽⁶⁾ (1923) 44 M. L. J. 599.

⁽⁷⁾ (1923) 46 M. L. J. 71.

⁽⁸⁾ (1923) 46 M. L. J. 192.

“ each lot represents income of four anna share ” should be mentioned in the proclamation; that in the proclamation the figure estimated by the Mamlatdar on behalf of the Collector was shown to be Rs. 1,25,000 as Panch valuation on behalf of the defendants, whereas the Panchnama had been made in the absence of the applicant, and that it was necessary to mention in the proclamation that the Panchnama was not made by the defendants’ Panch but by the Panch collected by the Mamlatdar.

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On October 28, 1926, a number of persons had come forward to bid, but another application was made to adjourn the sale, on the ground that the prices offered were considerably less than the prices mentioned in the Panchnama.

The Subordinate Judge rejected both the applications observing as follows :—

“ All possible steps have been taken in this case to ascertain prices and to realise the largest prices possible. Adjournments in such cases are more damaging to the realization of due prices than holding of sales when keen competition is there as between so many bidders present to-day.”

The defendant No. 1 appealed to the High Court.

D. R. Patwardhan, for the appellant.

G. R. Madbhavi, for respondents Nos. 1 and 2.

P. B. Shingne, for respondent No. 3.

S. R. Parulekar, for respondents Nos. 4 and 5.

FAWCETT, J. :—A preliminary objection has been raised that no appeal lies.

The appellant seeks to get this Court to interfere with an order of the First Class Subordinate Judge, by which he refused to alter the valuation of the property to be sold that was entered in a proclamation of sale, or to adjourn the sale in order to have a further enquiry as to its value. Mr. Shingne objects that these are merely administrative orders and not judicial, so as to entitle

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the appellant to say that they fall under section 47 of the Civil Procedure Code. He has cited the authority of the Madras Full Bench in *Sivagami Achi v. Subrahmania Ayyar*,⁽¹⁾ which is a leading authority on the point. This was a decision with regard to section 287 of the Code of 1882, corresponding to Order XXI, rule 66, of the present Code. It was held that none of the proceedings of a Court under section 287 of the Code of Civil Procedure, and the rules framed thereunder in relation to the proclamation of sale, amounted to an "order" within the meaning of section 244 (corresponding to section 47 of the present Code) so as to be appealable as a "decree." It is further remarked that under section 287 the proceedings are in themselves administrative and not judicial; but that if a sale eventually takes place, objections may be taken to the confirmation of the sale on any of the grounds mentioned in section 311 (corresponding to Order XXI, rule 90, of the present Code), some of which may relate to the contents of the proclamation.

This ruling has been followed by the Calcutta, Allahabad and Patna High Courts, cf. *Deoki Nandan Singh v. Bansi Singh*,⁽²⁾ *Ajudhia Prasad v. Gopi Nath*,⁽³⁾ *Deokinandan Singh v. Raja Dhakeswar Prasad Narain Singh*,⁽⁴⁾ and *Saurendra Nath Mitra v. Mritunjay Banarji*.⁽⁵⁾ The decision has also been followed in various other Madras cases such as *Ramanathan Chettiar v. Venkatachellam Chettiar*⁽⁶⁾ and *Lanka Rama Naidu v. Lanka Ramakrishna Naidu*.⁽⁷⁾

Mr. Patwardhan for the appellant has referred us to *Kaveribai Ammal v. Mehta & Sons*,⁽⁸⁾ where a doubt was expressed whether the question should not be reconsidered by a Full Bench in view of the fact that

⁽¹⁾ (1908) 27 Mad. 259.

⁽²⁾ (1911) 16 Cal. W. N. 124.

⁽³⁾ (1917) 39 All. 415.

⁽⁴⁾ (1916) 2 Pat. L. J. 13.

⁽⁵⁾ (1920) 5 Pat. L. J. 270.

⁽⁶⁾ (1923) 44 M. L. J. 599.

⁽⁷⁾ (1923) 46 M. L. J. 192.

⁽⁸⁾ (1923) 46 M. L. J. 71.

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section 288 of the former Code of 1882 does not appear in the existing Code. The Chief Justice, Sir Walter Schwabe, expressed a doubt, whether the decision of the Full Bench in *Sivagami Achi's case*⁽¹⁾ was a correct finding, and Coleridge J. in agreeing expressed the opinion that the alteration of the Code was deliberate and was intended to take away the ministerial functions that were alleged to be vested in the Court and to make it a judicial function, from which an appeal will lie. On the other hand, in *Lanka Rama Naidu v. Lanka Ramakrishna Naidu*,⁽²⁾ this question was fully considered and two other Judges of the same High Court, viz., Mr. Justice Krishnan and Mr. Justice Waller, came to the conclusion that the omission of section 288 did not really affect the *ratio decidendi* in *Sivagami Achi's case*.⁽¹⁾ A reference to the judgments in that case, both in the order of reference to a Full Bench and in the opinion expressed by the Full Bench, shows that the decision was not based merely upon the provisions of section 288, but also upon the view (1) that orders under section 287 were of an administrative and not a judicial nature, (2) that there was another suitable remedy available to a party, who was prejudiced by such orders, viz., by getting the sale eventually set aside, and (3) that it would be very undesirable to allow appellants in cases of this kind to delay sales in execution. Schwabe, C. J., in *Kaveribai Ammal v. Mehta & Sons*,⁽³⁾ also remarks (p. 73) :—

“I think the same applies to the question here whether there should be an alteration of the terms of the sale proclamation by raising the upset price and dividing the property into lots. The matter is so purely one of discretion of the lower Court not affecting the final rights of the parties at all that it ought to be treated as merely interlocutory.”

There is, apparently, no Bombay ruling on the point. But I think the fact that there is no ruling shows pretty

⁽¹⁾ (1923) 27 Mad. 259.

⁽²⁾ (1923) 46 M. L. J. 192.

⁽³⁾ (1923) 46 M. L. J. 71.

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clearly that in practice no appeals have been brought from interlocutory orders in regard to proclamations of sale. This confirms us in holding that there is no sufficient reason for our taking a different view from that of the four other High Courts. In these circumstances, we think that the preliminary objection succeeds, and the appeal is accordingly dismissed with costs.

MIRZA, J. :—I agree.

Decree confirmed.

J. G. R.

CRIMINAL REVISION

Before Mr. Justice Fawcett and Mr. Justice Mirza.

*In re VIRBHAN BHAGAJI.**

1928
March 1

Criminal Procedure Code (Act V of 1898), section 202—Complaint—Notice issued to accused—Hearing—Discharge of notice—Dismissal of complaint—Practice.

Section 202 of the Criminal Procedure Code is not necessarily limited to the preliminary examination of the complainant and his witnesses. If a Magistrate deems it desirable for the purpose of his inquiry to give the accused an opportunity of appearing before him and stating what he has to say about the accusation, and even accepts and considers documentary evidence produced by the accused, he is not thereby committing an illegality.

Where a Magistrate is satisfied with the accused's explanation, he should formally dismiss the complaint.

Per FAWCETT, J. :—“The phraseology, ‘Notice discharged’ may no doubt be analogous to the expression ‘Rule discharged.’ But it is one that I think ought to be deprecated. The Magistrate, when he passes an order after a preliminary inquiry, should say plainly either that he dismisses the complaint, or that he thinks that there is ground for proceeding, and therefore directs the issue of a summons or warrant, as the case may be.”

THIS was an application under the criminal revisional jurisdiction against an order passed by N. T. Jungalvala, Acting Presidency Magistrate, Fifth Court, Bombay.

The applicant filed a complaint against the two opponents charging them with offences punishable under sections 426, 447, 506 and 114 of the Indian Penal Code.

*Criminal Revisional Application No. 14 of 1928.