

APPELLATE-C

Before Mr. Justice Ghose and Mr. Justice Gordon.

SURNO MOYEE DEBI (AUCTION-PURCHASER) v. DAKHINA RAN-
SANYAL (JUDGMENT-DEBTOR) AND ANOTHER (DCCREE-HOLDER) °

1896
September 7.

Sale in execution of decree—Setting aside sale—Material irregularity—Code of Civil Procedure (Act XIV of 1882), sections 291, 311—Evidence.

Where a debtor's property under attachment had been ordered to be sold at a fixed date, after the disposal of a certain claim thereto made under section 278 of the Code of Civil Procedure, but no hour had been fixed for the sale as required by section 291, and the property was sold at a very inadequate price by reason of the paucity of bidders,

Held, affirming the decision of the Subordinate Judge, that there had been material irregularity causing substantial injury to the debtor; and that it is sufficient under section 311 of the Code, if the evidence, though not "direct evidence," shows that the injury was a necessary result of the irregularity complained of.

Tussadul Rasul Khan v. Ahmed Husain (1) explained.

ON the 19th August 1893 the respondent's property was attached under an order of that date; and on the 9th September 1893 a sale proclamation was issued fixing the 20th November for the sale. On the 27th September a claim to the property was made under section 278 of the Civil Procedure Code, and the 11th November was fixed for the hearing, which, however, was postponed to the 25th November. On the 20th November, the Subordinate Judge adjourned the sale to the 25th, and ordered the property to be sold on that date after the disposal of the claim. The hearing was again postponed to the 27th. The property was put up for sale on the 25th; but no bidders attended. On the 27th November the claim was rejected, and the property was sold for Rs. 200 to the appellant, who was one of only three bidders. The respondent then applied for an order setting aside the sale on the ground of material irregularity causing him

° Appeal from Order No. 285 of 1894, against the order of Babu Srinath Pal, Officiating Subordinate Judge of Zillah Pabna, dated the 30th of April 1894.

(1) I. L. R., 21 Calc., 66; L. R., 20 I. A., 176.

1896 substantial injury; and the Subordinate Judge made the order asked for. The purpose of the appeal is to set aside the order of the Subordinate Judge. The appellant is Babu Mitter, for the appellant. Babu Srinath Das, Advocate General (Sir Charles Paul), Babu Srinath Das, Babu Bidhu Bhushan Gangooly, for the respondents.

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The judgment of the Court (GHOSE and GORDON, JJ.) was as follows:—

This is an appeal by the auction-purchaser from an order of the Subordinate Judge of Pubna and Bogra setting aside, under section 311 of the Code of Civil Procedure, a sale of certain property on the ground of material irregularities in publishing and conducting it, by reason of which the judgment-debtors have sustained substantial injury.

The facts are shortly as follows: The property in question was attached by an order of the 19th August 1893, and on the 9th September following a proclamation of sale was issued fixing the 20th November for the sale. Meantime, on the 27th September 1893, Giribala, a step sister of one of the judgment-debtors, preferred a claim to the property under section 278 of the Civil Procedure Code, and the 11th November was fixed for hearing the same. On that date, the hearing was postponed to the 25th November, and as the property could not be sold until the disposal of the claim case, the Subordinate Judge on the 20th November adjourned the sale to the 25th and ordered the property to be sold on that date after the disposal of the claim case. On the 25th November, the claim case was again postponed to the 27th, and notwithstanding this, the property was put up for sale on the 25th, but on the report of the Nazir that no intending purchasers were present the sale was also postponed to the 27th. On that date, the claim of Giribala was rejected, and the property was then sold for Rs. 200 to Nityanand Sarkar, am-mukhtear on behalf of Surno Moyee Debi, the present appellant.

On these facts, which are fully established by the evidence, the Subordinate Judge has held, and we think rightly held, that there were material irregularities in connection with the sale. Both on the 20th November, when the sale was postponed to the 25th,

and on the 25th when it was again postponed to the 27th, no hour was fixed for the sale as required by section 291 of the Civil Procedure Code, and the order passed on each date that the sale would take place after the disposal of the claim case was of such a vague and indefinite character that intending bidders could not possibly have known when and at what time the sale would actually take place, and consequently there were no bidders present on the 25th November, and there were only three bidders on the 27th. The property was then sold for Rs. 200, whereas the evidence of one of the decree-holder's witnesses, Koilash Ghose, shows that a smaller share of 16½ gds. had been previously sold for Rs. 4,000. The Subordinate Judge has accordingly found that the judgment-debtor has sustained substantial injury by the low price which the property fetched, and he thinks that this was no doubt due to the irregularities we have referred to, and in this view he has set aside the sale. Before us, the learned Vakil for the appellant has contended that inasmuch as there is no *direct* evidence connecting the material irregularities with the injury as cause and effect, the Subordinate Judge was wrong in setting aside the sale; and in support of this contention he has relied on the case of *Tassaduk Rasul Khan v. Ahmad Husain* (1) which is the latest authority bearing upon this particular subject. He has also referred to the following cases: *Macnaghten v. Mahabir Pershad Singh* (2); *Arunachellam Chetti v. Arunachellam Chetti* (3); *Gur Buksh Lall v. Jawahir Singh* (4), and *Jagan Nath v. Makund Prasad* (5).

The case of *Tassadak Rasul Khan* (1) is a decision of the Privy Council on appeal from the Court of the Judicial Commissioner of Oudh. The Judicial Commissioner set aside the sale on the ground that it was a nullity, because the provisions of section 290 of the Civil Procedure Code had not been obeyed. He was further of opinion that, to set aside a sale under such circumstances, it was not necessary for the objectors to prove substantial injury, but that substantial injury might be

(1) I. L. R., 21 Calc., 66; L. R., 20 I. A., 176.

(2) I. L. R., 9 Calc., 656; L. R., 10 I. A., 25.

(3) I. L. R., 12 Mad. 19; L. R., 15 I. A., 171.

(4) I. L. R., 20 Calc., 599.

(5) I. L. R., 18 All., 37.

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inferred to have resulted, as the law had not been complied with. Their Lordships of the Privy Council in reversing the order of the Judicial Commissioner observed as follows: "It was contended on the part of the respondents that the non-compliance with the interval of thirty days between proclamation and sale made the sale a nullity. Their Lordships cannot accede to that contention. The proceeding in this case was brought by the respondents under section 311, which deals with material irregularity. The non-compliance with the provisions for posting was a material irregularity. But in the cases of *Macnaghten v. Mahabir Pershad Singh*, and *Arunachellam Chetti v. Arunachellam Chetti* it was held that in all cases of irregularity under section 311 evidence must be given of substantial injury having resulted. In the present case, the decree-holder failed to comply with the full requirements of section 290, but both on principle and authority their Lordships are of opinion that the case must be treated, as the respondents themselves treated it, as one of material irregularity to be redressed pursuant to the provisions of section 311, and in the application of that section it was incumbent on the respondents to have proved that they sustained substantial injury by reason of such irregularity. They gave no such evidence, and it would be extremely improbable that injury could have happened from the non-compliance with the strict letter of section 290. Their Lordships cannot accept the judgment of the Judicial Commissioner, that loss is to be inferred from the mere fact that a sale was bad without full compliance with the provisions of section 290. The section clearly contemplates direct evidence on the subject."

The learned Vakil for the appellant has laid great stress on the words "direct evidence" used by their Lordships in the concluding paragraph of the passage we have cited, and he has argued that what their Lordships meant was that direct evidence, and direct evidence only, must be given in proof of substantial injury having resulted from a material irregularity. We have given the matter our careful consideration, and we think that it is very doubtful whether their Lordships by using these words intended to restrict the mode of proof connecting a material irregularity with substantial injury to evidence of a particular description or to vary the rule laid down in the cases of *Mac*

naghten v. Mahabir Pershad Singh (1) and *Arunachellam Chetti v. Arunachellam Chetti* (2) that in all cases of irregularity under section 311 evidence must be given of substantial injury having resulted from the irregularity. We are rather inclined to think that what their Lordships intended to say by using the words "direct evidence" was that there must be evidence shewing that substantial injury was the necessary result of the irregularity complained of. We observe that the present case is somewhat different from the case of *Tassaduk Rasul Khan*. In that case, as we understand the report, there was no evidence of substantial injury, while in the present case substantial injury is proved by the very inadequate price at which the property was sold. No doubt, there is no direct evidence in the strict sense of the term that the inadequate price was caused by the irregularity, still there is evidence from which we think the inference necessarily arises that the irregularity was the cause of the injury. The uncertainty as to when and at what particular hour the sale would be held was sufficient to prevent intending purchasers from being present on the 25th November; and on the 27th when the property was put up and sold only three bidders attended; and to the paucity of bidders, we think, may reasonably be ascribed the very low price the property fetched. Under all these circumstances we find it impossible to avoid the conclusion that the substantial injury sustained by the judgment-debtors was the necessary consequence of the irregularities, and in this view we think that the order of the Subordinate Judge is right and should be affirmed.

It has been contended on behalf of the appellant that on a previous occasion the property had been sold at a low price, and that the knowledge that a claim had been made to the property cast a cloud over the title of the judgment-debtors, and so materially affected the bids; but even admitting the soundness of this argument, we are unable to hold that for these reasons alone the property was sold for a price so much below its market value.

We think therefore that this appeal fails, and must be dismissed. We make no order as to costs.

H. W.

Appeal dismissed.

(1) I. L. R., 9 Calc., 656; L. R., 10 I. A., 25.

(2) I. L. R., 12 Mad., 19; L. R., 15 I. A., 171.]

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