

APPELLATE CIVIL.

Before Mr. Justice Ainslie and Mr. Justice Kennedy.

1877
Dec. 21.

GOOPEE NATH DOBEY (JUDGMENT-DEBTOR) v. ROY LUCHMEEPUR
SINGH BAHADUR AND ANOTHER (DECREE-HOLDERS).*

Sale in Execution of Decree—Postponement of Sale—Notice—Proclamation—Act VIII of 1859, s. 249.

Where a sale in execution of a decree is postponed, whether indefinitely or to a fixed date, it is necessary, in the absence of an express arrangement between all the parties, that a fresh proclamation should be made giving notice of the day to which the sale has been postponed.

It may be presumed, when the notice is wanting, that there has been an absence of bidders, from which alone substantial injury must probably have arisen to the judgment-debtor (1).

Okhoy Chunder Dutt v. Erskine (2) followed.

IN May 1876 LutchmEEPur Singh obtained a decree against the judgment-debtor, under which certain property in the district of Shahabad was attached and ordered to be sold. The 6th November 1876 was, in the first instance, the day fixed for the sale. On the 25th of October the sale was postponed at the request of two rival decree-holders to the 11th December. The order postponing the sale was passed in the presence of the vakeels for the decree-holders, but without the consent of the judgment-debtor and without any notice to him. The proclamation of the postponement was notified simply by a notice to that effect put up in the Court-house, but no steps had been taken to convey information of the change of day to intending purchasers in the mofussil. The sale took place on the 11th December.

The judgment-debtor applied to the District Court to have the sale set aside, on the ground that no fresh proclamation, under s. 249 of Act VIII of 1859, was made of the day to which the sale was adjourned.

* Miscellaneous Regular Appeal, No. 265 of 1877, against the order of A. V. Palmer, Esq., Judge of Zilla Shahabad, dated the 5th of September 1877.

(1) See also *Shib Prokash Singh v.* (2) 3 W. R., Mis. R., 11. *Sardar Dayal Singh, post*, p. 544.

The Judge, although he found that the judgment-debtor had not been represented in Court at the time when the sale was postponed, refused the application.

The judgment-debtor accordingly preferred this appeal to the High Court.

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The *Advocate-General* and Baboo *Gooroo Dass Banerjee* for the appellants.

Moonshee *Mahomed Yusoof*, Baboo *Mohesh Chunder Chowdhry*, and Baboo *Sree Nath Dass* for the respondent.

The judgment of the Court was delivered by

AINSLIE, J. (who, after stating the facts of the case, continued).—The judgment of the late learned Chief Justice Sir Barnes Peacock in the case of *Okhoy Chunder Dutt v. Erskine* (1) may be quoted as showing that, in all cases in which a sale may be postponed to another day, it is necessary that the formalities required by law should be gone through afresh (unless it be that they have been waived by the parties themselves). He says—“It is exceedingly important that when an auction-sale is to take place in execution of a decree, a proclamation should be made, giving notice of the day on which the sale is to take place, so that intending purchasers may go and bid for the articles put up for sale, and Act VIII of 1859 is express on the point.” He then goes on to quote s. 249.

The case then before the Court is, no doubt, somewhat different from the present case, inasmuch as in that case the postponement had been indefinite, whereas in the present case the postponement was to a certain fixed day. Still it appears to us that the principle applies, that in all cases the prescribed notice must be given in order that intending purchasers may be able to attend and bid at the sale, unless the giving of such notice is specially waived. In the present case there was no such notice as is required by s. 249, though it had become necessary in consequence of the first notice having become inoperative otherwise than by the action of the parties to the suit.

(1) 3 W. R., Mis. R., 11.

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With reference to the substantial injury arising from this irregularity, we think that we ought to hold that, as the law distinctly requires a notice, and as the notice is so important, in order to secure a fair chance of a proper price being offered for the property to be sold, it may be presumed, when the notice is wanting, that there has been an absence of bidders, from which alone substantial injury to the judgment-debtor must probably have arisen.

There is some evidence moreover in this case that the property was sold for less than its actual value. The Judge has rejected that evidence as untrustworthy, but we think that it should be read in the light of the presumption that there must probably be substantial injury from want of notice, and that some weight should consequently be given to that evidence, unless it is clearly rebutted by evidence of the other side. There being no such rebutting evidence, we are bound to hold that there is sufficient proof of substantial injury.

The order of the lower Court must, therefore, be reversed, and the sale set aside with costs payable by the purchaser respondent.

Before Mr. Justice White and Mr. Justice R. C. Mitter.

1878
 Mar. 20.

SHIB PROKASH SINGH (JUDGMENT-DEBTOR) v. SARDAR DOYAL SINGH (DECREE-HOLDER).*

Sale of Property in Execution of Decree—Proclamation of Sale—Material Irregularity—Act VIII of 1859, ss. 249, 256.

The property of a judgment-debtor was proclaimed and advertized for sale in execution of a decree on a certain day. The proclamation set out particulars of the property, but subsequent to such proclamation a portion of the property was released to a third party. Notwithstanding this fact, no fresh proclamation was made, and the sale took place on the day originally fixed. *Held*, that the omission to issue a fresh proclamation was a material irregularity, inasmuch as the judgment-debtor was entitled to have a proclamation issued accurately describing the property to be sold, and that such proclamation should be published thirty days before the sale (1).

* Miscellaneous Regular Appeal, No. 239 of 1877, against the order of Moulvie Mohamed Noorul Hossain, Subordinate Judge of Zilla Shahabad, dated the 19th of May 1877.

(1) See also *Gopeenath Dobey v. Roy Luchmeeput Singh Bahadur*, ante, p. 542.