

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Gajrajmati Teorain and others v. Saiyid Akbar Husain and others, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered the 14th December 1906.*

Present at the Hearing :

LORD MACNAGHTEN.

LORD ATKINSON.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

This is an Appeal from a decree of the High Court at Allahabad, reversing the decree of the Subordinate Judge, and dismissing, with costs, a regular suit brought for the purpose of annulling a sale in execution proceedings.

The sale was held under a decree of the Subordinate Judge of Gorakhpur by the Collector of Basti. The sale proclamation was duly issued. The sale was fixed for the 20th of February 1897. It was held on the 23rd, but before the Collector had finished the sales listed for the 20th.

It appears that an order was made *ex parte* on the 11th of February 1897 by the Subordinate Judge of Gorakhpur staying the sale. On the 16th of February the Collector of Basti, in obedience to this order, struck the proceedings off the pending file. However, on the 22nd, in consequence of notice received

from the Court of the Subordinate Judge, from which it appeared that the Order staying the sale had been set aside, the case was then brought forward, as the Collector notes, "in continuation of the sale proceedings in other cases." The sale was commenced, but adjourned till the following day. On the 23rd the decree holders, who had leave to bid, purchased at the auction the interest of the judgment debtors, and the sale was concluded in their favour subject to confirmation by the Civil Court.

On the application for confirmation the judgment debtors applied to have the sale annulled. The Subordinate Judge confirmed the sale, finding that, although there were irregularities in the conduct of the sale, the judgment debtors had not sustained any damage. On Appeal the High Court at Allahabad confirmed the decision of the Subordinate Judge.

Then the judgment debtors brought this suit.

The order committing the sale to the Collector of Basti is not in evidence, nor does it appear clearly in what capacity the Collector sold, or on what grounds the order staying the sale was made, or on what grounds it was revoked, or whether any notice was ever given to the public that the sale had been stayed, and that the case was for a time struck off the pending file. It appears, however, to have been assumed in the present litigation, and their Lordships assume for the purpose of their judgment, that the case came within Section 291 of the Code of Civil Procedure, and that when the stay of proceedings was removed, a fresh proclamation ought to have been issued in compliance with the terms of that section.

The Subordinate Judge held that, inasmuch as no fresh proclamation was issued, the sale was

void, and therefore he pronounced a decree in favour of the judgment debtors.

The Court of Appeal, assuming that a fresh proclamation ought to have been issued, held that the omission was an irregularity which had involved no loss to the debtor; that the only course open to the judgment debtors was to object, as they did, to the confirmation of the sale, and that it was not competent for them to impeach the sale by regular suit.

Their Lordships are of opinion that the decision of the High Court is perfectly right. The provisions of the Code of Civil Procedure are, in their opinion, clear on the point.

Their Lordships will, therefore, humbly advise his Majesty that the Appeal ought to be dismissed. The Appellants will pay the costs of the Appeal.

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