

Baliram Sing and another - - - - - *Appellants*

v.

Rai Bahadur Seth Narsingdas Prayagdas Mohta and another - *Respondents*

FROM

THE COURT OF APPEAL OF DEPUTY COMMISSIONER, WARDHA,
CENTRAL PROVINCES.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 17TH APRIL, 1923.

Present at the Hearing :

LORD BUCKMASTER.

LORD DUNEDIN.

LORD CARSON.

SIR JOHN EDGE.

LORD SALVESEN.

[*Delivered by* LORD BUCKMASTER.]

Their Lordships see no need to reserve further consideration of this case. The question that it raises is a question which is more of procedure than of law, and arises under the execution, by way of sale, of a decree made by the Subordinate Judge of Wardha at a date which is not exactly defined, but which was clearly before the 6th April, 1918. On this latter date that decree was sent down to the Deputy Commissioner of the District for execution, and on the 16th July, 1918, the sale under that decree was proclaimed.

It is alleged by the appellants, who were the judgment debtors under the decree, that that proclamation was imperfect, and the first appellant, on the 20th August, 1918, made an application to the proper court for the purpose of having the proclamation amended and the sale adjourned. The ground upon which he based that application was that, first, the revenue

had not been properly defined in the proclamation, and, further, that there was no adequate description of the property that was about to be sold.

The rules which govern the sale in that district are the same as those established by the Code of Civil Procedure. Under Section 66 of that Code it is plain that the proclamation should contain the statement as to the revenue assessed upon the estate, and this Board, in a case reported in 10 I.A. at page 25 (*Olpherts v. Mahabir Pershad Singh*), have held that that is a material matter, and that its omission is the omission of a matter which would enable the judgment debtor to base an application for setting aside the sale if he could comply with the other condition that the Code provides.

The sale had been fixed for the 23rd August, 1918, and consequently this application was only three days before the sale was to take place. The Sub-Divisional Officer, before whom the matter was heard, did not think that it was desirable that the sale should be postponed; for this purpose it would have been necessary to have had a further month's advertisement, and accordingly he adjourned the application until after the sale had taken place. The sale did duly take place on the 23rd August, and on the 27th August the application was heard. What took place upon that hearing is a matter of some dispute, but it is clear that the present appellants did not appear. Of course, it is plain that if the hearing were regarded as merely the hearing of an adjourned application to postpone the sale, the fact that the sale had already taken place would have itself defeated the application; it would then have become too late. But it appears to have been regarded in a more liberal sense, and the learned Judge before whom it came regarded it as an application under Rule 90 of Order 21 of the Code of Civil Procedure, which entitles a person who has been injured by an imperfect proclamation to apply to the Court to set it aside on the ground of material irregularity, provided that he proves to the satisfaction of the Court that the material irregularity has caused him substantial injury.

It is not easy to see exactly what occurred on the hearing because we have no shorthand note of the judgment, and the only reference to it is contained in a summary of the proceedings in the order sheet. That recites the fact of the sale, and refers to the omission of the land revenue as one of the grounds upon which the application for amendment of the proclamation had originally been based, and contains the statement: "I believe the irregularity is immaterial, and such shrewd purchasers as" the two purchasers of the property "would not bid till they knew the land revenue. I, therefore, again reject the objection." If by that was meant that the omission of the land revenue was immaterial for the purposes of Rule 90 (*supra*), which entitles the person injured to apply on the ground of a material irregularity, the learned Judge was wrong. If, on the other hand,

he meant by it that it was immaterial because, having regard to all the circumstances of the case, there was nothing to lead him to believe that there had been any damage whatever suffered, his observation would be less open to question.

From that judgment an appeal was brought before the Deputy Commissioner himself, one of the grounds of it being that the irregularities complained of had resulted in an inadequate price being realised. It is by no means plain to their Lordships that on that hearing the appellants did, in fact, insist upon the omission of the land revenue as one of the grounds of complaint. If introduced at all in the notice of appeal it was only introduced by implication, where it was said that the lower Court had admitted that the proclamation was defective. The specific grounds on which it is alleged that the imperative provisions of law relating to proclamations were not followed do not include this matter, but at any rate it was very definitely asserted that the irregularities had resulted in an inadequate price.

Upon the hearing of that appeal, the appellants appear to have made no application whatever to be permitted to call evidence to prove that they had, in fact, suffered material damage by what had taken place. They did not ask that the matter should be sent back for hearing upon that head by the Sub-Divisional Officer, nor, indeed, that the Deputy Commissioner himself should hear evidence upon it. It appears to have been argued on the facts as they stood, and the result was that the Deputy Commissioner decided that the omission was one which was not likely to have had any effect on the bidding in the auction.

In these circumstances, remembering that it lay upon the appellants to establish before the Court that they had suffered damage before they could start their application for setting aside the sale; that they never did bring forward any evidence whatever upon the point, and they never appear to have asked for liberty to do it, it appears to the Board too late now to come and say that had they had such an opportunity they might have been able to satisfy the Court that they had suffered such damage and that the opportunity should be afforded them now.

For these reasons their Lordships will humbly advise His Majesty that the appeal should fail and should be dismissed with costs accordingly.

In the Privy Council.

BALIRAM SING AND ANOTHER

v.

RAI BAHADUR SETH NARSINGDAS PRAYAGDAS
MOHTA AND ANOTHER.

DELIVERED BY LORD BUCKMASTER.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C. 2.
1923.