

that marriage under section 11 of the Act and they would be illegitimate children if no such decree has been obtained. This is anomalous and startling position which could hardly have been contemplated by the legislature. This is a lacuna in the Act which can only be rectified by the legislature.

(10) The legal position, therefore, is that the obtaining of a decree of nullity of a void marriage under section 11 of the Hindu Marriage Act is a condition precedent to the grant of legitimacy under section 16 of that Act to the children of such a marriage begotten or conceived before the decree. If a decree of nullity of such a marriage is passed then the children begotten or conceived before the decree are to be deemed to be legitimate children who would be entitled to inherit the property of their parents. However, if a decree of nullity has not been passed under section 11 of the Act, then the provisions of section 16 cannot be invoked to legitimise the children of a void marriage.

(11) In the instant case the Karewa marriage between Ram Singh and Gurnam Kaur appellant has not been proved and no decree of nullity under section 11 of the Act was obtained and consequently section 16 of the Act does not apply and the contention of the learned counsel for the appellants is rejected as devoid of force.

(12) No other point was urged. There is no force in this appeal and the same is dismissed. There will be no order as to costs.

B.S.G.

APPELLATE CIVIL

Before M. L. Verma, J.

MRS. MARGARET A. SKINNER,—Appellant.

*versus*

M/S. EMPIRE STORE CONNAUGHT PLACE, NEW DELHI-1,  
ETC.,—Respondents.

Execution First Appeal No. 252 of 1973.

August 14, 1975.

*Code of Civil Procedure (V of 1908)—Section 73 and Order XXI,  
Rule 90—High Court Rules and Orders, Volume I, Chapter 12-L—  
Rule 20(i)—Punjab Land. Revenue Act (XVII of 1887)—Section*

Mrs. Margaret A. Skinner v. M/s. Empire Store Connaught Place,  
New Delhi-1, etc. (Verma, J.)

141—*A rival decreeholder taking out execution before the sale in execution of another decree—Such decreeholder—Whether a ‘person entitled to rateable distribution’ and competent to prefer objections to the sale—‘Material irregularity and substantial injury’—Scope of—Stated—Sale of land in execution of a decree—Whether could be conducted by a Revenue Officer.*

*Held*, that rule 90 of Order XXI of the Code of Civil Procedure 1908, specifically includes person entitled to share in a rateable distribution of assets, to whom right to apply to set aside the sale on the ground of material irregularity or fraud has been given. The expression “person entitled to rateable distribution” means a person on whom the right is conferred by section 73 of the Code. The said section confers the right to share proceeds of execution sale to all the decreeholders. The only condition is that the rival decreeholders must have taken out execution of the decree before the sale proceeds, i.e., assets, have been received by the Court executing the decree. Thus, a rival decreeholder who has taken out execution of his decree before the sale in execution of another decree is a ‘person entitled to rateable distribution’ and as such competent to file objections for setting aside sale under rule 90 of Order XXI of the Code.

(Para 4).

*Held*, that it is clear from the provisions contained in rule 90 of Order XXI and the proviso appended thereto, that a sale of immovable property can be set aside if it is shown, firstly, that there has been material irregularity or fraud in publishing or conducting it and, secondly, that the applicant has sustained substantial injury on account of such material irregularity or fraud. The term “irregularity” means not being in conformity to the rules prescribed for regulating execution sale. The word “material” would mean real and not merely formal or academic. So, an irregularity which may be termed as material should be such which affects the ultimate decision of the case. “Injury” means loss which is wrongful and “substantial” would mean actual and not imaginary. The material irregularity and substantial injury sustained by the applicant must be co-related with each other as cause and effect. In other words, the substantial injury sustained by the applicant must be the result of material irregularity committed in publishing or conducting the execution sale. The words “publishing the sale” refer to proclamation of sale under rule 66 of Order XXI of the Code and to anything done before the sale. The words “conducting the sale” refer to the action of the Auction Officer committed at the time of sale.

(Para 5).

*Held*, that the word “ordinarily” in rule 20(i) of Chapter 12-L of the High Court Rules and Orders, Volume I would mean usually or

in ordinary cases. This rule is to the effect that usually sale should be conducted by the Court Auctioneer, but there is no absolute bar to direct sale through someone other than the Court Auctioneer. An indication is available from rule 7 of Chapter 12-M of the High Court Rules and Orders, Volume I, and section 141 of the Punjab Land Revenue Act, 1887 as applicable to the State of Haryana, that a Civil Court can direct sale of land assessed to land revenue through Revenue Officer and in that case the orders for sale of land have to be addressed to the Collector or such Revenue Officer as the Collector may appoint in this behalf and the same shall be executed by the Collector or by such officer. Sale of land by a Revenue Officer in execution of the order issued by a Civil Court is envisaged and, therefore, it cannot be said that the Revenue Officer could not be directed to conduct the sale of the land in execution of a Civil Court decree.

(Paras 6 and 7).

*Execution First Appeal from the order of Shri Raj Kumar Gupta, Sub-Judge, 1st Class, Hissar, dated 15th January, 1973, dismissing the objection petition and leaving the parties to bear their own costs.*

*Claim: Objection Petition for setting aside the sale in an execution proceedings.*

*Claim in Appeal: For reversal of the order of the lower court.*

G. C. Mital and Arun Jain, Advocate, for the appellant.

K. L. Sachdeva, Advocate, for respondent No. 1 only.

Roop Chand Choudhry, Advocate, for respondent No. 3 only.

#### JUDGMENT

Verma, J.—(1) The circumstances giving rise to this appeal may be briefly stated as under: 1]

(2) M/s. Empire Store, New Delhi (hereinafter called Respondent No. 1) took out execution of a money decree held by them against Mrs. Stanley E. Skinner (Respondent No. 2) and in execution of that decree 1/3rd share in the land belonging to Mrs. Stanley S. Skinner was sold on February 10, 1971, by Tehsildar, Hansi, under the necessary warrants issued by the Subordinate Judge 1st Class, Hissar. Mrs. Margaret A. Skinner (hereinafter called the appellant) also held a money decree against Mrs. Stanley E. Skinner, who is her mother. She made application on January 21, 1971, in her execution application for permission to bid at the auction. The said permission was

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granted to her on February 8, 1971. Thereafter, she moved application on August 31, 1971, for reteable distribution of the sale proceeds of the land. Later on, she moved application under Order XXI, rule 90, Civil Procedure Code, for setting aside the sale of 1/3rd of the land belonging to Respondent No. 2, held by the Tehsildar on February 10, 1971. The main grounds pleaded by her in the said application were as under :—

- (1) That the proclamation and the warrant of sale had not been properly drawn up and necessary details were not incorporated therein, and the value of the land stated therein was inadequate.
- (2) That the sold land had been converted into plots but the said fact was not stated in the proclamation or warrant of sale.
- (3) That the proclamation was neither affixed at the Court house or at the spot nor at the Court of the Collector.
- (4) That the appellant offered a bid but it was not accepted by the Tehsildar for the reason that he declined to accept a cheque intended to be presented by her in lieu of 1/4th of the auction money.
- (5) That the attached land had been sold for inadequate price.
- (6) That since the decretal amount due to Respondent No. 1 was not more than Rs. 15,000, a part of the land could have been sold.
- (7) That the appellant's bid being a co-sharer in the land should have been preferred.

So, according to the appellant, there had been material irregularity in publishing and conducting the sale and, as such, the same was liable to be set aside. The aforesaid objections raised by the appellant were resisted by Respondent No. 1 as well as by Shiv Dayal (Respondent No. 3), who had purchased the land at the auction. They controverted the material allegations made by the appellant and

pleaded, *inter alia*, that the appellant had no *locus standi* to maintain the objections. Hence, the following issues were settled :—

- (1) Whether there has been a material irregularity in publishing or conducting the sale as alleged in para No. 3 of the objection petition ?
- (2) Whether all the objections taken up in para No. 3 of the objection petition can be taken up in the present objection petition ?
- (3) Whether the objector has *locus standi* to file the present objection petition ?
- (4) Whether the objector has sustained substantial injury by reason of the alleged irregularity ?
- (5) Relief.

(3) The executing Court answered issue No. 3 in the affirmative and issue Nos. 1, 2 and 4 in the negative and dismissed the objections preferred by the appellant. Aggrieved by the said order of the executing Court, the appellant has come to this Court in appeal.

(4) The two preliminary objections raised by Shri Roop Chand Chaudhry, the learned counsel for Shiv Dayal auction-purchaser, are, firstly, that this appeal cannot be treated as execution first appeal, and, secondly, that the appellant was not competent to file objections and, as such, she could not maintain this appeal. Since the dispute respecting the setting aside of the sale was between the rival decreeholder, who is the appellant and the auction-purchaser, the impugned order does not fall under section 47, C.P.C., for the reason that the appellant, who is a rival decreeholder, was not and cannot be considered as a party to the suit in which the decree, in execution of which the land had been sold, had been passed. Therefore, I am inclined to agree with Shri Roop Chand Chaudhry that the appeal cannot be treated as execution first appeal, and the first objection raised by him seems to be correct. However, the impugned order is itself appealable under clause (j) of rule 1 of Order XLIII, C.P.C., and, therefore, the appeal be and is treated as F.A.O. (first appeal from order). Rule 90 of Order XXI, C.P.C., specifically includes

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person entitled to share in a rateable distribution of assets, to whom right to apply to set aside the sale on the ground of material irregularity or fraud has been given. The expression "person entitled to rateable distribution" means a person on whom the right is conferred by section 73, C.P.C. The said section confers the right to share proceeds of execution sale to all the decreeholders. The only condition is that the rival decreeholders must have taken out execution of the decree before the sale proceeds, i.e., assets, have been received by the Court executing the decree. The appellant admittedly held money decree against Respondent No. 2 and she had taken out execution. She also made application for permission to bid at the auction on January 21, 1971, i.e. about 20 days before the sale which took place on February 10, 1971. Therefore, in my opinion, she was entitled to share in rateable distribution of the assets. As such, she was competent to file objections for setting aside the sale under rule 90 Order XXI, C.P.C., and in that view of the matter, she is competent to maintain this appeal. Therefore, I find no force in the second objection raised by Shri Roop Chand Chaudhry and overrule the same.

(5) It is clear from the provisions contained in rule 90 of Order XXI and the proviso appended thereto, that a sale of immovable property can be set aside if it is shown, firstly, that there has been material irregularity or fraud in publishing or conducting it and, secondly, that the applicant has sustained substantial injury on account of such material irregularity or fraud. The term "irregularity" means not being in conformity to the rules prescribed for regulating execution sale. The word "material" would mean real and not merely formal or academic. So, an irregularity which may be termed as material should be such which affects the ultimate decision of the case. "Injury" means loss which is wrongful and "substantial" would mean actual and not imaginary. The material irregularity and substantial injury sustained by the applicant must be co-related with each other as cause and effect. In other words, the substantial injury sustained by the applicant must be the result of material irregularity committed in publishing or conducting the execution sale. The words "publishing the sale" refer to proclamation of sale under rule 66 of Order XXI, C.P.C., and to anything done before the sale. The words "conducting the sale" refer to the action of the Auction Officer committed at the time of sale.

(6) Mr. G. C. Mittal, learned counsel for the appellant, advanced various contentions, the principal of which was that the sale of the land could be conducted by the Court Auctioneer and the same could not be held by the Tehsildar and the executing Court could not issue the warrant directing the sale of the land to the Tehsildar. In support of his aforesaid contention, he relied on rule 20 of Chapter 12-L of the High Court Rules and Orders, Volume I, the relevant portion of which reads as under :—

“20(i) Sales in execution of decrees shall *ordinarily* be conducted by the Court Auctioneer .....

The word “ordinarily” would mean usually or in ordinary cases. Therefore, the aforesaid rule 20 is to the effect that usually sale should be conducted by the Court Auctioneer but there is no absolute bar to direct sale through someone other than the Court Auctioneer. An indication is available from rule 7 of Chapter 12-M of the High Court Rules and Orders, Volume I, and section 141 of the Punjab Land Revenue Act as applicable to the State of Haryana, that a civil Court can direct sale of land assessed to land revenue through Revenue Officer and in that case the orders for sale of land have to be addressed to the Collector or such Revenue Officer as he (the Collector) may appoint in this behalf and the same would be executed by the Collector or by such officer. Therefore, in the instant case, there was no bar for the executing Court to direct the warrant of sale to the Tehsildar for its execution.

(7) Mr. G. C. Mittal had been of the view that since sections 68 to 72 (both inclusive) had been repealed by section 7 of Civil Procedure (Amendment) Act No. 66 of 1956, and Rule 70 of Order XXI, Code of Civil Procedure, had been repealed by section 14 of the said Civil Procedure Code (Amendment) Act No. 66 of 1956, the sale of the land could not be held by the Tahsildar. I am unable to subscribe to that view for the reason that the provisions contained in the aforesaid sections 68 to 72 and Rule 70 of Order XXI (since repealed) related to the transfer of decrees for execution to the Collector and did not relate to the directing of sale of land by a Revenue Officer. As indicated above, section 141 of the Punjab Land Revenue Act, 1887, does envisage a sale of land by a Revenue Officer in execution of the order issued by a civil Court. Therefore, I see no merit in the contention of Mr. G. C. Mittal that the Revenue Officer

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could not be directed to conduct the sale of the land which was assessed to land revenue could not be held validly by the Tahsildar, and overrule the same.

(8) Mr. G. C. Mital pointed out that the representative of the appellant had offered a bid for purchase of the land at Rs. 70,000 and when her (appellant's) representative offered cheque for one-fourth of the said bid amount, the Tahsildar who conducted the sale declined to accept it. So, he termed it to be a material irregularity. I cannot agree with him. Rule 84 of Order XXI, Code of Civil Procedure, requires the purchaser of property at a Court auction to deposit immediately after the declaration of sale in his favour, twenty-five per cent. of the amount of the purchase money with the officer conducting the sale, and in default of such deposit, the property has to be resold forthwith. The said deposit of twenty-five per cent of the purchase money by a purchaser other than a decree-holder who had obtained an order dispensing the said deposit by the Court, is mandatory. Therefore, the appellant who was not holder of the decree in execution of which property had been sold and who had not obtained an order from the executing Court dispensing the deposit of one-fourth of the purchase money, was required by law to make a deposit of one-fourth of the purchase money in Government currency notes or in coins. I have not been referred to any provision of law which can show that the Tahsildar, who conducted the sale, could accept a cheque instead of Government currency notes or coins as deposit of the said amount from the appellant. Further, it is in evidence from Shri C. N. Chaudhry, Tahsildar, who conducted the sale and appeared as R.W. 5 that he had asked representative of the appellant who had bid at the auction to get the cheque endorsed by the Manager of the Bank concerned as good for payment, and it was on his failure to do so that he (Tahsildar) had declined to accept the cheque. That, in my opinion, was rather a concession granted by Shri C. N. Chaudhry, Tahsildar, to the representative of the appellant, who declined to avail it and, therefore, Shri C. N. Chaudhry, Tahsildar, was justified in refusing to accept the cheque in lieu of Government currency notes or the coins as deposit of one-fourth of purchase money. Further, it is clear from the record that the representative of the appellant had offered a bid for Rs. 70,000 only. Shiv Dayal respondent No. 3 gave a higher bid of Rs. 71,000 and the same being the highest was accepted. There is nothing to show that the representative of the appellant had offered any bid higher than



Rs. 71,000. It is pertinent to note that the appellant had also taken out execution of the money decree held by her against respondent No. 2 and had further applied on January 21, 1971 for permission to bid at the auction. The said permission was granted to her on February 8, 1971. The sale was held on February 10, 1971. Therefore, she knew fully well about the date and time of the sale and also that the sale was to be held on a public holiday. So, she was expected to entrust Government currency notes or coins sufficient to make to deposit of one-fourth of the purchase-money to her representative who was sent to bid at the auction. She did not care to do so and, as such, she should take the consequences if her decision to offer the cheque in place of Government currency notes or coins for making deposit of one-fourth of the purchase-money was declined by the Tahsildar, who conducted the sale.

(9) It was urged by Shri G. C. Mital that the land was valuable and the appellant was prepared to purchase the same for Rupees one lac. Since the land had been sold for Rs. 71,000, it cannot be maintained that the price for which it had been sold was inadequate. Otherwise too, there is a presumption that the price fetched at a court sale is adequate, and mere inadequacy of price cannot be termed as injury, much less substantial. Therefore, I do not think that there is material, much less sufficient, for the appellant to contend that she has suffered substantial injury, and then she has been unable to show that there has been any material irregularity in conducting the sale which had resulted in injury which can be complained of by her.

(10) The other objections i.e. that the proclamation or warrant of sale had not been properly drawn up and necessary details including that land had been converted into plots, had not been shown in the proclamation, or that the value mentioned therein was inadequate, or that the said proclamation was neither affixed at the Court house nor at the spot and nor at the Court of Collector, pertain to the matters prior to the sale. Second proviso to Rule 90 of Order XXI, Civil Procedure Code, by this Court, which runs as under :

“Provided further that no such sale shall be set aside on any ground which the applicant could have put forward before the sale was conducted.”

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disallows the setting aside of the sale on the said objections. As indicated above in the preceding para, the appellant was well aware of the date and time of sale at least twenty days before the holding of the sale and, as such, she had ample opportunity to raise the aforesaid objections. She did not raise the same and now after the sale, the second proviso, referred to above of Rule 90 of Order XXI, Code of Civil Procedure does not permit her to challenge the sale on the said ground.

(11) The ground, taken by the appellant that she being a co-sharer in the land sold was entitled to be preferred in the matter of bid, was neither pressed before the executing Court nor before me. The matter that the decretal amount due to respondent No. 1 was not more than Rs. 15,000 and, as such, a portion of the land could be sold for realisation of his decretal amount, is extraneous for the reason that the said objection could be raised by respondent No. 2 or at any rate before the holding of the sale.

(12) For the foregoing reasons, I find no merit in the contentions advanced by Shri G. C. Mital, and I am satisfied that the findings recorded by the executing Court on the issues are correct, and I see no reason to differ from the conclusions arrived at by it. So, the impugned order is unassailable and this appeal is bereft of any merit.

(13) Consequently, I maintaining the impugned order, dismiss this appeal. In the peculiar circumstances of the case, I, however, leave the parties to bear their own costs of this appeal.

N.K.S.

CIVIL MISCELLANEOUS

Before S. S. Sandhawalia and Pritam Singh Pattar, JJ.

SWARN SINGH AND ANOTHER,—Petitioners

versus

STATE OF PUNJAB, ETC.,—Respondents.

Civil Writ Petition No. 77 of 1975.

August 8, 1975.

*Land Acquisition Act (I of 1894)—Section 4—Allotment of house-sites to landless workers in rural areas—Whether a 'public purpose' within the ambit of section 4.*