

1941

Present : Howard C.J. and Cannon J.KARUNARATNE *et al* v. MOHIDEEN *et. al.*40-41—D. C. (*Inty.*) Colombo, 5,252.

Insolvency—Sale of property by auctioneer—Confirmation of sale—Application to postpone confirmation pending adjudication to title—Power of court—Civil Procedure Code, s. 839.

After the sale of property of an insolvent under the provisions of section 51 of the Insolvency Ordinance, the assignee moved to confirm the sale and for authority to execute the conveyance in favour of the purchaser. Thereupon an application was made to postpone the confirmation of the sale until the claim of the applicant to the property was adjudicated upon.

Held, that the Court had no power to postpone the confirmation of the sale.

A PPEAL from an order of the District Judge of Colombo.

H. V. Perera, K.C. (with him *P. Thiagarajah*), for the purchasers-appellants in both appeals.

N. Nadarajah (with him *D. W. Fernando*), for the respondents.

Cur. adv. vult.

December 1, 1941. HOWARD C.J.—

The appellants in this case appeal against an order of the District Judge of Colombo postponing, until after the claim of the second respondent had been adjudicated upon, the confirmation of a sale, ordered by the Court under the provisions of section 51 of the Insolvents Ordinance (Cap. 82), in respect of certain lots of which the appellants were the purchasers. The third respondent is a person adjudged insolvent under the proceedings of the Insolvents Ordinance and the first respondent is his assignee. The conditions of sale of the lots referred to were approved by the Court on September 17, 1940. On October 16 and 17, 1940, the second respondent, by letter addressed to the auctioneer appointed by the Court to conduct the sale and to the assignee, disputed the insolvent's title to the lots and duly intimated that she claimed the entirety of the said lots and further requested them not to sell them as they belonged to her and her children and not to the insolvent. In spite of these protests the auctioneer and assignee proceeded with the sale which took place on October 19, 1940, when the appellants became the purchasers of the lots in question, deposited the full purchase money and fulfilled the conditions of sale. On November 5, 1940, the assignee moved to confirm the sale and for authority to execute the conveyance of the properties to the appellants. On November 16, 1940, the second respondent brought to the notice of the Court that the lots in question are the property of herself and her children and were sold in spite of her protests. On December 10, 1940, the learned District Judge made the order, which is the subject of this appeal, postponing the confirmation of the sale and providing that if no action is filed within one month from the date of the order the sale of the lots would be confirmed.

The question for consideration is whether the learned District Judge had any power to postpone the grant of a conveyance to the appellants. It has been contended by Mr. Perera on behalf of the appellants that the latter having complied with the conditions of the sale, it became a binding contract between the appellants and the auctioneer, and the Court had no power to intervene. Mr. Perera, moreover, maintained that such a sale was not governed by the provisions relating to Fiscal's sales to be found in the Civil Procedure Code and, in particular, did not require confirmation. With this contention I agree. Mr. Perera maintains that the Court was not by any other specific provision of the law nor by virtue of its inherent jurisdiction, empowered to prevent the grant of a conveyance. Mr. Nadarajah on behalf of the second respondent concedes that there is no specific provision of the law empowering the Court to act as it did. He relies; however, on section 839 of the Civil Procedure Code, which is a provision phrased in general terms saving the inherent powers of the Court. He also calls in aid the provisions of section 62 of the Courts Ordinance which confers jurisdiction on District Courts and sections 3 and 4 of the Insolvents Ordinance conferring jurisdiction on these Courts in matters of insolvency. He also maintains that without these provisions of the law the inherent powers of the Court entitled the District Judge to intervene and refuse the grant of a conveyance for the purpose of doing justice between persons interested. In this connection we were referred to the case of *Hakum Chand Boid v. Kamalanand Singh*¹. At page 931 Woodroffe J. stated as follows:—

“Further the law cannot (as pointed out by Sir Barnes Peacock C.J.) make express provisions against all inconveniences so that their dispositions shall express all the cases that may possibly happen, and it is therefore the duty of a Judge to apply them not only to what appears to be regulated by their express provisions, but to all the cases to which a just application of them may be made and which appear to be comprehended, either within the express sense of the law or within the consequences that may be gathered from it. *Hurro Chunder Roy Chowdhry v. Shoorodhonee Debia*². The Code does not, as I have already had occasion to hold, in *Punchanon Singh v. Kunuklota Barmoni*³, affect the power and duty of the Court, in cases where no specific rule exists, to act according to equity, justice, and good conscience, though in the exercise of such power it must be careful to see that its decision is based on sound general principles and is not in conflict with them or the intentions of the Legislature. There are also matters, and I do not now deal with them, in which a question may arise whether the right to make an application or the exercise of a power is derived entirely from express legislation, as in the case of the right to prefer and entertain an appeal or to award costs, it being a matter of dispute in the latter case whether a question of costs is one of procedure or one affecting vested rights. The Court has, therefore, in many cases, where the circumstances require it acted upon the assumption of the possession of an inherent power to act *ex debito justitiae* and to do that real and substantial justice for the administration, for which it alone exists.”

¹ 33 Calc. 928.

² (1868) 9 W. R. 402.

³ I. L. R. 23 All. 167.

Mr. Nadarajah also invited our attention to the case of *Hansewar Ghose v. Rakhal Das Ghose*¹. In this case the petitioner obtained a mortgage decree against the judgment-debtor. Before the decree could be executed, the latter made an application in insolvency. During the pendency of the application, the petitioner purchased the mortgaged properties in execution of the decree. The judgment-debtor was subsequently adjudged an insolvent and a receiver appointed who sent to the Court a proclamation for sale of the insolvent's property in which he included the properties purchased by the petitioner who thereupon presented a petition of objection to the Court on the ground that the receiver had no authority to sell the properties purchased by him. This petition was presented after the expiry of 21 days from the date of the order of the Receiver and the Court dismissed it under the proviso to section 22. It was held (1) that under the proviso, a person aggrieved by the receiver's order might apply to the Court, that, upon the allegations of the petitioner the intended sale by the receiver could not affect his title, because the properties in question were no longer the properties of the insolvent and that consequently he could not be deemed to be a person aggrieved by the act of the receiver and section 22 had no application to the case, and that the application of the petitioner to the Court below was not subject to the period of limitation prescribed by the proviso to the section; (2) That the application of the petitioner to the Court below ought to be entertained and an inquiry held into the truth or otherwise of his allegations. In my opinion this case is not material, inasmuch as in contradistinction to the present case the assistance of the Court was invoked before the sale of the properties took place. Mr. Nadarajah also relied on the case of *Gunawardene v. Dias*². In this case the Court on the motion of the assignee's proctor issued a Commission to A to sell a property belonging to the estate of an insolvent. The steps taken by the assignee's proctor were such as to create the belief in would-be purchasers that the property was to be sold free of encumbrances. At the sale B bought the property in the belief it was sold free of encumbrances. Subsequently, the property was sold under mortgage decree. B applied to Court that the sale to him be not confirmed, and that the deposit be refunded to him. The District Judge refused the application on the ground that (1) B should have made the necessary inquiries before buying; and (2) that the assignee not being "an officer of the Court, the Court could not deal with the matter of the petition". It was held that both grounds were wrong. It does not lie in the mouth of the party, who by his conduct or representations misleads another, to say that the latter ought not to have acted on the belief induced by himself, and should have satisfied himself as to the truth by independent inquiries. The power of the Court to interfere with the sale and prevent injustice does not turn on the question whether or not the assignee is an officer of the Court. It would be disastrous, it would be shocking, if the Court were to enforce against a purchaser misled by its duly accredited agents a bargain so illusory and so unconscientious as this. In *Gunawardene v. Dias* (*supra*) it was the purchaser who applied for relief. The Court held that to hold him to his bargain would

¹ A. I. R. 1914 Calc. 885.

² 23 N. L. R. 339.

be unconscionable in view of the fact that he had been misled into becoming a purchaser by the misrepresentations of the assignee. *Gunawardene v. Dias* is not, therefore, applicable to the facts of the present case.

I think the principles laid down in *Hakum Chand Boid v. Kamalanand Singh* with regard to the inherent powers of the Court apply with particular force to the present case. It is the power and duty of the Court, in cases where no specific rule exists, to act according to equity, justice, and good conscience, though in the exercise of such power it must be careful to see that its decision is based on sound general principles and is not in conflict with them or the intentions of the Legislature. It may be observed that the passage I have cited does not confer on Courts dictatorial powers, but imposes on the exercise of their inherent jurisdiction certain limitations. Can it be said that the interference by a Court to nullify a completed contract is the exercising of its inherent powers on sound general principles? I do not think it can. Moreover as there is no power in the Ordinance for the suspension of a sale under section 51 of the Insolvents Ordinance it can be argued that for the Court to exercise its discretion by employing such a power is in conflict with the intentions of the Legislature. I do not, therefore, think that the learned District Judge in making this order was empowered to call in aid the inherent jurisdiction of the Court. Nor could he call in aid the statutory provisions referred to by Mr. Nadarajah.

I doubt further whether the order can be said to be made in the furtherance of the interests of justice. The appellants in conformity with the conditions of sale made various payments by way of stamps and notarial fees. If they are refused a conveyance, it is doubtful how they can receive indemnification in respect of these payments. They acquire as the result of their purchase merely the rights of the insolvent in the lots which were sold. The sale is not valid as against the rights and claim of the second respondent. It would therefore appear that an act sanctioning the grant of the conveyance is more in consonance with the principles of equity than an order refusing such sanction.

For the reasons I have given the appeals are allowed and the order of the learned Judge set aside with costs in this Court and the Court below.

CANNON J.—I agree.

Appeal allowed.
