

1867.  
Aug. 12.

*Miscellaneous Appeal No. 2 of 1867.*

GOVIND HARI VA'LEKAR ..... *Appellant.*  
BANK OF INDIA..... *Respondent.*

*Miscellaneous Appeal No. 3 of 1867.*

BANK OF INDIA..... *Appellant.*  
RA'GHO NA'RA'YAN..... *Respondent.*

*Auction Sale—Irregularity—Notice of Sale—Notice of Lien—Adjournment of Sale—Civ. Proc. Code, Sec. 256.*

The inám village of Chandanpuri was sold by auction under a decree. The notice of sale stated that the sale would begin either at Maligám or at Chandanpuri, and be completed at Maligám.

*Held* that the notice of sale was sufficiently certain.

An auctioneer who sells under a decree has power to adjourn the sale from time to time (upon giving proper notice), but whether he does so or not is a matter in his own discretion.

The practice of Kárkúns reading aloud notices of liens on property about to be sold by auction is objectionable, but, in the absence of proof that the value of the property has been thereby deteriorated, it is not such an irregularity as will vitiate the sale.

**T**HESSE were two separate appeals against an order of the Honorable G. A. Hobart, District Judge of Khándesh, confirming an auction sale under Sec. 256 of the Civil Procedure Code.

The inám village of Chandanpuri was sold, by order of the District Judge of Khándesh, in execution of a decree obtained by the Bank of India against Govind Hari Válekar, by public auction, for Rs. 7,105.

In the auction notification it was stated that the sale would begin on the 22nd of October, either at Maligám or at Chandanpuri, and be completed at Maligám. The auction commenced on the 22nd of October at Chandanpuri, and that evening the last bid was that of the Bank of India. The auction was then adjourned to the following day at Maligám, where it was closed in the evening, the property being knocked down to Rágho Náráyan as the highest bidder. On that day the Bank of India gave notice to the auc-

tioneer not to close the sale, as they would be prepared to make a higher bid on the next day. The grounds on which the appellants relied appear fully from the judgment of Couch, C.J.

*Ferguson* (with him *Shántárám Naráyan*) for the appellant.

*Reid* (with him *Dhirajlál Mathurádas*) for the respondent.

Couch, C.J.:—This is an appeal from an order of the District Judge, confirming a sale made by order of Court in execution of a decree against Govind Hari. The Bank of India and Govind Hari are the petitioners, each asking to have the Judge's order set aside.

The proceedings were taken before the Judge, under Sec. 256, which provides that "no sale of immoveable property shall become absolute until the sale has been confirmed by the Court. At any time within thirty days from the date of the sale, application may be made to the Court to set aside the sale, on the ground of any material irregularity in publishing or conducting the sale, but no sale shall be set aside on the ground of such irregularity, unless the applicant shall prove to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity."

The counsel for the appellants in Appeal No. 3 argued that the notice of sale was not certain as to the place where the auction was to be held. It appears that the property sold was the village of Chandanpuri, and the notice of sale stated that the sale would begin at either place Maligám, or Chandanpuri, but would be completed at Maligám. There was an advantage in this, as it gave parties an opportunity of seeing the property before the sale was completed at Maligám, and therefore the notification, being in such a form, was not likely to cause any injury to the appellants. I, therefore, think that the uncertainty in the notice of sale was not such an irregularity as to entitle the appellants to have the sale set aside.

The second point taken was that the auction ought to have been closed on the day it commenced. The Bank of India would then have been able to purchase the property

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for a smaller sum than what the respondent paid. There is no rule, I think, which compels an auctioneer to close the auction on the first day. It must be left to his judgment to do so when he thinks fit, and much in such cases will depend upon the nature of the property and the circumstances of the sale. In some cases circumstances may arise such as would make it unjust to limit the power of adjourning the sale with proper notice. There was nothing improper in adjourning the sale in this case.

The third point was that the auction, if adjourned once, could have been also adjourned a second time, in order to enable the manager of the Bank to bid higher and pay the twenty-five per cent. deposit. With reference to this objection, there was no obligation on the part of the auctioneer to adjourn simply because a person sent him notice to say that he was ready to make a higher bid. It would lead to serious mischief, were we to hold that an auctioneer could not close the sale because he received such an offer. It may be, in the present case, that the offer was *bonâ fide*. But we cannot say that the auctioneer was bound to adjourn the sale, inasmuch as he would have to undergo a certain amount of risk in so doing. There was nothing to compel the Bank of India to come forward the next day and bid.

With reference to the fourth objection (that bidders left), it was not shown that the parties likely to bid had left between the last bid and before the sale was completed.

As regards the fifth objection, as to the Kárkún's reading notices of liens on the estate, it would be sufficient that it was not taken before the Judge. From the evidence, however, it appears that the Kárkún did read out notices of liens on the estate; but it has not been shown that any injury resulted from this conduct of the Kárkún, nor can this point now be raised for the first time. In the case we were referred to, the facts were that the Kárkún not only read the notice, but conducted himself in such a way as to lead people to suppose that he made an affirmation of the existence of the mortgage. We did not mean to decide in that case that the mere fact of Kárkún's reading notices was a

material irregularity, so as to invalidate a sale. It would have been better if the Kárkún had not read the notices, for it is possible that that may mislead, and, therefore, it ought to be prevented. In this case, however, it was not such a material irregularity as to reduce the value of the property, and thereby vitiate the sale. These are all the objections taken, and, having disposed of them, we confirm the order of the lower court with costs.

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NEWTON, J., concurred.

*Order confirmed.*

*Special Appeal No. 416 of 1867.*

Sept. 16.

NA'RA'YAN VYANKATESH DA'MLE.....*Appellant.*  
 DHONDU' DA'MODHAR *et al.*.....*Respondents.*

*Boundaries—Jurisdiction—Appeal.*

In a case where *boundaries* of land are disputed (a), an appeal from the Mámílatdár lies to the Collector. A District Judge has no power to entertain such an appeal. Appeal referred to the Collector under Act XVI. of 1838.

THIS was a special appeal from the decision of A. C. Watt, Acting Assistant Judge of the Puná District, in Appeal Suit No. 14 of 1865, confirming the decree of the Mámílatdár of Havli.

The original suit was to recover certain land, the boundary of which, the plaintiff alleged, was disturbed by the defendants' including a portion of it in their own fields.

The defendants answered that they neither disturbed the boundary, nor included a portion of the plaintiff's fields in their own, as stated by the plaintiff.

The Mámílatdár, on measuring the land, and on referring to the Survey Register, found that the defendants had not included a portion of the plaintiff's land in their own; and decreed in favour of the defendants..

On appeal, the Acting Collector of Puná reversed the decree, and remanded the case for the Mámílatdár to base

(a) Sec Reg. XVII. of 1827, Sec. xxxi., Cl. 5, and Act II. of 1866. Sec. III.