

PART L. —SALE OF PROPERTY AND DELIVERY TO THE PURCHASER

1. The provisions of the Civil Procedure Code 1908 on the subject of sales are contained in Order XXI, Rules 64 to 102 as amended by the Punjab High Court (vide Chapter 21). Rule 64 to 73 deal with "sale generally"; Rules 74 to 81, with sale of moveable property; and Rules 82 to 102 with sale of immoveable.

References.

2. Whenever a Court makes an order for the sale of any attached property under Order XXI, Rules 64, it shall, if the property be land assessed to land revenue, revenue-paying or revenue-free land, or any interest in such land, act as directed in the rules hereinafter prescribed. If the property be of any other description the Court shall fix a convenient day, not being distant more than fifteen days, for ascertaining the particulars specified in Order XXI, Rule 66 (2), and settling the proclamation of sale. Notice of the day so fixed shall be given to the parties or their pleaders.

Settlement of proclamation of sale.

3. (1) If the property be immoveable property (other than revenue paying or revenue-free land) the court may call upon the Sub Registrar within whose sub-district such property is situated to search his registers and report, before the date fixed for settling the proclamation, to what incumbrances, if any, the property is liable. It is very desirable that such searches should be ordered in all cases, with a view to the prevention of fraud, but it should be noted that they cannot be ordered if the decree-holder is not willing to pay the necessary fees. The fees payable are at the rates prescribed in the second proviso to Article II of the table of registration, fees published with Punjab Government notification No. 22850, dated the 25th September, 1923, as amended by Punjab Government notification No. 23759, dated the 15th June, 1932, which are as follows.: —

Enquiry as to encumbrances from Sub Registrar's office.

Rs . A. P.

(a) For the first year in the books of which search is to be made for each entry or document	..1-0-0
(b) For every other year in the books of which search is continued for each entry or document	..0-4-0
The fee in each case is subject to a maximum of	..5-0-0

Settlement of proclamation of sale. Estimate of value.

- (2) The amount recovered in this behalf by the Court will first be placed in deposit and will then be paid to the Registration Department. by means of repayment vouchers endorsed in their favour
- (3) The report of the Sub-Registrar shall be open to the inspection of the parties, or their pleaders, free of charge, between the time of its receipt by the court and-the settlement of the proclamation of sale.
- 4. On the day so fixed , the Court shall, after perusing the documents, if any, filed under Order XXI, Rules 13 and 14 of, the Code, and the report referred to in the preceding paragraph; after examining the decree-holder, and judgment-debtor, if present, and after making such further inquiry as it may consider necessary, settle the proclamation of sale specifying as clearly and accurately as possible the matters required by Order XXI, Rule 66(2), of the Code, in the following form :—

Description of property including name of village and boundaries , if necessary	Name of judgment debtor	Extent of interest of judgment-debtor in the property, so far as it has been ascertained by the Court	Detail of incumbrances, if any, to which the property is liable so far as they can be ascertained by the Court	Any other known particulars bearing on the nature and value of the property

This proclamation for sale is an important part of the proceedings and the details should be ascertained and noted with care. This will remove the basis for many a belated objection to the sale at a later stage.

It is not necessary for the court itself to give in this proclamation its own estimate of the value of the property It is sufficient to include in it the estimate, if any, given by either or both of the parties (Proviso added to Order XXI Rule 66 (2) (e) by the Punjab High Court).

The proclamation, when settled, shall be signed by the judge, and shall be made in the manner prescribed by Order XXI, Rule 67, of the Code.

It should be noted that the period of thirty days and fifteen days mentioned in Order XXI Rule 68, Civil Procedure Code , has been reduced by the Punjab High Court to fifteen days and one week, respectively.

5.If, after the proclamation has been published, any matter is brought to the notice of the Court which it considers material for intending purchasers to know, the Court shall cause the same to be notified to intending purchasers when the property is put up for sale.

Information obtained after proclamation.

6.The costs of the proceedings hereinbefore prescribed shall be paid, in the first instance, by the decree-holder; but they shall be charged as part of the costs of execution, unless the Court, for reasons to be specified in writing, considers that they should, either wholly or in part, be omitted therefrom.

Costs for proclamation.

7.Attention is called to the provisions of Order XXI, Rule 83 of the Code, which confers on the Court the power of postponing , at the instance of the judgment-debtor, a sale of immoveable property in execution of decree, if it is satisfied that the amount of the decree may be raised by mortgage or lease or private sale of such property or of any other property of the judgment-debtor. Care must be taken that this power is not so exercised as to inflict an injury on the decree-holder.

Grant of time to debtor to arrange private alienation.

In clause (3) of Rule 83 quoted above it is expressly laid down that the Rule does not apply to a sale of property directed to be sold in execution of decree for sale in enforcement of a mortgage of, or charge on, such property.

8.The sale shall be held at the time and place specified in the proclamation, unless the Court adjourns it to a specified day and hour, or the officer conducting the sale (with the leave of the Court, if the sale is made in or within the precincts of the Court-house) adjourns it for reasons which must be duly recorded . Whenever a sale is adjourned for a longer period than thirty days, a fresh proclamation shall be made, unless the judgment-debtor consents to waive it.

Adjournment of sale.

9.Attention is drawn to Order XXI, Rule 73, of the Code of Civil Procedure, 1908, which directs that an officer having any duty to perform in connection with any sale in execution of a decree, shall not directly or indirectly bid for, acquire or attempt to acquire any interest in the property sold ; and to Order XXI, Rule 72, of the Code, which prohibits the holder of a decree in execution of which property is sold from bidding for or purchasing the property without the express permission of the Court executing the decree.

Purchase at auction by decree-holder or officer connected with auction.

Decree-holder
need not pay
safe money.

10. Clause (2) of Rule 84 of Order XXI enables the Court to dispense with the deposit of earnest money when the decree-holder is the purchaser and is entitled to set off the purchase-money under Rule 72. Rule 86 makes the forfeiture of earnest money optional.

Submission of
statements of
forfeiture of
earnest money.

11. For procedure regarding submission of statements of forfeiture of deposits see Volume IV, Chapter 10-A, rule 6.

Purchase
money: its
payment to
decree-holder
or its refund.
Refund of
commission.

12. "Purchase money deposited in Court upon the sale of immoveable property shall be retained by the Court until the expiry of a period of fifteen days from the date of the order confirming the sales. If no notice of an appeal having been presented by the party seeking to set the sale aside, be given to the Court within that period, the purchase money less the sum which has to be credited to Government or paid to the Court Auctioneer as commission on the sale (see paragraph 22) may be paid on the demand of the decree-holder. If such notice be given within the prescribed period, the purchase money shall be retained in deposit until the appeal is decided, unless the party at the time entitled to receive it gives security, to the satisfaction of the Court to repay it at any time when he may be required by the Court, so to do.

13. The changes introduced by the Punjab High Court in Order XXI Rule 89, Civil Procedure Code, require careful attention (vide Chapter 21).

Application to
set aside.

14. Applications for setting aside sales are frequently made under Order XXI, Rule 90, Civil Procedure Code. An application under this Rule can be made not only by the decree-holder or a person entitled to rateable distribution in the assets but also by any person "whose interests are affected by the decree". But the grounds on which such an application can be made are restricted and should be carefully borne in mind. An application under this Rule can only be made on the ground of material irregularity or fraud in publishing or conducting the sale, and, secondly, it must be proved that the applicant has suffered substantial injury as a result of the material irregularity or fraud complained of. Both these conditions must be satisfied before any sale is set aside under this Rule. It has been provided further in the Punjab that no sale can be set aside on any ground which the applicant could have put forward before the sale was conducted. An application under this Rule must be made within 30 days of the sale (Article 166, Schedule I, of the Indian Limitation Act, 1908).

15. Order XXI, Rule 91, of the Code of Civil Procedure, 1908, enables the purchaser at a sale of immoveable property in execution of decree to apply to the Court to set aside the sale on the ground that the debtor had no saleable interest therein. Such an application must also be made within thirty days from the date of the sale (see Article 166, Schedule I to the Indian Limitation Act, IX of 1908). It should be noted that the Rule applies only when the judgment-debtor has no interest at all in the property sold but not when he has some interest at any rate in it, however small that interest may be.

Application to purchaser to set aside sale.

16. If no application to set aside the sale is made under Rules 89, 90 or 91 within thirty days or the application is disallowed, the Court must confirm the sale. An appeal lies from an order confirming or setting aside a sale but no separate suit is maintainable to challenge the order, (Order XXI, Rule 92.)

Confirmation of sale: Appeal.

17. When such a sale is set aside- under Order XXI, Rule 92, rule 93 provides for the recovery and repayment to the purchaser of the purchase-money. The Court should not refer him to a separate suit for the money paid by him, which should be recovered (if necessary) and refunded to him, subject to the provisions of paragraph 23.

Refund to purchaser.

18. When a sale of immoveable property has become absolute, the Court shall grant a certificate stating the property sold and the name of the person, who, at the time of the sale, is declared to be the purchaser. This certificate should be in the prescribed form, and must bear the date of the confirmation of the sale, and be stamped, at the expense of the purchaser, in conformity with the provisions of chapter Part B, and Article 18 of Schedule I-A of the Indian Stamp Act, 11 of 1899, as amended by Punjab Act, VIII of 1922. When the terms of the certificate have been finally settled, the draft shall be signed by the Judge and placed with the record of the execution proceedings, and the certificate granted to the purchaser (which should be in exact conformity with such draft) shall be engrossed on the stamp paper, free of copying charge. Instances have occurred where the purchaser has not taken his certificate, but has asked merely for a draft certificate to be appended to the file of execution, his idea being to use the draft certificate in proof of his title to the property purchased. Subordinate Courts are warned to guard against such subterfuges. No draft certificate should in

Certificate of sale.

any case be drawn up until the stamp duty required by law has been paid.

It should be noted that the title to the purchaser accrues from the date of the sale, though a certificate can only be granted after its confirmation.

Copy of certificate of sale of immoveable property to be sent to Registration office.

19. A copy of the certificate, whether the property sold be land or other immoveable property, and without regard to the amount of the purchase-money, shall be sent to the Registering Officer, within the local limits of whose jurisdiction the whole or any part of the property is situated to be filed in his supplementary Book No. I.

This copy should be drawn up in vernacular with permanent black ink or with "registration ink" obtainable from the Central Stationery Officer, Calcutta, and on the prescribed form which is obtainable on indent from the Controller of Printing and Stationery, Punjab.

Court officials for conducting sales.

20.(i) Sales in execution of decrees shall ordinarily be conducted by the Court Auctioneer. The District Judge may direct by special order that the sale in a particular case or cases shall be conducted by the Nazarat Staff.

(ii)^[41][At the head quarters of each sub-division in a district, save as otherwise directed, the District Judge shall, with the prior approval of the High Court, appoint a Court Auctioneer to conduct sales in execution of decrees within the limits of the sub-division.]

Security by Court Auctioneers.

(iii) Every Court Auctioneer shall give security in the sum of Rs. 2,000, over and above any security he may have given as Official Receiver, for the satisfactory discharge of his duties. This security shall be furnished to the satisfaction of the District Judge. The rules in Chapter 4-D, High Court Rules and Orders, Volume II, which govern the taking of security from Official Receivers shall, mutatis mutandis, apply also to Court Auctioneers.

Procedure for return of sale warrant.

21 (i) A warrant of sale shall not be delivered to the Court Auctioneer direct by the Court ordering the sale but shall be forwarded to him through the process-serving agency. After the sale the warrant and connected Papers shall be returned by the Auctioneer to the process-serving Agency which shall forward it to the court concerned.

Sale under supervision of Court Auctioneers.

(ii) All sales of property whose estimated value exceeds Rs. 500 shall be conducted under the general supervision of the Court Auctioneer. Sales of property

whose estimated value is Rs. 500 or less may be conducted by agents of the Court Auctioneer. In all cases the Court Auctioneer is responsible for proper compliance with all legal requirements and for all the acts of his agents.

The Court Auctioneer shall each morning, supply to each court a date-sheet showing the sales already fixed by all courts, in order that sales, which he has to attend may not be fixed at different places on the same day.

(iii) The Court Auctioneer shall himself deposit into the treasury all sums realised at auction sales conducted by him or his staff. All sums realised at sales conducted at places where there is a treasury shall be deposited into the treasury or the State Bank of India, as the case may be, on the first working day after the sale. The District Judge shall prescribe periods, within which the proceeds of sales conducted at other places shall be deposited. The periods so prescribed shall be reported to the High Court and shall be as short as possible.

Deposit of sale proceeds into Government treasury.

22. (i) Commission at the following rates shall be deducted from the proceeds of sales under this Chapter:—

Government commission.

(a) If the sale proceeds do not exceed rupees five thousand —at five per centum.

(b) If the sale proceeds exceed rupees five thousand at five per centum on rupees five thousand and two and a half per centum on the remainder.

(ii)^[42] [If the sale is conducted by the Court Auctioneer, 80 per cent of the Commission will be paid to him and 20 per cent will be paid into the Treasury to the credit of Government. All incidental expenditure shall be met by the Auctioneer. The amount of commission of the Court Auctioneer shall not, however, exceed Rs. 5000/- in respect of any one sale.]

(iii) If the sale is conducted by the Nazarat staff, the whole of the commission shall be credited to Government and nothing shall be paid to the officer conducting the sale. In such cases, the expenses incurred in conducting the sale, including the cost of advertisement, must not exceed the amount of commission.

(iv) The expenses incurred in the care, custody and keep of attached property (as taxed by the Court) shall be a first charge on the sale proceeds thereof, after the deduction of the commission mentioned above.

Expenses of custody etc.

23. (i) No commission shall be paid on the proceeds of sales set aside for a material irregularity in publishing or conducting the sale. The commission on the proceeds

Charges of Court Auctioneers.

of a sale set aside for any other cause shall be paid by the person at whose instance and for whose benefit the sale is set aside and the Court Auctioneer shall be entitled to his share of such commission.

(ii) If a sale is set aside the purchase money shall be refunded in full to the Auction Purchaser unless it is set aside at his instance and for his benefit in which event the commission due under paragraph 22 shall be deducted from the sum to be refunded.

(iii) Where a sale is set aside after the commission has been paid to the Court Auctioneer, the court shall recover it from him and shall refund it to the Auction Purchaser if he is entitled to the refund of the whole of the purchase money. In such cases the Government share of the commission shall also be refunded.

(iv) In cases in which auction sales are ordered, but not completed or do not take place at all, the court auctioneer shall be paid only his actual expenses, provided that if there has been, in the opinion of the Court, clear negligence on the part of the auctioneer (e.g., failure to advertise, leading to absence of bidders) he will not be entitled to any compensation. The amount of actual expenses if held due under this rule will be determined by the Court and shall be paid by the decree-holder or the judgment-debtor as the Court may direct.

Conduct of sale
by Nazarat
staff.

24 (i) Where the District Judge directs that a sale be conducted by the Nazarat Staff, the proper officer to conduct the sale is

(a) Where the sale is ordered by a Court of small Causes—the Departmental Officer or such other officer as the Court may appoint.

(b) Where the sale is ordered by a Court other than a Court of Small Causes:

(1) The Civil Nazir, for all sales ordered by Courts located at District Headquarters and for all other sales in which the value of the property to be sold is estimated to exceed Rs. 5,000.

(2) The Naib Nazir of the Court ordering the sale for other sales.

(ii) In every case in which the Civil Nazir is not required, under these directions or the directions of the District Judge, to conduct the sale in person, such

sale may be conducted under the orders and upon the responsibility of the Civil Nazir, by a Naib Nazir deputed by him for the purpose.

(iii) When it is desirable to have the sale conducted at the place where the attached property is situate and the property is of small value, and a Nazir or Naib Nazir is not available for the duty, an execution bailaiff may be deputed to conduct the sale.

(iv) A process-server shall not be employed to conduct a sale without the authority in writing of the Officer in charge of the Process-Serving Agency concerned. Such order shall not be made unless no other officer is available and the value of the property to be sold is estimated at Rs. 100 or less.

(v) The District Judge may issue instructions, consistent with these directions, for the further regulation of the conduct of sales by the Civil Nazir and his establishment.

25. Whenever guns or other arms in respect of which licenses have to be taken by purchasers under the Indian Arms Act, XI of 1878, and Rules thereunder, are sold by public auction in execution of decrees, the Court directing the sale shall give due notice to the Magistrate of the district of the names and addresses of the purchasers and of the time and place of the intended delivery to the purchasers of such arms, so that proper steps may be taken by the Police to enforce the requirements of the Indian Arms Act.

Sale of guns or arms.

26. For attachment and sale of land or interest in land see chapter 12-M of this Volume.

Sale of land.