

Gajadhar Prasad and Others

Vs

Babu Bhakta Ratan and Others

Civil Appeal No. 1648 of 1967

(K. K. Mathew, M. H. Beg JJ)

14.08.1973

JUDGMENT

BEG, J. -

1. This is a judgment-debtors' appeal, by certificate of fitness of the case for appeal to this Court granted by the High Court of Allahabad, arising out of an application filed under Order 21, rule 90, Civil Procedure Code.
2. The respondent decree-holders had obtained a decree for about Rs. 76,000 against the appellants in a mortgage suit. In execution of that decree sales of three items of property, shown as houses belonging to the judgment-debtors took place on May 5, 1955 and May 7, 1955. The items were described as follows in the sale proclamation :

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"Boundaries----- East
West North South-----1.
Pucca built house bearing University Lane and House of Colonel- previous No. 8 and present Road Temple of Marium gunj No. 5 situate in Colonelgunj, Kaliji Bibi and Road City of Allahabad, together Mohd. with site and building materials Raza entire 16 anna share value at Rs. 10,350.2. Entire house bearing previous House of Lane here- House of Way No. 805 situate in Mohalla Gajadhar after House Gajadhar Katra, Pasiyana, City of Prasad of Maheshwary Prasad Allahabad, valued at Rs. 5,040.3. Bungalows bearing Nos. 8 and Lyal Road Bungalow Thornhill Club 10, situate on Club Road, City No. 12. Road Road City of Allahabad with compound plot No. 129 together with trees, four walls and out houses etc., with all things rights and interests appertaining to bungalows the site land whereof has been acquired on lease, dated November 20, 1948 and which lies within the same boundary. Bungalow No. 8 valued at Rs. 24,000. Bombay No. 10 valued at Rs. 31,200.-----
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There is no encumbrance."

3. The main objection of the judgment-debtors appellants to this proclamation is that the execution Court had, in giving the valuation of the properties in the proclamation, practically accepted the statements made on behalf of the decree-holders, and, without assigning any reason, failed to mention the values put by the judgment-debtors on these properties. The respective valuations of the

properties by the two sides were :

#"1. No. 10 T.B. Sapru Road | Valuation put by the Valuation put by 2. No. 8 T.B. Sapru Road | D.H. 40,000 the J.D. 1,00,000 3. No. 5 Colonelgunj 10,000 60,000 4. No. 805 Katra 1,000 25,000."##

4. On May 18, 1948, long before the proclamation of sale was drawn up on March 31, 1955, the judgment-debtors had put in an objection to the execution Court's order of February 14, 1948, relating to the framing of the sale proclamation, particularly with regard to the two bungalows situated in the heart of the Civil Lines, the best residential area of Allahabad. They had stated that the area of land in the compound in which the two bungalows were situated was three acres and that the whole property was not worth less than Rupees one lac. They had objected to the sale of the two bungalows in one lot. They had also asserted that the latest municipal assessment of 1944 had displaced the municipal assessment of 1934 relied upon by the decree-holder. According to the judgment-debtors, the two bungalows Nos. 8 and 10 on Tej Bahadur Sapru Road were assessed at annual rent of Rs. 1,500 and Rs. 1,200 per year. In an affidavit of April 19, 1947, they had asserted that a bungalow situated nearby, assessed at an annual rent of Rs. 1,500 was sold for Rs. 50,000 on April 23, 1945, when prices were lower. On May 18, 1948, the judgment-debtors had also prayed for the issue of a commission, at their expense, presumably to view the property and give a report on relevant facts before actually framing a sale proclamation in accordance with the court's order of February 14, 1948, directing insertion of the value made by it.

5. On May 5, 1955, the Court Amin had himself put up house No. 5 situated in Colonelgunj, Allahabad, separately for sale and sold it for Rs. 10,500. On the same date, the Amin sold house No. 5-A in Colonelgunj for Rs. 8,500 and also house No. 5-B separately for Rs. 7,000. Thus, a total amount of Rs. 26,000 was realized from the sale of the three houses in one compound at Colonelgunj described as one item of property in the sale proclamation. They had been valued at Rs. 10,000 by the decree-holders and Rs. 60,000 by the judgment-debtors. The court had valued the whole property at Rs. 10,350, and thus practically assented to the decree-holders' valuation and rejected the judgment-debtor's without assigning any reason beyond expressing the opinion that it was exaggerated. The property in Katra was sold for Rs. 3,750 on may 5, 1955.

6. After the sale, the judgment-debtors applied to set aside the sales on the ground of fraud and material irregularity in conducting them and complained of substantial injury. They relied on uncontroverted assertions made in their affidavit of April 19, 1947, as well as on the assertions made in an application, dated May 18, 1948, where it was stated :

"That the judgment-debtor is informed that the whole game of the decree-holder is to undervalue the property get the auction for a song and purchase the property himself. This underhand game may be stopped and justice be done."

7. The learned counsel for the judgment-debtors submitted that, on the uncontroverted assertions of the judgment-debtors, the conclusion is irresistible that the decree-holder had deliberately misled the court and had committed a fraud upon it. It was urged that the decree-holders' game had succeeded because they had themselves bought the two bungalows on Tej Bahadur Sapru Road for Rs. 56,000. According to the judgment-debtors, bungalow No. 8, in which they carried on the business of cabinet making, could be let for Rs. 250 per month and was itself worth that much.

8. The execution Court had relied upon the Amin's report for holding that the two bungalows could

be properly sold as a single unit because the servants' quarters for the two bungalows, which were situated in one compound, were the same. The judgment-debtors' application had been dismissed for absence of material irregularity or fraud and want of proof of substantial injury as a result of these auction sales. A Division Bench of the High Court had affirmed these findings, but had certified the case, under Article 133 of the Constitution of India as fit one for an appeal to this Court.

9. Two questions arise before us for decision. They are : firstly, whether there was either fraud upon the court or material irregularity in conducting the auction sales; and, secondly, whether substantial injury to the judgment-debtors had been proved to have resulted from the auction sales.

10. It may be mentioned here that no one has put in appearance on behalf of the decree-holders respondents, Mr. J. N. Chatterjee, appearing on behalf of the judgment-debtors-appellants, stated that he did not want to press objections to sales of Colonelgunj and Katra properties. Indeed, their auction purchasers were not impleaded. Therefore, we will refrain from deciding any question relating to Colonelgunj and Katra properties.

11. We will now consider the question of material irregularity in ordering and conducting the auction sale of the two bungalows on Sir Tej Bahadur Sapru Road (formerly known as Club Road). The provision which was said to have been infringed is Order 21, Rule 66(2).

12. The whole of Rule 66 reads as follows :

"R. 66. (1) Where any property is ordered to be sold by public auction in execution of a decree, the court shall cause a proclamation of the intended sale to be made in the language of such court.

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible -

(a) the property to be sold;

(b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate of in part of an estate paying revenue to the Government;

(c) any encumbrance to which the property is liable;

(d) the amount for the recovery of which the sale is ordered; and

(e) every other thing which the court considers material for a purchaser to know in order to judge of the nature and value of the property.

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation,

the court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto."

13. It was submitted that the court should not have put its own valuation on the property, as such a procedure was certain to prejudice the minds of prospective purchasers with regard to the value of the property to be auctioned. We find that there is some conflict of opinion in the High Courts on this question. The Madras High Court, in *S. K. Veeraswami Pillai v. Kalyanasundaram Mudaliar and Others* (AIR 1927 Mad 1009 (1) : 106 IC 201.); *R. Srinivasan and Others v. The Andhra Bank Ltd.* (AIR 1949 Mad 328 : (1948) 2 Mad LJ 569.); *V. A. S. Yellappa Naidu v. G. Venugopal Naidu* (AIR 1958 Mad 423 : 70 Mad LW 815.), and the Allahabad High Court, *Md. Said Khan v. Md. Abdus Semi Khan and Another* (AIR 1932 All 664 : 138 IC 612.); *Dwarka Dass v. Bhawani Prasad and Others* (AIR 1960 All 510.), have held that it is unnecessary for the court to give its own estimate. The Calcutta High Court in *Rajah Ramessur Proshadnarain Singh v. Rai Sham Krissen and Others* (VIII CWN 257.); *Saurendra Mohan Tagore v. Hurruck Chand and Others* (XII CWN 542.); *Bejoy Singh Dadhulia v. Ashutosh-Gossami and Others* (AIR 1924 Cal 589 : 83 IC 430 : 28 CWN 552.); *Lachira v. Rameshwar Singh and Others* (AIR 1930 Cal 781 : 127 IC 257.); *Pashupati Nath Maliah and Another v. Bank of Behar* (AIR 1932 Cal 141 : 136 IC 468 : 35 CWN 907.); *New Birbhum Coal Co. Ltd. v. Surendra Nath Laik and Others* (AIR 1934 Cal 205 : 150 IC 504 : 37 CWN 1054.), the Patna High Court, in *Raghunath Singh v. Hazari Sahu and Others* (AIR 1917 Pat 381 : 37 IC 872 : 2 PLJ 130.); and *Mt. Golab Kuer and Another v. Mst. Bibi Saira and Others* (AIR 1919 Pat 372 : 37 IC 872 : 2 PLJ 130.), and the Rangoon High Court, in *A.M.K.M. Firm v. Baishmaw* (AIR 1937 Rang 137 : 171 IC 622.), have expressed opinions favouring giving of the court's own estimate of the value of the property to be sold. But, a mere acceptance of the valuation given by the decree-holder has been held to be material irregularity in *A.M.K.M. Firm v. Baishmaw* (supra). The High Court of Bombay, in *Charandass Vasanji and Another v. Dossabhoy Maganlal and Others* (AIR 1939 Bom 182 : 182 IC 409 : ILR 1939 Bom 389 : 41 Bom LR 328.), and *Premaraj Pannalal Shop v. Sadabai and Others* (AIR 1956 Bom 248.), has held that, although, it is not necessary for the execution Court to value the property to be sold yet, it may do so if it thinks fit. In *Sitabai Rambhau Marathe v. Gangadhar Dhanram Marwadi and Another* (AIR 1935 Bom 331 : 159 IC 358 : 37 BLR 489.), however, the Bombay High Court held that the court is bound to hold an enquiry as to the value to the property and to state it in the sale proclamation. Although the Madras High Court had held that it is not necessary for the court to give its own valuation it expressed the opinion that it is desirable, where there is a wide divergence between the valuation of the decree-holder and of the judgment-debtor, to have property valued through an Amin and to state it in the proclamation. The Calcutta view, in some of the cases mentioned above, was that, although the court need not give its own valuation of the property in the sale proclamation, it would be justified in stating the valuation given by the parties.

14. It may be noticed here that there have been amendments of Order 21, Rule 66 by different High Courts from 1929 onwards dealing with the question of valuation. The Calcutta and the Punjab High Courts have made it clear that "It shall not be necessary for the court itself to give its own estimate of the value of the property but the proclamation shall include the estimate, if any, given by either or both the parties". In Andhra Pradesh, Order 21, Rule 66(2)(e) has been amended to make it obligatory to give the value of the property as stated : (i) by the decree-holder; (ii) by the judgment-debtor. The Madras and Kerala High Courts have also adopted the rule as amended by the Andhra Pradesh High Court. The Madhya Pradesh High Court amendment only mentions that the particulars to be provided may include the decree-holder's estimate of the approximate market price. The Patna High Court amendment provides -

"that no estimate of the value of the property, other than those, if any, made by the decree-holder and judgment-debtor respectively together with a statement that the court does not vouch for the accuracy of either, shall be inserted in the sale proclamation."

15. A review of the authorities as well as the amendments to Rule 66(2)(e) make it abundantly clear that the court, when stating the estimated value of the property to be sold, must not accept merely the ipse dixit of one side. It is certainly not necessary for it to state its own estimate. If this were required, it may, to be fair, necessitate insertion of something like a summary of a judicially considered order, giving its grounds, in the sale proclamation, which may confuse bidders. It may also be quite misleading if the court's estimate is erroneous. Moreover, Rule 66(2)(e) requires the court to state only the facts it considers material for a purchaser to judge the value and nature of the property for himself. Hence, the purchaser should be left to judge the value for himself. But, essential facts which have a bearing on the very material question of value of the property and which would assist the purchaser in forming his own opinion must be stated. That is, after all, the whole object of Order 21, Rule 66(2)(e), Civil Procedure Code. The court has only to decide what all these material particulars are in each case. We think that this is an obligation imposed by Rule 66(2)(e). In discharging it, the court should normally at least state the valuation given by both the decree-holder as well as the judgment-debtor where they have both valued the property, and these do not appear fantastic. It may usefully state other material facts, such as the area of land, nature of rights in it, municipal assessment, actual rents realised, which could reasonably be expected to effect valuation. What could be reasonably and usefully stated succinctly in a sale proclamation has to be determined on the facts of each particular case. Inflexible rules are not desirable on such a question.

16. In the case before us, the execution Court had practically accepted as its own valuation, without indicating reasonable grounds for this preference, whatever the decree-holders had asserted about the value of the property. It did not bother to seriously even consider the objections of the judgment-debtors. We think that the duty to consider what particulars should be inserted in the sale proclamation and how the sale ought to be conducted should be performed judicially and reasonably. If the execution Court does not, as it did not in the case before us, apply its mind or give any consideration whatsoever to the objections of the judgment-debtor, we think a material irregularity would be committed by the execution Court. It is not necessary for the execution Court to order the insertion of a judicially passed order in the sale proclamation itself, but, it should pass an order showing that it applied its mind to the need for determining all the essential particulars, which would reasonably be looked for by a purchaser, and which should be inserted in the sale proclamation. The order should show that it considered the objections, if any, of the decree-holders or the judgment-debtors, as the case may be. It should not merely accept unhesitatingly the ipse dixit of one side. We think that the execution Court had not performed its duty fairly and reasonably in this case. After embarking on the difficult task of valuation, it rejected the judgment-debtors figures by merely observing that they are exaggerated and practically accepted without hesitation whatever the decree-holders submitted, but this valuation was proved to be incorrect judged by the result of auction sales taken as a whole.

17. Mr. J. N. Chatterji relied upon the following passage in *Merudanayagam Pillai v. Manickavasakam Chettiar* (AIR 1945 PC 67 at 70 : 72 IA 104 : ILR 1045 Mad 601 : (1945) 1 Mad LJ 229.) :

"If the respondent knew the true facts, if he purchased at what he knew was too low a figure based on an upset price accepted by the court owing to his own initial

misrepresentation and subsequent suppression of material facts, his conduct would amount to fraud on the court, as the learned subordinate judge points out."

18. It is not necessary for us to decide whether the decree-holders' conduct in the case before us would amount to actual fraud practised on the court with regard to the valuation. The judgment-debtors were there with their own valuation and had even applied for the appointment of a Commissioner at their expense to report about matters affecting the value of the property. They had asserted that the two bungalows at Tej Bahadur Sapru Road would fetch a much higher value if sold separately. The execution Court should have at least performed the duty of considering whether these objections were well founded.

19. We find from a perusal of the sale proclamation in this case that even the area of the compound in which the two bungalows were situated was not there. The land in the compound is evidently nuzool leasehold land but the unexpired period of the lease or rent payable on it are not mentioned. It was not stated whether the bungalows, which were valued separately, would be sold as one or two items of property. Probably, it was left to the Amin to exercise his own discretion in this matter, as he had exercised it in the case of Colonelgunj property. The cumulative effect of all the features of the case mentioned above is that we think that there was material irregularity here in the conduct of the execution sale of the two bungalows.

20. We now turn to the question of substantial injury. The result of the separate sales of the houses in Colonelgunj was that, when the sale price were added up, they fetched a considerably higher price than that put upon these properties, lumped together in one lot, by the decree-holders. The High Court had also found that sales of the two bungalows on the Tej Bahadur Sapru Road separately would probably similarly have fetched a higher price. The affidavit, dated July 19, 1947, filed by the judgment-debtors, as stated above, had not been controverted by any material put forward by the decree-holders.

21. We, therefore, think that there is enough evidence to indicate that the judgment-debtors has suffered substantial injury so far as the sale of the two bungalows numbers 8 and 10 on Tej Bahadur Sapru Road, Allahabad, are concerned.

22. The result is that we allow this appeal to the extent that we set aside the judgments and orders of the High Court and of the execution Court with regard to the sale of bungalows Nos. 8 and 10, together with their compound, and dismiss it as regards the other properties. We also set aside the execution sale of May 7, 1955 of these two bungalows with all the land in their compound. We order that these two bungalows will be sold afresh after judicially considering and deciding the question whether they can be sold separately and what particulars should be inserted in the sale proclamation. The parties will bear their own costs.

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