

Putti Kondala Rao and Others

Vs

Vellamanchili Sitarattamma and Another

Civil Appeal No. 643 of 1975

(CJI A. N. Ray, M. H. Beg, R. S. Sarkaria, P. N. Shinghal JJ)

12.12.1975

JUDGMENT

RAY, C. J. -

1. This appeal is by special leave from the judgment dated March 24, 1973 of the High Court of Andhra Pradesh.
2. The High Court held that the application of the appellants, the judgment debtors is defective and not maintainable and the court has no power to set aside the sale unless facts are alleged by the applicant and proved by him to the satisfaction of the court that the applicant has sustained substantial injury by reason of such irregularity.
3. The respondents are the decree-holders. Pursuant to the decree there was an order for attachment and sale of the house property of the appellants. The sale took place on June 7, 1960.
4. The appellants filed an application on July 7, 1960 under Order XXI, Rule 90 of the Code of Civil procedure to set aside the sale. On November 18, 1966 the application was dismissed by the Munsif. On April 22, 1972 the Subordinate Judge allowed the appeal filed by the judgment debtors and set aside the sale. The high Court pursuant to the revision petition presented by the auction purchaser set aside the order of the Subordinate Court on the ground that the application of the appellants under Order XXI was defective and not maintainable.
5. The application was in seven paragraphs. The first two paragraphs contained the description of the petitioners and the respondents. In the third paragraph the judgment debtors alleged that the properties were purchased by the husband of the decree holder. In the fourth paragraph the judgment debtors alleged that the sale notices were deliberately suppressed from the knowledge of the judgment debtors. It is also alleged that the properties were undervalued and were sold in favour of the husband who was the nominee of the decree-holder. In paragraph 5 it was alleged that the correct assessments had not been shown. In paragraph 6 of the petition it is alleged that the sale is illegal for material irregularities and for suppression of all notices to the petitioners as the respondents Nos. 1 and 2 colluded together and practised fraud upon the petitioners. In paragraph 7 the judgment debtors prayed for setting aside the sale.
6. The Munsif by his order dated November 18 1966 noticed the contentions which arose for consideration. Those were as follows. First whether the judgment debtors had no knowledge of the attachment subsequent sale proceedings Second, whether the decree holder practised fraud upon the

judgment debtors. Third, whether the sale was illegal. Fourth, whether the judgment debtors sustained any substantial injury.

7. The sale was to be held on June 6, 1960. That was a public holiday on account of Bakrid. There was a gazette notification to that effect. Because the date of sale was a public holiday, the sale was held on the next day June 7, 1960. The Munsif held that when the sale is held on a date different from that notified without an order of adjournment and a further proclamation of sale it would amount only to an irregularity and the remedy be apply to set aside the sale on proof of substantial injury. The Munsif held that there was no circumstance to make the sale illegal or invalid.

8. The Munsif further held that the attachment was effective from December 17, 1959. One of the judgment debtors who was the eldest brother was present at the time of attachment. The Youngest brother alleged that he was not pulling on well with the family members because he married a girl of another caste. The Munsif felt that to be an afterthought because there was no evidence of any discord between the brothers. The Munsif held that the judgment debtors were living together in the house attached and that they had knowledge of the attachment.

9. With regard to the sale notice the Munsif held that the judgment debtors had knowledge of the attachment and sale and also held that no fraud was practised.

10. With regard to the question of substantial injury the Munsif held that the allegation in the petition that the property was worth more than Rs. 25,000 and that the decree holder got the same undervalued was to be rejected. The Munsif came to the conclusion that the adjacent property and the evidence and material circumstances would show that the house could not be valued at more than Rs. 25,000. The original sale deed Ex. B-11 of the adjoining house showed that it was sold for Rs. 12,000. That was a daba house with a tiled one at the back. The property which was sold was slightly larger in area than that one. But the Munsif held that the situation of the house of the neighbourhood properties all indicated that there was no undervaluation.

11. The property was subject to four mortgages. The three mortgages were for the sums of Rs. 1,000, Rs. 3,500 and Rs. 1,800 and the fourth mortgage was for Rs. 400 aggregating Rs. 6,700. The sale was held subject to those four mortgages. Interest was at 12 per cent. Interest on the principal amount be more than Rs. 1,000 on the date of the sale. The amount of Rs. 6,125 which was the auction price was subject to the mortgages. Further there was a maintenance charge in favour of one Kanakshamma for sum of Rs. 60 per year. In this background the Munsif held that the sale was valid.

12. Before the Subordinate Judge two points for consideration in the appeal were whether there was material irregularity or fraud in the publication and conduct of the sale and whether they sustained substantial loss or injury.

13. The Subordinate Judge held that the sale on June 7, 1960 without an order of adjournment was an irregularity. The price shown in the sale proclamation was Rs. 6,000. The decree holder valued the property at Rs. 16,000. The Amin valued the property at Rs. 20,000 free from all incumbrances. The Subordinate Judge held that the property was subject to the charge and the sale was subject to mortgages. The Subordinate Judge came to the conclusion that the auction purchaser was the husband of the decree-holder and there was gross undervaluation of the property and set aside the sale.

14. The decision of this Court in *Laxmidevi v. Sethani Mukand Kanwar* ((1965) 1 SCR 726 : AIR 1965 SC 834) held that it depends upon several relevant facts whether the judgment debtor has suffered a substantial injury at a judicial sale.

15. The features brought out on the materials in this case are that there was proper service and the sale was held on June 7, 1960 because the previous day was a public holiday. The judgment debtors did not give their valuation. The property sole was subject to mortgages and charge. The decree holders have been kept out of the fruit of the fruit of the decree for about 17 years. The attempt on the part of the judgment debtors to set aside the sale was an afterthought as was found by the Munsif. The Subordinate Judge was impressed with the suggestion that the property was undervalued. The Subordinate Judge was wrong there. The Munsif was correct in his conclusion and reasons that the property sold was subject to mortgages and charges and was sold at the correct price taking into consideration the price in the neighbourhood and other evidence on record.

16. The High Court found that there was no allegation of substantial injury in the petition. It appears from the record that the trial Court and the first appellate Court addressed themselves at length on the question of substantial injury. Parties were heard. They made their submissions. The conclusions of the trial Court and the appellate Court are there.

17. Counsel for the appellant submitted that if we set aside the judgment of the High Court, the matter would have to be remanded for hearing on other points. It will serve no useful purpose to send the matter to the High Court on other questions. There has been substantial justice done to the parties. The judgment of the trial Court was wrongly reversed by the first appellate Court.

18. The High Court was not unjustified on the materials to hold that the application for setting aside the sale was bald and there was no proper allegation of substantial injury to the judgment debtors. Sometimes however, there may not be express allegations of substantial injury and the same may appear to be implicit from all facts and circumstances alleged. In the present case, the trial Court as well as the first appellate Court heard the parties and decided the case on the footing that there were allegations of substantial injury to the judgment debtors.

19. For these reasons we proceed on the basis that the allegations in the petition could be read to imply substantial injury to the judgment debtors. It is not necessary to remand the matter to the High Court because we are of opinion that the judgment of the trial Court is correct and should be restored. We, therefor, dismiss the appeal. The appellants will pay costs to the respondents.

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