

Takkaseela Pedda Subba Reddi

Vs

Pujari Padmavathamma and Others

Civil Appeal No. 2381 of 1968

(P. N. Bhagwati, Syed M. Fazal Ali JJ)

28.04.1977

JUDGMENT

FAZAL ALI, J. –

1. This appeal by certificate arises out of execution proceedings in respect of a decree obtained by the respondents/decree-holders. It appears that fifth respondent/decree-holder Siddam Pedda Rami Reddi - hereinafter referred to as "SPR Reddi" - obtained a decree in O. S. 15 of 1949 from the Court for selling the properties belonging to the judgment-debtor in order to satisfy the decree in O. S. 15 of 1949 and he also applied of permission to bid at the auction sale. The first sale was held on October 12, 1954 at which the lands situated in villages Devanoor and Gudipadu were put to sale. But this sale was set aside as there was some delay in payment of the sale price. Consequently a second sale was held on March 2, 1955 at which the fifth respondent SPR Reddi purchased the lands situated in village Devanoor and the appellant/auction-purchaser T. P. S. Reddy purchased the lands in village Gudipadu. It is also not disputed that in the warrant of sale as also the sale proclamation, the decretal amount for which the properties were to be sold proclamation, the decretal amount for which the sale was knocked down. Thus it would appear that the sale proceeds of the lands in village Devanoor were sufficient to satisfy the decretal amount mentioned in the proclamation of sale. Despite this fact, the Court proceeded to sell the properties of the Judgment-debtor in village Gudipadu which fetched Rs. 12,500 and which were purchased by the appellant/auction-purchaser.

2. On April 20, 1955 the decree-holder obtained an order from the Court for reteable distribution of the sale proceeds. In other words, this order was passed by the Court not before the sale so that the entire decretal amount could have been mentioned in the sale proclamation but a few days after the seal had already taken place. This is rather an important aspect of the matter which appears to have been completely overlooked by the trial Court. On March 31, 1955 the judgment-debtor Pujari filed an application to set aside the sale on various grounds, namely, that the sale was vitiated by material irregularities which cause serious prejudice to the judgment-debtor an that the properties sold by the Court were valuable properties an the same were grossly undervalued in the sale proclamation. Finally it was contended by the judgment-debtor that once the sale of the properties in village Devanoor was sufficient to satisfy the amount mentioned in the sale proclamation, the Court should have stopped the sale as required by the mandatory provisions of Order 21 Rule 64 of the Code of Civil Procedure - ereinafter referred to as 'the Code' - instead of continuing the sale of the properties in village Gudipadu. The trial Court, however, after hearing the objections of the decree-holder rejected the application of the judgment-debtor. Thereafter the judgment-debtor preferred an appeal before the High Court which, while negating the grounds taken by the judgment-debtor regarding the material irregularities in the conduct of sale or the under-valuation of the properties, accepted the plea of the judgment-debtor regarding the non-compliance with the provisions of Order 21 Rule

64 of the Code. The High Court held, and in our opinion rightly, that as the sale of the properties in village Devanoor fetched an amount which was sufficient to satisfy the amount mentioned in the sale warrant, the Executing Court was not justified in proceeding with the sale of the properties in village Gudipadu and should have stopped the sale. The High Court accordingly accepted the plea of the judgment-debtor and set aside the sale with respect to the properties situated in village Gudipadu, but granted a certificate to the appellant to file an appeal in this Court and hence this appeal before us.

3. In this appeal the facts are more or less undisputed and the only serious point argued by the appellant is that the High Court was in error in setting aside the sale because even if the entire decretal amount was not mentioned in the sale proclamation, that was at best an irregularity which did not cause any prejudice to the judgment-debtor. It was also argued by learned Counsel for the appellant that the judgment-debtor did not raise any objection before the Executing Court against continuing the sale of other properties situated in village Gudipadu. It was next submitted that the fifth respondent/decreed-holder had obtained another decree in O. S. 19 of 1953 and the total amount under the two decrees fully justified the selling of the properties in village Gudipadu also, particularly when the decreed-holder had taken an order from the Executing Court for re-saleable distribution of the sale proceeds. It is true that the High Court has not considered this aspect of the matter, but in our opinion the contentions raised by the appellant are wholly untenable. It is not disputed that the warrant of sale was prepared long after the fifth respondent/decreed-holder had obtained the second decree in O. S. 19 of 1953 and yet no attempt was made by the decreed-holder to approach the Court for amending the decretal amount mentioned in the sale proclamation, so as to include the decretal amount not only of the decree in the first suit O. S. 15 of 1949 but also of the decree in the second suit in O. S. 19 of 1953. In these circumstances, therefore, under the provisions of Order 21 Rule 64 of the Code when the amount as specified in the sale proclamation was fully satisfied by the sale of the properties in village Devanoor, the Court should have stopped the sale of further items of the properties. It is manifest that where the amount specified in the proclamation of sale for the recovery of which the sale was ordered is realised by sale of certain items, the sale of further items should be stopped. This in our opinion is the logical corollary which flows from Order 21 Rule 64 of the Code which may be extracted thus :

Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

Under this provision the Execution Court derives jurisdiction to sell properties attached only to the point at which the decree is fully satisfied. The words "necessary to satisfy the decree" clearly indicate that no sale can be allowed beyond the decretal amount mentioned in the sale proclamation. In other words, where the sale proclamation is sufficient to satisfy the decree, no further sale should be held and the Court should stop at that stage. In the instant case, we have already indicated that the sale of lands in village Devanoor alone fetched a sum of Rs. 16,800 which was more than sufficient to satisfy the amount of Rs. 16,715-8-0 mentioned in the sale proclamation. It is true that the decreed-holder had obtained another decree in O. S. 19 of 1953, but there is nothing to show that the decreed-holder had approached the Court for including the second decretal amount in the proclamation of sale. In these circumstances, therefore, we are clearly of the opinion that the Executing Court was not justified, in the facts and circumstances of the present case, in selling the properties situated in village Gudipadu. The fact that the judgment-debtor did not raise an objection on this ground before the Executing Court is not sufficient to put him out of Court because this was

a matter which went to the very root of the jurisdiction of the Executing Court to sell the properties and the non-compliance with the provisions of Order 21 Rule 64 of the Code was sufficient to vitiate the same so far as the properties situated in village Gudipadu were concerned. For these reasons, the contention raised by Counsel for the appellant must be overruled.

4. This, however, does not put an end to the issue, because the High Court, while setting aside the sale, has passed no order for adjusting the equities between the parties. According to the appellant he had taken possession of the properties purchased by him at the auction sale and had made substantial improvements. If the sale of these properties to the judgment-debtor, but he will be entitled to receive the value of improvements made by him during the time he was in possession of those properties in addition to the return of the sum of Rs. 12,500. The Executing Court will have to hold an inquiry into the matter and determine the value of the improvements made by the appellant which will have to be paid to him. The appellant will not be entitled to any interest on the value of the improvements if he is found to be in possession of the properties. If, however, the Executing Court finds that the auction-purchaser was not in possession of the properties and the properties continued to be in possession of the judgment-debtor, then the question of the value of improvements will naturally not arise. In that event the judgment-debtor will have to refund the amount of Rs. 12,500 to the appellant with interest at the rate of 12% per annum from the date of sale upto the date of refund.

5. For these reasons, therefore, the appeal is dismissed with the modification indicated above the case is sent back to the Executing Court to hold an inquiry into the matter. In the special and peculiar circumstances of the present case, we make no order as to costs.

</html