

Valivety Ramakrishnaiah

Vs

Totakura Rangarao

Civil Appeal No. 2051 of 1980

(A. P. Sen, B. C. Ray JJ)

29.08.1986

JUDGMENT

RAY, J. -

1. We have heard the arguments advanced on behalf of the appellant and after considering the facts and circumstances of the case we have dismissed the appeal by our order dated August 20, 1986. The reasons for the dismissal of the appeal are stated hereinbelow. This appeal on special leave arises out of the judgment and order dated October 25, 1976 in Letters Patent Appeal No. 3 of 1976. The judgment debtor made an application for setting aside the sale held on April 17, 1972 under Order 21 Rule 90 of the Code of Civil Procedure alleging, inter alia, that there was no proper sale proclamation drawn up as it was stated therein that the sale of the attached property will be subject to decree in O.S. No. 282/68, that the valuation put on the sale proclamation was low, that is, Rs. 15,000 for each lot and the judgment debtor's valuation of the property of Rs. 1,40,000 was not put in and for this material irregularity the property was sold at a low price of Rs. 24,000. It was further alleged that the decretal amount for which the attached property was put sale was about Rs. 7,660 and costs Rs. 846.75 paise and one-fourth portion of the property would have been sufficient for fetching that amount instead of putting half portion of the property to sale. The trial court by its judgment and order dated August 26, 1974 dismissed the application which was registered as E.A. No. 849/79 are held that there was no material irregularity in the matter of drawing of the sale proclamation and also in publishing the same. It was further held that in the sale proclamation both valuations put by the decree holder as well as by the judgment debtor were mentioned and the valuation made by the Amin of the court was also put in there as required under the provisions of Order 21 Rule 66 of the Civil Procedure Code. The objection filed by the judgment debtor that the property should be made into four sub-divisions and they will be put to auction separately and the statement in the proclamation that it is subject to the decree in O.S. No. 282/68 should be deleted were party allowed by directing deletion of the property subject to charge but rejected the other objection regarding dividing the property in four lots and putting each lot to auction one after another. Thereafter another sale proclamation was drawn up by the decree holder and it was filed pursuant to the order dated February 14, 1972. The attached property was shown in the sale proclamation in two parts each part being valued at Rs. 15,000 as per order dated February 14, 1972 on the objection petition filed by the judgment debtor being No. 214/72. It was further held that the judgment debtor was a pleader's clerk and on some plea or other he tried to drag on the proceedings. He made applications for time for putting in the decretal amount twice but he did not put in the decretal amount though time was granted and sale was adjourned. Moreover against the order passed on his Objection Petition No. E.A. 215/72 he did not file any appeal. It was further held that there was no irregularity in publishing and conducting the sale and in the sale proclamation Ex. C-1 the decree holder did not show the sale subject to charge of any decree in O.S. No. 282/68. This fact

is also evident from Ex. A-7 the publication of the sale in paper 'Jagrithi'. The sale proclamation was, correctly made. It was further held that the judgment debtor at the time of the sale drew the attention of the court to Ex. C-2 wherein it was noted that the decree is subject to a charge in O.S. No. 282/68. This was held to be due to some subsequent interpolation made in Ex. C-2. Moreover as soon as it was detected the court explained to the bidders present on the date of sale that there was no charge on the property and the property put to sale was free from charge. The bidders were not misled and the sale fetched the proper price for half portion of the property at Rs. 24,000. It has also been held that none of the witnesses examined on behalf of judgment debtor stated that they were misguided by the proclamation of sale. It was further held that the judgment debtor failed to establish that he suffered any substantial injury as a consequence of the alleged irregularity. The application was, therefore, rejected.

2. An appeal was preferred against this order before the High Court of Judicature as Andhra Pradesh and it was registered as Appeal No. 434/74. Same objections were also raised and contended before the High Court. On December 18, 1975 the High Court held that the attached property was sold in two items as per order of the court and negatived the objection of the judgment debtor, appellant. It was also held that the judgment debtor's prayer for making the property into four plots was rejected by order dated February 7, 1972 and it was held "that it cannot be done at this stage, as boundaries were given for the two portions jointly". It has been further held that it is a matter of discretion for the court to exercise under Order 21 Rule 64 whether the property will be put to auction in two lots or four lots. The property was put to auction in two lots and as soon as one lot fetched Rs. 24,000 the court directed stoppage of sale of the second item. Therefore there was no material irregularity either in publishing or conducting the sale on this ground. It was further held that at every stage of the proceedings the judgment debtor was present and at no stage he objected to the fact that the valuation mentioned by him was not given in the sale proclamation. It has been further held that in Ex. A-7, that is, the publication of the sale proclamation in paper 'Jagrithi' the valuation of items Nos. 1 and 2 was given as Rs. 15,000 for for each lot. Amin's valuation was also put therein as well as of the valuation of judgment debtor. There was no material irregularity and even if it is assumed that there was irregularity, no substantial injury has been caused to the judgment debtor. On a scrutiny of Exs. C-2 and C-3 it was found that the printed portion on the other side of the page, wherein it was written with a ball point pen with a different ink that the decree holder's value is Rs. 3000 subject to the O.S. No. 282/68 though in the scheduled portion of Ex. C-2 in column 5 it was specifically mentioned that there were no encumbrances was an interpolation. It was also held that as the court sale fetched a reasonable price the judgment debtor has not suffered any substantial injury. The appeal was, therefore, dismissed with costs. In the Letters Patent Appeal also the court after considering the facts and circumstances of the case and hearing the parties dismissed the appeal and affirmed the judgment.

3. On hearing the learned counsel for the appellant and on going through the papers we are constrained to hold that there has been no irregularity far less any material irregularity in publishing and conducting the sale and bidders were not misled by it. The sale proclamation was drawn up by the decree holder in accordance with the provisions of Order 21 Rule 66 of Civil Procedure Code showing therein the property in two portions and each portion was valued at Rs. 15,000. It was not mentioned therein that the property was subject to charge of decree in O.S. No. 282/68. This is evident from the sale proclamation Ex. C-1 and also the sale proclamation that was published in paper 'Jagrithi' Ex. A-7. This proclamation was quite in accordance with the order passed by the court on February 14, 1972. It appears that in Ex. C-2, that is, the service copy of istihar it is noted that it is subject to the charge of the decree in O.S. No. 282/68 and this noting has been made with a ball point pen with a different ink. It has been rightly found by the lower appellate court that this is

an interpolation made in the said service copy of the sale proclamation.

4. Moreover, it has been found specifically that on the date of sale this irregularity was pointed out by the judgment debtor and the court at once directed to delete the same and intimated the bidders present to offer their bids treating the property as free from any charge. It appears that several bidders participated in the bid and one portion of the property was knocked down finally for Rs. 24,000. It is pertinent to mention in this connection that the judgment debtor purchased this property at a price of Rs. 27,500 on November 30, 1965, as evident from the sale deed Ex. B-1. Now half of the property was sold in auction and it fetched a price of Rs. 24,000. It also appears that at the auction sale several bidders participated. In such circumstances we cannot but hold that there has been no material irregularity in publishing and conducting the sale and the price fetched at the auction sale is not at all low but it is a proper price.

5. So far as regards the objection that the sale proclamation was not properly drawn up inasmuch as in the sale proclamation the property was put to sale in two lots in spite of the judgment debtor's objection that it should be put to sale in four lots one after another the conclusive findings of the courts below were that in accordance with the order partly allowing the objection of the judgment debtor in E.A. 214/72 the sale proclamation was rightly drawn up as the prayer for making the property in four lots were rejected and no appeal was preferred by the judgment debtor against this order. The relevant order dated February 7, 1972 is in the following terms :

Regarding the prayer for making the property into four plots cannot be done at this stage as boundaries were given for two portions jointly. Therefore the application is allowed partly.

We have also considered in this connection the other objection that the property attached should have been put to sale in lots in accordance with provision of Order 21 Rule 64 of the Civil Procedure Code. It has been rightly held by the court below that there was no irregularity in drawing up the sale proclamation describing the attached property for sale in two lots as it is in accordance with the order of the court referred to hereinbefore. It is evident that the judgment debtor who is a pleader's clerk was aware of every step taken in the matter of drawing of the proclamation and also putting the property to sale. In fact he was also present on the date of auction sale as has been conclusively held by the court below and he made an objection regarding the drawing up of the sale proclamation by describing the property as subject to charge of a court decree. This mistake was corrected by deleting it by the order of the court on that very date and the bidders were also told that the property was free from any charge. We have also held hereinbefore that the writing on the back of the istihar Ex. C-2 that is subject to charge is an interpolation as this is not to be found in the original sale proclamation Ex. C-1 as well as in the sale proclamation that was published in the paper Ex. A-7. The decision in *Marudanayagam Pillai v. Manickavasakam Chettiar* [AIR 1945 PC 67 : 72 IA 104] does not apply as in that case in the sale proclamation a very low valuation of property was put in and it was further mentioned there that it was subject to a prior charge. As a result the auction sale fetched a very low price. In those circumstances the sale was set aside as the judgment debtor deliberately undervalued the property in sale proclamation which resulted in the property being sold at a grossly low price. It was found that this gross undervaluation amounted to fraud, and the sale was set aside. In the instant case there was no material irregularity or illegality in publishing and conducting sale and the property was sold at a proper price. The decision in *Naganna v. Venkatrayulu* [AIR 1945 PC 178 : 72 IA 287] also does not apply to this as we have held that there was no irregularity nor any fraud in publishing or conducting the sale and the judgment debtor has not suffered substantial injury.

6. In the premises aforesaid we dismiss the appeal and confirm the judgments and orders of the courts below.

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