

Ambati Narasayya

Vs

M. Subba Rao and Another

Civil Appeal No. 4195 of 1989

(A. M. Ahmadi, K. Jagannatha Shetty JJ)

06.10.1989

JUDGMENT

JAGANNATHA SHETTY, J. –

1. We grant special leave and proceed to dispose of the appeal.

2. In O. S. No. 821 of 1973, there was ex parte decree against the appellant for payment of Rs. 2000 and costs. In execution of the decree, the appellant's land S. No. 116 at Bayanguda village measuring 10 acres was brought to court sale. His small farm house was also located in the land. In the auction held the respondent purchased the land for Rs. 17,000. The sale was subject to the prior mortgage for Rs. 2000 in favour of the Land-mortgage Bank Jangareddigudem. On May 31, 1976, the sale was confirmed. On July 26, 1976, the appellant filed application under Order XXI Rule 90 for setting aside the sale. He impeached the auction sale broadly on three grounds namely :

(i) That he was the owner of only one acre of land and the remaining 9 acres in the said survey number belonged to his father - Siddaiah, (ii) That the land was worth about Rs. 70,000 but it was sold for a very low price of Rs. 17,000 by fraudulent procedure followed by the authorities, and

(ii) That he was not served with notice before attachment or sale.

3. In support of the above allegations, the appellant entered the witness box as PW 2. He has also examined four other witnesses besides producing documentary evidence marked as Exs. A-1 to A-13. The auction purchaser in turn has examined three witnesses.

4. On appraisal of the evidence, the executing court - the Principal District Munsif, Kovvur, rejected the application of the appellant. He held that the sale was not vitiated by fraud or irregularity. The appeal against that order was dismissed by learned Subordinate Judge at Kovvur. Before the appellate court, one other contention was argued on behalf of the appellant. It was contended that the executing court ought to have sold only such portion of the land as it would satisfy the decretal dues and the sale of the entire 10 acres was illegal and without authority. The appellate court rejected that contention for the reason that it is a single piece of land and could not have been divided into parcels. The High Court of Andhra Pradesh also dismissed the appellant's revision, but expressed no opinion as to whether a portion of the land could have been sold to satisfy the decree.

5. Hence this appeal.

6. The principal question that has been highlighted before us relates to the legality of the sale of 10 acres of land without considering whether a portion of the land could have been sold to satisfy the decree. It is said that the total sum claimed in the execution was Rs. 2395.50. The relevant provision which has a bearing on the question is Rule 64 Order XXI of the Code of Civil Procedure and it reads as follows :

"Order XXI Rule 64 : Power to order property attached to be sold and proceeds to be paid to persons entitled. - 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 partly entitled under the decree to receive the same."

7. It is of importance to note from this provision that in all execution proceedings, the court has to first decide whether it is necessary to bring the entire attached property to sale or such portion thereof as may seem necessary to satisfy the decree. If the property is large and the decree to be satisfied is small, the court must bring only such portion of the property, the proceeds of which would be sufficient to satisfy the claim of the decree holder. It is immaterial whether the property is one or several. Even if the property is one, if a separate portion could be sold without violating any provision of law only such portion of the property should be sold. This, in our opinion, is not just a discretion, but an obligation imposed on the court. Care must be taken to put only such portion of the property to sale the consideration of which is sufficient to meet the claim in the execution petition. The sale held without examining this aspect and not in conformity with this requirement would be illegal and without jurisdiction.

8. In *Takkaseela Pedda Subba Reddi v. Pujari Padmavathamma* ((1977) 3 SCC 337, 340) this Court after examining the scope of Rule 64 of Order XXI CPC has taken a similar view : (SCC p. 340, para 3)

"Under this provision the executing courts 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 fetches a price equal to or higher than the amount mentioned in the sale proclamation and is sufficient to satisfy the decree, no further sale should be held and the court should stop at that stage."

9. We may again hark back to the case of the appellant. The amount claimed in the execution petition was about Rs. 2400. To realize that amount the land measuring 10 acres was sold for Rs. 17,000. The appellate court has stated that the land being one, could not have been divided. Shri Ganesh, learned counsel for the respondent sought to justify that view. But we find it difficult to appreciate that reason. It seems to be against commonsense. The land is not indivisible nor the division is impracticable or undesirable. Out of 10 acres, the court could have conveniently demarcated a portion and sold it. Unfortunately, no such attempt was made and it was not even thought of. The court has blindfold sold the entire property. This is a usual feature which we have noticed in most of the execution cases. We must deprecate this tendency. There is a duty upon the court to sell only such property or a portion thereof as necessary to satisfy the decree. It is a mandate of the legislature which cannot be ignored. We cannot, therefore, sustain the impugned sale. It must be set aside being a contravention of the provision of Rule 64 Order XXI CPC.

10. In the result, we allow the appeal with costs. In reversal of the orders of the courts below, we set aside the impugned sale. We direct the executing court first to put the appellant in possession of the land in question and then refund the sale amount to the auction purchaser if it is in deposit. The court, thereafter may proceed to execute the decree according to law and in the light of the observations made. This order shall be complied with within two months from the date of receipt of this order.

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