

Seethammal

Vs

Senthil Finance and another

Civil Appeals No. 5092 of 1996

(K. Ramaswamy, G. T. Nanavati JJ)

15.03.1996

JUDGMENT

1. Leave granted.

2. Heard learned counsel for both the parties.

3. In execution of money decree in O.S.No. 67/87, the property, i.e., 1053 sq feet of land with built-in house was sold for a sum of Rs. 15100/- subject to discharge of the mortgage sum of Rs. 40,000/- encumbered on the property, The appellant/judgment-debtor questioned the validity of the sale under Order 21, Rule 97, C.P.C. The executing court rejected the same which was confirmed in C.R.P. No. 1895/93, by the impugned order dated September 26, 1993 of the High Court of Madras. Thus this appeal.

4. Having heard the learned counsel on both sides. we are of the view that the sale is in excess of the execution. It is not in dispute that the property sold consists of a built-up house in portion measuring 1053 sq. ft. The property was originally valued for a sum of Rupees 75,000/- But subsequently, it was reduced to Rs. 50,000/-. At an auction, it was sold for a mere sum of Rs. 15,100/-. The upset price was Rs. 15,000/-. The respondent's bid was for Rs. 15,100/- and the sale was knocked down as stated earlier, subject to the discharge of the mortgage for sum of Rs. 40,000/- It is now stated by Mr. A.T.M. Sampath, the learned counsel for the second respondent that the respondent himself is a mortgagee of that property for a sum of Rs. 40,000/- It is, therefore, clear that nobody was coming forward to purchase the property and the respondent himself had purchased it for a sum of Rs. 15,100/-. Under these circumstances, we are of the view that the sale conducted by the executing Court was obviously illegal. It is stated that the appellant had already deposited the entire decretal amount and it was withdrawn by the decree-holder also. In addition, the appellant is directed to deposit interest @ 18% from the date of the sale, namely, January 20, 1992, till date on the amount of Rs. 15,000/- deposited by the respondent and the respondent shall be at liberty to withdraw the same. In addition, the appellant shall also pay a sum of Rs. 2000/- towards poundage fee. The amount shall be deposited within period of six months from today.

5. The appeal is accordingly allowed subject to the above terms. No costs.

Order accordingly.