

Balram son of Bhasa Ram

Vs

Ilam Singh and others

Civil Appeal No. 2901 of 1991

(J. S. Verma, B. N. Kirpal, JJ)

23.08.1996

### JUDGEMENT

J. S. VERMA J.

1. The appellant obtained a money decree against respondent No. 1 on 25-12-1982. On 2-1-1983 the appellant filed an application for execution of the decree by recovery of the amount of Rs. 17,892/-. The appellant applied for recovery of the decretal amount by sale of a large tract of agricultural land of the respondent No. 1, the value of which shown by the appellant was Rs. 73,000/- in 1976. The auction was held on 10-12-1984. The appellant bid at that auction with the permission of the Court. The appellant's bid was for the amount of Rs. 23,500/- On 12-12-1984 the bid of the appellant was accepted. The appellant did not make any deposit on the date of auction and claimed adjustment of the decretal amount against the sale price. Admittedly, there was a shortfall in the sale price, even after the decretal amount was set off and the deposit made by the appellant within the time allowed was taken into account. After expiry of the period prescribed for payment of the full sale price, on 19-4-1985 the appellant deposited Rs. 3,727.25 which fell short towards the sale price of Rs. 23,500/-. On 18-9-1985 the executing Court accepted this amount of Rs. 3,727.25, taking the view that the shortage in deposit was due to the mistake of the Court office in making the calculation and the Court has inherent power to correct its own mistake. The judgment-debtor filed objection to the validity of the sale which was rejected.

2. The judgment-debtor, respondent No. 1, preferred a revision against this order of the executing Court to the District Judge, which was dismissed. The Judgment-debtor, respondent No. 1, filed a petition under Article 227 of the Constitution of India in the High Court, which has been allowed. By interim order dated 19-12-1986 the High Court directed further proceedings for the confirmation of the sale to remain stayed subject to the condition that the judgment-debtor, respondent No. 1, deposit the entire decretal amount within 2 months. On 9-1-1987 the judgment-debtor deposited Rs. 19,773/-, which fell short by Rs. 2,007.85. This shortage also appears to have occurred due to the mistake in calculation of the Court's office. The judgment-debtor, on discovery of the mistake deposited the remaining amount of Rs. 2,007.85. However, the executing Court proceeded with the execution and confirmed the sale on 4-5-1987 and also gave possession of the land auctioned to the appellant. By order dated 19-4-1990 the High Court allowed the petition of the respondent No. 1 and held that the judgment-debtor has been wrongly dispossessed from the land in spite of the interim order dated 19-12-1986, that the full amount of sale price no being deposited by the appellant within the time fixed under XXI, Rule 85, Code of Civil Procedure, the deposit of the balance amount of Rs. 3,727.25 much later did not cure the defect, since the executing Court has no power to extend that time.

3. This appeal by special leave is by the decree-holder against the above order of the High Court. In view of the fact that the appellant is continuing in possession of the land auctioned in spite of the orders of the High Court, in this appeal stay was granted in favour of the appellant by the interim order dated 6-8-1991 subject to the following conditions :-

"a) The appellant must deposit a sum of Rs. 65,000/- as security in the Trial Court within a period of 6 months from today in 3 instalments. The first instalment of Rs. 20,000/- shall be deposited within a period of 2 months from today; the second instalment of Rs. 20,000/- within a period of 4 months from today; and the last instalment for Rs. 25,000/- within a period of 6 months from today'

b) the Appellant must further deposit a sum of Rs. 15,000/- per year in the trial Court for the period June, 1991 till the appeal is finally disposed of. The amount shall be deposited on or before the 31st of July each year, the first deposit being on or before 31-7-1992.

c) The amount deposited as directed above shall be invested by the trial Court in interest earning fixed deposits in a nationalised bank and shall be subject to the direction of this Court.

d) In case of default in depositing any of the aforesaid amounts as mentioned in Clause (a) and (b) above the order of stay shall automatically stand vacated."

4. Shri Satish Chandra, learned counsel for the appellant submitted that the consequences envisaged by Order XXI Rule 85 due to the not deposit of the full sale price do not ensue in the present case because the shortage in deposit by the appellant was occasioned by the mistake of the Court in specifying a lesser amount in the sale proclamation as the decretal amount then due. He submitted that in these circumstances Rule 90 and not Rule 85 of Order XXI applies and resort to the provision in Rule 90 not being made by the judgment-debtor, the validity of the sale remains unaffected. He submitted that the judgment-debtor had to make an application under Rule 90 within the prescribed of 15 days to set aside the sale which was not done and, therefore, the sale had to be confirmed. It was also argued that the actual date of sale in the present case must be taken to be the date on which the correct amount due under the decree and calculated by the Court for the purpose of set off against the sale price and not the date on which the sale was actually held. Learned counsel further submitted-debtor not having made deposit in accordance with Rule 89 (2) of Order XXI, the confirmation of sale cannot be questioned.

5. In reply Shri J. P Goel learned counsel for the respondent No. 1, judgment-debtor, submitted that the provision in Order XXI Rule 85 is mandatory, requiring strict compliance and the undoubted failure by the appellant to deposit the full amount of sale price within the time prescribed therein, rendered the sale void since there was no power in the executing Court to extend that period. Shri Goel also submitted that a large tract of land was auctioned for a very low price for recovery of a much lesser decretal amount and this has deprived the judgment-debtor, respondent No. 1, of his only source of livelihood.

6. The main point for decision is whether is non-compliance of order XXI Rule 85 to render the action sale, void. The above fact are undisputed. It is beyond controversy that the full amount of purchase money payable by the purchaser into the Court was not paid by him within 15 days from the date of the auction sale. This result even after giving the advantage of set off of the decretal

amount due to the purchaser decree-holder to which he may have been entitled under Rule 72. Only argument to avoid its consequence is that the shortfall in the deposit was occasioned by a mistake of the Court in the calculation of the amount, of which the appellant was entitled to claim set off under Rule 72. The question is whether this plea is tenable to avert the inevitable consequences of the failure to comply with the strict requirement of Rule 85.

7. In *Manilal Shah v. Sardar Sayed Ahmed Sayed Mahamad* (1955) 1 SCR 108 : (AIR 1954 SC 349), this Court examined the scheme of the provisions of the Rules 84, 85 and 86 of Order XXI Code of Civil Procedure and held as under :-

".... The principal question which falls to be considered is whether the failure to make the deposit under Order XXI, rules 84 and 85, is only a material irregularity in the sale which can only be set aside under rule 90 or whether, it is wholly void. It is argued that the case falls within the former category and the application under rule 90 being barred by limitation, the sale cannot be set aside. It is also contended that the Court having once allowed the set-off and condoned the failure to deposit, the mistake of the Court should not be allowed to prejudice the purchasers who would certainly have deposited the purchase price but for the mistake. We are of the opinion that both the contentions are devoid of substance. In order to resolve this controversy a reference to the relevant rules of Order XXI of the Civil Procedure Code will be necessary. These Rules are 72, 84, 85 and 86;

xxx    xxx    xxx

The scheme of the rules quoted above may be shortly stated. A decree-holder cannot purchase property at the Court-action in execution of his own decree without the express permission of the Court and that when he does so with such permission, he is entitled to a set-off, but if he does so without such permission, then the Court has a discretion to set aside the sale upon the application by the judgment-debtor, or any other person whose interests are affected by the sale (Rule 72). As a matter of pure construction this provision is obviously directory and not mandatory --- See *Rai Radha Krishna. v. Bisheshar Sahai*, 49 Ind App 312 : (AIR 1922 PC 356). The moment a person is declared to be the purchaser, he is bound to deposit 25 per cent of the purchase money unless he happens to be the decree-holder in which case the Court may not require him to do so (Rule 84).

The provision regarding the deposit of 25 per cent by the purchaser other than the decree-holder is mandatory as the language of the rule suggests. The full amount of the purchase-money must be paid within fifteen days from the date of the sale but the decree-holder is entitled to the advantage of a set off. The provision for payment is, however, mandatory ... (Rule 85). If the payment is not made within the period of fifteen days, the Court has the discretion to forfeit the deposit, and there the discretion ends but the obligation of the Court to resell the property is imperative. A further consequence of non-payment is that the defaulting purchaser forfeits all claim to the property .... (Rule 86).

xxx    xxx    xxx

"Having examined the language of the relevant rules and the judicial decisions

bearing upon the subject we are of opinion that the provisions of the rules requiring the deposit of 25 per cent of the purchase-money immediately on the person being declared as a purchaser and the payment of the balance within 15 days of the sale are mandatory and upon non-compliance with these provisions there is no sale at all. The rules do not contemplate that there can be any sale in favour of a purchaser without depositing 25 per cent of the purchase-money in the first instance and the balance within 15 days. When there is no sale within the contemplation of these rules, there can be no question, of material irregularity in the conduct of the sale. Non-payment of the price on the part of the defaulting purchaser renders the sale proceedings as a complete nullity. The very fact that the Court is bound to resell the property in the event of a default shows that the previous proceedings for sale are completely wiped out as if they do not exist in the eye of law. We hold, therefore, that in the circumstances of the present case there was no sale and the purchasers acquired no rights at all.

It was urged before us that the Court could allow a set-off in execution proceedings under its inherent powers apart from the provisions of Order XXI, rule 19, of the Civil Procedure Code. We do not think that the inherent powers of the Court could be invoked to circumvent the mandatory provisions of the Code and relieve the purchasers of their obligation to make the deposit....."

8. It is to be noted that the argument that it is only a material irregularity in the sale to attract Rule 90 instead of Rule 85 was expressly rejected; and it was clearly held that Rule 85 being mandatory, its non-compliance renders the sale proceedings a complete nullity requiring the executing Court to proceed under Rule 86 and property has to be resold unless the judgment-debtor satisfies the decree by making the payment before the resale. The argument that the executing Court has inherent power to extend time on the ground of its own mistake was also expressly rejected. In our opinion the contentions of learned counsel for the appellant are fully negated by the decision of the Court.

9. We may also indicate that the persistent assertion on behalf that the shortage in deposit by the appellant was occasioned by a mistake of the executing Court in indicating the figure of the decretal amount due in the sale proclamation also has no sound basis. The provisions in Order XXI relating to sale of property beginning with Rule 64 clearly indicate the responsibility of the decree-holder in this behalf and his role in the drawing up of the sale proclamation. The executing Court proceeds with execution and draws up the sale proclamation on the basis of information supplied by the decree-holder. Rule 66 of Order XXI is as under :-

"Proclamation of sales by public auction :-

(1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible--

(a) the property to be sold or, where a part of the property would be sufficient to satisfy the decree, such part;

(b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of the estate, paying revenue to the Government;

(c) any incumbrance to which the property is liable;

(d) the amount for the recovery of which the sale is ordered; and

(e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property:

Provided the where notice of the date for settling the terms of proclamation has been given to the judgment-debtor by means of an order under rule 54, it shall not be necessary to give notice under this rule to the judgment-debtor unless the Court otherwise directs:

Provided further that nothing in this rule shall be construed as requiring the Court to enter in the proclamation of sale its own estimate of the value of the property, but the proclamation shall include the estimate, if any, given, by either or both of the parties.

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by Sub-rule (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto."

It is clear that the sale proclamation is drawn up by the executing Court after notice to the decree-holder, on an application for an order for sale made by the decree-holder which is to be accompanied by a statement signed and verified by the decree-holder in the prescribed manner and containing the matters required by sub-rule(2) to be specified in the proclamation, which also includes " the amount for the recovery of which the sale is ordered." It follows that 'the amount for the recovery of which the sale is ordered' is stated in the sale proclamation on the basis of the duly signed and verified statement made by the decree-holder which accompanies the decree-holder's application for an order of sale. The specification of the amount for the recovery of which the sale was ordered, in the sale proclamation being based on a statement made and verified by the decree-holder, it is not open to the decree-holder to claim that the was misled by any mistake of the Court in the specification of that amount. The blame, if any for the mistake lies squarely on the decree-holder. Moreover, the decree-holder knows best the amount to which he is entitled under the decree, and he does not have to depend on anyone else to furnish this information. A mistake for which the decree-holder himself is responsible cannot furnish a ground to the decree-holder to avert the adverse consequences on him of his failure to comply with the mandatory requirement of Rule 85.

10. It is also to be noted that the duty to pay the full amount of purchase money the prescribed period of 15 days from the date of sale of the property is cast on the purchaser by virtue of Rule 85 of Order XXI and therefore, the entire responsibility to make full compliance of the mandatory provision is his. The proviso to Rule 85 is enacted for the benefit of the purchaser when he is the decree-holder and is entitled to the advantage of any set off under Rule 72. The proviso giving this benefit to the decree-holder purchaser merely relieves him of the requirement of depositing that amount of which he is entitled to claim set off, but it does not relieve him of the duty to deposit the full amount taking advantage of the set off. Any mistake made while claiming the set off which results in failure to deposit the full amount of purchase money within 15 days of the date of sale renders the decree-holder purchaser liable to the same adverse consequences which would ensue to any other purchaser due to non-compliance of Rule 85. No distinction is made between a decree-holder purchaser entitled to claim set off under Rule 72 and any other purchaser for the purpose of strict compliance with the requirement under Rule 85. The contentions of learned counsel for the appellant have not merit.

11. The High Court has taken the view that there was also non-compliance of Rule 84 of Order XXI since 25 per cent of the amount of the purchase money was not deposited by the appellant immediately as required by Clause 1 of Rule 84. Learned Counsel for the appellant submitted that the appellant was entitled to set off under Rule 72 as provided in Clause 2 of Rule 84. In reply learned counsel for respondent No. 1 submitted that the Court had not dispensed with this requirement as no such permission was sought by the appellant. In view of our conclusion that there was a clear non-compliance of the requirement of Rule 85 which rendered the sale a nullity, we consider it unnecessary to decide this further question in the present case.

12. The question now is of the ultimate order to make while dismissing this appeal, in view of the fact that the appellant is in possession of the lands since 4-5-1987 in spite of the stay order dated 19-12-1986 made by the High Court which ultimately decided in favour of the respondent No. 1. The High Court has clearly stated that the entire decretal amount due for satisfaction of the decree had been deposited by the debtor respondent No. 1 in the Court. The interim order dated 6-8-1991 made in this appeal while granting stay to the appellant has also to be taken note of. We are informed that the appellant has been making the deposits as required by the order dated 6-8-1991. The appellant has enjoyed the usufruct of the property since 4-5-1987 even though he has, so far, been deprived of the benefit of the decretal amount which is meagre as compared to the benefit of the enjoyment of the property by the appellant. On the other hand the judgment-debtor, respondent No. 1, delayed the satisfaction of the decree which, to some extent contributed to this situation.

13. The circumstances of the case, the ultimate order which commends to us as the most appropriate, is as under :-

- 1) The decretal amount deposited by the judgment-decree, respondent No. 1, in the Court shall be paid to the appellant decree-holder.
- 2) In these circumstances on-half of the total amount deposited by the appellant in the Court in accordance with the order dated 6-8-1991, together with the accretions thereto must be paid to the judgment-debtor, respondent No.1, while the remaining one-half of the total amount be refunded to the appellant.
- 3) The executing Court should proceed forth-with to restore possession of the property to the judgment-debtor, respondent No. 1. No. The appellant must pay the

amount due upto the date of restoration of possession according to the interim order dated 6-8-1991, to be disbursed in the manner indicated above.

4) On compliance of the above directions the executing Court is to record full satisfaction of the decree and strike off the execution.

5) The executing Court is to make such orders as may be necessary for giving full effect to these directions.

14. We direct, accordingly.

15. The appeal is dismissed in the above terms with costs quantified at Rs. 10,000/-. Appeal dismissed.