

S.S. Dayananda

Vs

K.S. Nagesh Rao and Others

SLP No. 4557 of 1997

(K. Ramaswamy, S. Saghir Ahmed JJ)

19.02.1997

ORDER

1. Delay condoned.
2. This special leave petition arises from the judgment and order dated 16-7-1996 passed by the learned Single Judge of the Karnataka High Court in CRP No. 5643 of 1990.
3. The first respondent suffered a decree in a sum of Rs. 3825.25 for recovery of which his property was brought to sale on 18-12-1978 and the petitioner purchased the same for a sum of Rs. 67,000. An application was filed by the respondent under Order 21, Rule 90 of the Code of Civil Procedure (CPC) impugning the legality of the sale conducted. The executing court dismissed the application by order dated 16-8-1990. On appeal, the appellate court set aside the order of the executing court and allowed the petition declaring that the sale was illegal. On revision, the High Court by the impugned order has confirmed the same. The finding recorded by the appellate court and the High Court is that non-compliance of the procedure required under Order 21, Rule 64 CPC had vitiated the sale.
4. It is contended for the petitioner that the executing court had found that the adequacy of consideration is not a ground for setting aside the sale but the appellate court and the High Court have not gone into that aspect of the matter. The appellant having purchased the property valued in the proclamation at Rs. 85,000 the sale for Rs. 67,000 was adequate and, therefore, the sale could not be set aside. We find no force in the contention. It is seen that the High Court has noted that the procedural compliance of Order 21, Rule 64 CPC was not adhered to which is a mandatory requirement as held by this Court in *Desh Bandhu Gupta v. N.L. Anand & Rajinder Singh* [(1994) 1 SCC 131]. Equally the sale consideration of the property was in excess of the execution. Under these circumstances, the High Court is justified in confirming the order of the appellate court setting aside the sale.
5. The special leave petition is accordingly dismissed.