

BOMBAY HIGH COURT

Premaraj Pannalal shop

Vs.

Sadabai

A.F.O.O. No. 60 of 1954.

(Shah, J.)

30.01.1954. 03.10.1955

JUDGMENT

Shah, J.

1. This appeal arises out of an application filed to set aside the auction sale of City Nos. 3114, 3115 and 115 of the town of Ahmednagar. The auction was held on 19-8-1952 in enforcement of a decree obtained in Special Suit No. 25 of 1934. The three properties were sold for Rs. 7500/- and were purchased by respondent 1. In the sale proclamation which was framed by the Court after hearing objections of the parties, an encumbrance of Rs, 40,000 was shown on C. S. No. 1155 and an encumbrance of Rs. 45,000/- was shown on C. S. Nos. 3114 and 8115. At the auction each of the properties C. S. Nos. 3114 and 3115 was sold for Rs. 3200/- and C. S. No. 115 was sold for Rs. 1100/-. The auction purchaser who was the plaintiff in Special Suit No. 25 of 1934 purchased the right, title and interest of judgment-debtor 2A. After the sale was completed an application was filed by the appellant, who was also defendant 1 in Suit No. 25 of 1934 for setting aside the sale on the ground that he was entitled to rateable distribution under the nature of the decree obtained by him against defendant 2A. The application was filed on 16-11-1952, and before the application could be heard and disposed of the sale was confirmed on 7-1-1953. It was urged in the Court below that once the sale was confirmed, the application for setting aside the sale could not be maintained. The learned trial Judge negatived the contention and proceeded to hear the application on the merits.

2. It appears that a large number of contentions were raised by the appellant for setting aside the sale, but only four of them were pressed before the learned Judge.

- (i) That the plaintiff had mischievously kept away the bidders at the time of the auction;
- (ii) that bogus encumbrances had been shown in the sale proclamation and they had adversely affected the price which the properties fetched; (iii) that the original sale

proclamation was so framed that it was intended thereby to proclaim for sale the right, title and interest of both the judgment-debtors, and that thereafter the sale proclamation was amended by showing that the right, title and interest of judgment-debtor 2A only was intended to be sold, but a fresh sale proclamation was not published and (iv) that the valuation of the property to be sold was not mentioned in the sale proclamation.

3. The learned Judge in the Court below rejected all the contentions advanced by the appellant. He held that there was no evidence on which he could hold that the appellant had sustained substantial irregularity or fraud in publishing or conducting the sale. The learned Judge accordingly rejected the application. Against the order passed by the learned Judge the appellant has come to this Court in appeal.

4. The four points which were urged in the trial Court were submitted in support of the appeal by Mr. Desai on behalf of the appellant, together with an additional point which does not appear to have been canvassed in the Court below. That additional point was that the time at which the sale was to be held was not mentioned in the sale proclamation.

As the learned Judge has pointed out, there was beyond the bare word of the appellant, no evidence which supported the case that any bidders were mischievously kept away. As a matter of fact the appellant's own brother had offered bids at the auction sale. Therefore there appears to be no substance in the first contention that 'bidders were mischievously kept away'.

5. It is true that encumbrances for large amounts were shown as subsisting on the properties advertised for sale. But the learned Judge held after a prima facie enquiry that encumbrances were enforceable against the property and that they should accordingly be shown in the sale proclamation. It appears that encumbrance of Surajkuwarbai was shown in spite of the contention raised by the plaintiff that it was a bogus encumbrance. The other encumbrance in favour of one Bhikchand was in respect of a decretal debt for which the property was agreed to be sold by judgment-debtor 2A to Bhikchand, and thereafter the sale has not been carried out. The decretal debt evidently was charged upon the property which was agreed to be sold to Bhikchand and the sale was thereafter not effected. The learned Judge was therefore in my judgment right in holding that the encumbrances were not bogus encumbrances.

6. It is true that the original sale proclamation did not mention that the right, title and interest of judgment-debtor also was intended to be sold. The sale proclamation was thereafter amended, but it was not published again. But the appellant could have raised an objection. In any event it is difficult to appreciate how the sale merely of the right, title and interest of judgment-debtor 2A in the property could affect the validity of the sale.

It cannot be forgotten that defendant himself as the appellant was interested in seeing that the right, title and interest of judgment-debtor 2A in the property alone were sold. It is also true that the valuation of the property was not shown in the sale proclamation. But this Court has taken the view in - '*Charandas Vasanji v. Dossabhoy Maganlal*', that in a sale proclamation issued under

Order 21, Rule 63, Civil Procedure Code the Court is not bound to value the property. It is true that if the Court thinks it desirable to value the property and state the value in the proclamation, the true value should be shown.

7. The contention that the time at which the sale fixed was not mentioned in the sale proclamation appears to have no substance. That ground was never urged in the Court below. The contention could have only relevance or validity if it was alleged that as a result of failure to mention the time in the sale proclamation the bidders were prevented from offering bids. It is not suggested that there were any prospective bidders who would

¹ AIR 1939 Bom 182

have come before the Court and offered bids. It is clear therefore that there was no material irregularity or fraud in publishing or conducting the sale. The view of the Court below that there has been no substantial injury by reason of the sale also must be upheld. The learned trial Judge has in para. 12 of his judgment set out in detail the grounds on which he held that the appellant failed to establish that he had sustained substantial injury by reason of the material irregularity or fraud in publishing and conducting the sale; Mr. Desai on behalf of the appellant has not been able to challenge the validity of that conclusion recorded by the learned Judge.

8. The appeal therefore fails and is dismissed with costs.

Appeal dismissed. .