

(1951) 07 MAD CK 0028

In the Madras High Court

Case No : Original Side Appeal No. 27 of 1951

A. Subbaraya Mudaliar

APPELLANT

Vs

K. Sundararajan, (Joint Receiver) and Others

RESPONDENT

Date of Decision : 09-07-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 84

Citation : AIR 1951 Mad 986 : (1952) ILR (Mad) 502 : (1951) 64 LW 821 : (1951) 2 MLJ 353

Hon'ble Judges : Rajamannar, C.J;Venkatarama Ayyar, J

Bench : Division Bench

Advocate : A. Seshachariar and Srinivasan, for the Appellant; K.S. Sundarardjan, G. Ramakrishna Iyer, M.P. Subramaniam and T.R. Sangameswaran, for the Respondent

Final Decision : Dismissed

Judgement

Rajamannar, C.J.—Pending a suit on the original side of this Court relating to the estate of one C. Balasundara Mudaliar, deceased, it was found that the only way of raising funds necessary for the discharge of pressing claims on the estate was the sale of one of the items of the estate. There was a suggestion that one of the properties, a printing press, called the B. N. Press might be sold as a going concern. On 11th December 1950 Rajagopalan, J., made an order giving liberty to the parties to the suit to obtain offers for the purchase of the press as a going concern so that the Court might be in a position to decide whether the press should be sold at a public sale or at a sale confined to the parties. Apparently no satisfactory offers were obtained and on 8th January 1951, the learned Judge decided that the press should be sold as a going concern by the Joint Receiver at a public sale. The parties to the suit were given liberty to bid at the sale on the same terms as the other bidders. The sale was to be effected after wide publicity. In pursuance of this order, the Joint Receiver, an Advocate of this Court, after giving such publicity as he thought was proper conducted the sale on 25th March 1951. There were twelve bidders and it is admitted that besides the first

defendant who is found in the list of bidders, the plaintiff also was present at the auction though she apparently did not arrive before the auction commenced. She, however, did not take part into the bidding. The first defendant made one bid of Rs. 26,000, but did not participate subsequently in the bidding. The proprietor of Rayan Press, one A. Subbaraya Mudaliar, was the highest bidder, his bid being for Rs. 31,200. The joint receiver knocked down the sale in his favour and received Rs. 8,100 being 25 per cent of the bid in cash. It is common ground that one of the conditions of sale was that it should be subject to the confirmation by this Court. Soon after the auction, when the receiver submitted a report to the Court praying that the Court may be pleased to confirm the sale in favour of the highest bidder, the plaintiff complained that the highest bid offered at the auction was quite inadequate and she herself offered Rs. 35,000. The first defendant did not make any offer and apparently was satisfied that the sale should be confirmed. The purchaser protested against any attempt to reopen the bidding. The Court, however, taking into account the offer of the plaintiff to purchase the press for Rs. 35,000 adjourned the matter to a date on which the learned Judge conducted, as it were, an auction between the parties to find out the highest price which would be offered for the property. Eventually the plaintiff made the highest offer of Rs. 42,000. It was contended before the learned Judge on behalf of the auction purchaser that as there was no irregularity in the conduct of the sale, the Court should not set aside the entire auction proceedings conducted by the joint receiver under orders of the Court, and the highest bid which he made should be accepted by the Court and the sale concluded in his favour. The learned Judge did not accept this contention. In his opinion, the price fetched at the auction sale was not adequate and he did not agree with the learned counsel for the auction purchaser that the Court could not refuse to confirm the sale to the highest bidder merely on the ground of apparent inadequacy of price. He came to the conclusion that the offer of Rs. 42,000 made by the plaintiff was an offer made in good faith and he saw no justification for refusing to accept this offer and why he should accept the highest bid at the auction for Rs. 32,000 which fell far below the offer made by the plaintiff. The learned Judge, therefore, refused to accept the highest bid made by the auction purchaser and directed the joint receiver to refund forthwith the deposit made by him. He directed the plaintiff to deposit into Court the sum of Rs. 10,000 before a particular time and the balance within 15 days thereafter or within such time as may be allowed by the Court. If the payment was not made within 15 days after the prescribed date (9th April 1951), interest was payable at six per cent per annum. If the plaintiff defaulted in the payment of the balance of the purchase money within the time allowed, the initial deposit made by him of Rs. 10,000 was to be held by the Court to make good any loss that might result to the parties by a resale. It is against this order of Rajagopalan, J., that the auction purchaser Subbaraya Mudaliar has filed the above appeal.

2. It was fairly--and we believe rightly--conceded by Mr. Seshachari, learned counsel for the appellant, that merely by reason of the fact that the appellant

was the highest bidder at the auction sale conducted by the joint receiver under orders of Court, the appellant did not obtain any enforceable right to the property sold at the auction. He did not contend that there was, as it were, a concluded contract between him and the joint receiver on behalf of the Court, a contract can be enforced by him even as against the Court. This contention was obviously not open to him in view of the express provision in the conditions of sale that the sale was subject to confirmation by this Court. Even in the absence of such a condition the result might have been the same--Vide Ratnasami Pillai Vs. Sabapathy Pillai and Others, .

3. Learned counsel for the appellant, therefore, did not base his client's case on any enforceable right, but he relied on what he contended was a rule of public policy calculated to impress on the public the sanctity of sales conducted under orders of Court, namely, that the highest bid will, as a rule, be accepted by the Court, unless of course, there were strong reasons like irregularity or fraud which would justify the Court in refusing to accept the bid even if it was the highest. He placed much reliance on a decision of a Division Bench of this Court in "Soundararajan v. Mahmad Ismail". 50 Mad L W 699. In that case in a partition suit on the original side of this Court, a public auction of the estate properties was held under orders of Court. A reserve price of Rs. 1,10,000 was fixed and the members of the family were allowed to bid and set off the values of their respective shares. The property was eventually knocked down at the auction to one Khaka Mahmad Ismail Sahib, as the highest bidder of Rs. 1,12,500. The commissioners who conducted the sale reported the result of the auction to the Court and the matter eventually came before Gentle, J., for confirmation. One of the parties made an offer to purchase the properties for Rs. 1,15,000, i.e., for Rs. 2,500 more than the highest bid. The learned Judge thought it was not proper to reopen the matter and confirmed the sale. There was an appeal which was heard and disposed by Leach, C. J., and Kunhi Raman, J. The learned Judges confirmed the order of Gentle, J. The "ratio decidendi" of their decision is found in the following passage :

"The fact that the sale is subject to the confirmation of the Court does not mean that the Court shall refuse to accept the highest bid because at a later stage some one in second thought says that he is willing to pay more. It is only right and proper that the sale should be subject to the confirmation of the Court. The condition is a safeguard against irregularity or fraud in connection with the sale and against property being sold at an inadequate price. No such consideration applies here."

It was not even suggested before them that the highest bid at the auction was inadequate. In our opinion, the facts of the case now before us are completely different from the facts in the case decided by the Division Bench. It is true that there is no suggestion of irregularity or fraud, but there was certainly a complaint of inadequacy of price. As the plaintiff eventually was willing to purchase the property for Rs. 42,000 it must be taken that that amount

represents fairly accurately the adequate price of the property. If that be so, then certainly the highest bid which was only Rs. 32,100 cannot be said to be adequate. We understand the learned trial Judge to have really based his decision on this fact, namely, the inadequacy of the price fetched at the auction. We think that the ruling in "Soundararajan v. Khakha Mahmad Ismail Sahib", 50 Mad L W 699 does not help the, appellant, because the learned Judges expressly say that the condition as regards confirmation of the Court is a safeguard against property being sold at an inadequate price. It will therefore be not only proper but necessary that the Court in exercising the discretion which it undoubtedly has of accepting or refusing to accept highest bid at the auction in pursuance of its orders, should see that the price fetched at the auction is an adequate price. As we have held that on the facts present in this case, the price of Rs. 32,100 cannot be held to be an adequate price of the property in question, it follows that the learned Judge was justified in refusing to accept the appellant's bid and in accepting the offer of the plaintiff of Rs. 42,000.

4. Learned counsel for the appellant urged before us that sales conducted by officers under orders of Court would become a farce if the highest bids at these sales are not accepted by the Court in the absence of irregularity or fraud and if the Court were to interfere with such bids, simply because there was a higher bid before the Court at the time of the confirmation. We realise that this may be the result if the Court were to refuse the highest bid, say, of Rs. 10,000 merely because a party at the time of confirmation offers Rs. 10,000. But in our opinion, a sale conducted by an officer of Court would equally become a farce if the Court is obliged to accept the highest bid at such a sale, though the court is convinced that the bid does not represent adequately the real price of the property. In these matters it is not safe to lay down any rule of thumb. The facts of each particular case would ultimately mould the exercise of discretion by the Court. We are convinced in this case that the discretion was very properly exercised and we see no reason to interfere with the order of the learned Judge.

5. The appeal fails and is dismissed with costs.