

(1987) 09 P&H CK 0074

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 876 of 1986

Ajit Jain

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 14-09-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90

Citation : (1987) 09 P&H CK 0074

Hon'ble Judges : S.P. Goyal, J;I.S. Tiwana, J

Bench : Division Bench

Advocate : N.C. Jain and Mr. J.B. Jain, for the Appellant; A.C. Jain for Respondent No. 1, Mr. B.M. Bedi for Respondent No. 2 and Mr. K.S. Thapar for Respondent Nos. 3 to 6, for the Respondent

Final Decision : Allowed

Judgement

S.P. Goyal, J.—In execution of a money decree, Respondent No. 1 got attached and auctioned the property in dispute of the judgment-debtor, Respondent No. 2. The Petitioner and Respondents No. 3 to 6, who gave the highest bid were declared its purchasers. The decree-holder filed objections under, Order XXI Rule 90, Code of Civil Procedure, which were dismissed by the Executing Court. On appeal, its order was set aside and the case remanded for fresh decision after framing proper issues and allowing the parties to lead their evidence. During the pendency of the appeal, the learned Counsel, for Respondents No. 3 to 6 made a statement at the bar that the said Respondents do not want to contest and that the sale be set aside". After the remand, in the Executing Court they, filed a written request to the same effect. The Executing Court, however, after trial rejected the objections and confirmed the sale. Aggrieved thereby, the decree-holder up in appeal to this Court.

2. The learned Single Judge without going into, the merits of the objections, allowed the appeal on the ground that the consent of the four auction purchasers to set aside the sale amounted to the admission of the irregularities on their part

and as, such the sale was liable be set aside under Order XXI rule, 90 CPC Code. Relying on *Mt. Raisunnissa and Others Vs. Mojibur Rahman and Others*, , and *Chacko Pyli v. Type Varghese* AIR 1956 tc 147, he further observed that even though Ajit Jain, one of the auction-purchasers, did not join the other auction-purchasers in giving their consent to the setting aside of the sale, yet the sale was liable to be set aside, this interest of the auction-purchasers therein being indivisible. But on none of these grounds the impugned judgment can be sustained.

3. No doubt the four auction purchasers gave their consent to set aside the sale, but while doing so they never made any admission as to the existence of any irregularity in the conduct of the sale. From the simple fact that they had chosen to confess a judgment, it was not possible in law to infer any implied admission on their part as to the existence of any irregularity, in the conduct of the sale. When a Defendant confesses judgment, it binds only him and no decree can be passed on its basis against the co-Defendants, as is evident from the provisions of Order 15 Rule 2 of the CPC On the concession of the four auction purchasers no adverse order to the interest of the Appellant could, therefore, be passed nor the auction set aside as a whole.

4. Even if any implied admission as to the existence of an irregularity in the conduct of a sale could be spelled out from the consent of the four auction purchasers, it would not be a relevant piece of evidence against the Appellant as has been held in AIR 1928 769 (Lahore) , AIR 1929 129 (Lahore) , AIR 1929 721 (Lahore)), *Chandi Avira v. Thomman Varkey and others* AIR 1951 TC 109 (F.B.), and *Budh Singh and Anr. v. Ajmer Singh and others* AIR 1955 NOC (Punj.) 5723. In case it may be held that an admission of a co-Defendant would be admissible against other Defendants, it would be only a relevant piece of evidence but not a conclusive one. Consequently, no judgment could be rendered affecting the interests of the Appellant adversely on the consent of the four auction purchasers alone.

5. So far as the two decisions relied upon by the learned Single Judge are concerned, in both of them of one the judgment debtors had moved for the setting aside of the sale. Even though the other judgment debtors, who had joint interest, had not moved in the matter, the auction as a whole was set aside because it was not possible to separate the interests of the judgment debtors or to set aside the auction partially. By setting aside the sale, the interests of the judgment debtors other than the one who moved for its setting aside, were not adversely affected nor they had opposed the same. The ratio of these decisions that the sale being indivisible has to be set aside as a whole therefore, has no bearing on the present case so far as the binding nature of the consent of the four auction purchasers on the Appellant was concerned. However, there can be no dispute with the proposition of law that the sale being indivisible has to be set aside as a whole even if all the joint owners/auction purchasers do not file objections to the same. But if the objection petition is opposed even by one of

the joint auction purchasers, it has to be set aside on merits and it would not be possible to set aside the sale merely on the concession of some of the joint auction purchasers.

6. For the reasons recorded above, this appeal is allowed and the impugned judgment set aside. The case would now go to the learned Single Judge for re-hearing and disposal of the appeal of the decree-holder in the light of the observations made above.

Sd/- I.S. Tiwana, J.