

(1999) 08 AP CK 0104
In the Andhra Pradesh High Court
Case No : AAO No. 941 of 1986

Akasim Bi and others

APPELLANT

Vs

T.G. Lakshmayya Thimmayya Setty and others

RESPONDENT

Date of Decision : 26-08-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 54, Order 21 Rule 66, Order 21 Rule 69, Order 21 Rule 72, Order 21 Rule 90

Citation : (1999) 6 ALD 402 : (1999) 6 ALT 151

Hon'ble Judges : Y.V. Narayana, J

Bench : Single Bench

Advocate : Mr. K. Vijaya Kumar Reddy, for Mr. K. Rajanna, for the Appellant; Mr. M.V.S. Suresh Kumar and Mr. N. Rama Mohan Rao, for the Respondent

Judgement

1. This appeal is filed against the decree and order passed in EA No.36 of 1982 in EP No.182 of 1980 in OS No.32 of 1979 on the file of the Subordinate Judge's Court, Adoni, dated 30-7-1986, dismissing the same which was filed under Order 21, Rule 90 CPC. Appellants herein are the petitioners-judgment debtors in the EA. They filed the EA seeking to set aside the sale of immovable properties in this case on the ground that the sale is vitiated by material irregularity or fraud in publication and conduction of sale.

2. Brief facts: In order to execute the decree which was obtained by the 1st respondent, the EP was filed under Order 21, Rule II CPC against the appellants, who are the legal representatives of one late Janda Husen Sab (the original debtor), praying to realise the decretal debt by selling the EP schedule immovable properties of late Janda Husen Sab which are now in the hands of the appellants-JDs. In the EP, itself, it was mentioned that the EP schedule properties were attached before judgment and the said attachment was also made absolute on 5-9-1980 in IANo.295 of 1979. The properties which are scheduled in the EP are as follows:

Item No. 1 :

House bearing Dr. No. 6/79 situated in Pedda Thambalam village, Adoni Taluk, DUr's value -Rs. 2,500/-; Amin's value -Rs. 3,000/-.

Item No. 2 :

House bearing Dr.No. 3/59 situated in Pedda Thambalam village. Adorn Taluk, DHr's value -Rs. 2,500/-; Amin's value -Rs. 3,000/-.

Item No. 3 :

House bearing Dr. No.3/59-1 situated in Pedda Thanibatam village, Adoni Taluk, DHr's value - Rs. 2,500/-; Amin's value -Rs. 3,000/-.

Land situated in Pedda Thambalam village, Adoni Taluk, as per details below:

Item No. Kind S.No. A-C Taram DA'S value Rs. Amin's Value Rs.

4 Circar dry 623 3-53 536 7000/- 9000/-

5 -Do- 49 0-60 0-39 1200/- 1500/-

6 -do- 48-E 0-17 0-33 350/- 500/-

7 -do- 343-B 4-73 3-07 3500/- 4000/-

8 -do- 344 7-23 4-70 3500/- 7000/-

Land situated in Chinna Thambalam village, Adoni Taluk, as per details below:

Item Kind S. No. A-C Taram D.Hr's value Rs. Amin's value Rs.

9 Circar dry out of S.No. 1016 6-60 10-03 5000/- subject to mortgage of Rs. 10000/- of LMB, Adoni. 18000/-

In the EP, the amount due to be recovered was shown to be Rs.24,527-25 ps. in addition to costs of Rs.529-25 ps. Thus, in all, a sum of about Rs.26,000/- was due to be recovered from the JDrs., under the EP, for which items 1 to 9 were sought to be brought to sale. The sale of the immovable properties was held on 11-2-1982. The sale was knocked down as follows:

Item No Amount realised in Court auction

Rs

1 3600/-

2 3600/-

3 3000/-

5 1650/-

6 600/-

9 9000/-

One T.G. Eranna Setty was the auction purchaser.

3. Questioning the said sale, the appellants-JDs. filed the present EA contending that the entire sale is vitiated by fraud and collusion and the JDs. were not given proper notice before conducting the sale. It was further contended that the sale was held on 11-2-1982 without making fresh proclamations. There were no sufficient independent bidders during the auction held on 11-2-1982. The persons who took part in the auction were none other than the servants and men of the decree-holder and the auction purchaser is the brother's son of the decree-holder. The properties were sold for grossly inadequate price, which is 1/3rd of the value of the properties. The publication in the newspaper is designedly silent about the measurements of the three residential houses. Similarly, the publication and the proclamation are silent about the revenue payable on the lands. The proclamation of sale of land was not affixed in the Collector's office and also at the place where the properties are situated. The taxes payable on the house properties were not indicated in the publication or proclamation. All the above irregularities are incurable which vitiated the sale held in this case. The petition was opposed by the DHs., contending that there were no irregularities in conducting the sale. It is contended on their behalf that there was wide publicity by beat of tom-tom in the village and that all the formalities were duly observed before conducting the sale and, therefore, the sale need not be set aside.

4. On the above pleadings, enquiry was conducted in the Court below. On behalf of the JDs., PWs.1 to 6 were examined and on behalf of the decree holders, RWs.1 to 4 were examined. No documents were marked on either side. On a consideration of the entire evidence on record, the lower Court dismissed the EA. Hence, the present CMA by the JDs.

5. Before this Court also, the appellants-JDs., advanced all these contentions which were put forward before the lower Court. Having duly heard both the learned Counsel in extenso and having thoroughly perused the various documents which are part of the record, I am of the view that the view taken by the lower Court in dismissing the EA is wholly erroneous and the sale, for the reasons which are contained in the following paragraphs, is liable to be set aside.

6. The first and foremost contention raised by the learned Counsel for the appellants-JDs., before this Court is that the date on which the sale was held in this case was actually not fixed for sale and the sale held on 11-2-1982 is, therefore, illegal. In order to appreciate this contention of the learned Counsel, a perusal of the docket entries in the EP is necessary. The EP was filed on 12-11-1980 under Order 21, Rule 11 CPC seeking execution of the decree which is dated 29-8-1980. Along with the EP, sale papers and encumbrance certificates were filed. On 31-12-1980, sale notices were ordered by the executing Court. It was adjourned to 11-2-1981. On 11-2-1981, the docket entry shows that, sale papers and ECs were returned for rectification of defects. On the same day, it was endorsed that sale notices were served on JDs. 1 to 4 personally and sale

notices of JDrs.5 and 6, who are minors, were received by their guardian i.e., JDr.1. The advocate entered appearance on the same day on their behalf. It was posted to 12-3-1981. On 12-3-1981, the docket entry shows that sale papers and ECs were returned for rectification of defects. It was posted to 24-4-1981. On 24-4-1981, it was endorsed that sale papers and ECs were represented on 17-4-1981 and after checking the same, the same were again returned for rectification of defects. JDr.No.3 filed counter. Then, it was adjourned to 3-7-1981. From 3-7-1981 onwards till 16-9-1981, the matter underwent mere adjournments. On 23-9-1981, the Court below set all the JDrs. ex parte and permitted the DHrs. to bid in the auction as per orders in EA No.435 of 1980. The matter was posted to 30-9-1981 for filing a petition to fix upset price. On a perusal of the record, it is revealed that along with the EP, the Decree Holders also filed a petition under Order 21, Rule 72 CPC (which is numbered as EA No.435 of 1980) praying to permit them to bid in Court auction. The said EA had been adjourned from time to time along with the EP. While so, on 23-9-1981, the Court below passed the following order in the said EA No.435 of 1980:

"Respondents called absent. Their advocate reported no instructions. The respondents are set ex parte. Petition allowed."

Thereafter, the lower Court proceeded to set the JDrs., ex parte in the EP also on the same day i.e., on 23-9-1981. The docket entry dated 23-9-1981 in EP No.182 of 1980 makes it explicitly clear. It is extracted hereunder:

"23-9-1981:

Enquiry.

All the JDrs., called absent. They are set ex parte. Their Advocate reported no instructions. Decree Holder is permitted to bid in the auction as per orders in EA 435 of 1980. For filing a petition to fix upset price, call 30-9-1981."

The docket orders passed in EA No.435 of 1980 and in EP No.182 "of 1980 dated 23-9-1981 goes to show that the lower Court set the JDrs., ex parte in the EA first and it proceeded to carry the same order in the EP also, which is not permissible under law. Be that as it may. On 30-9-1981, petition to fix upset price was filed on behalf of the DHrs. The upset prices were noted down in the docket sheet. Then, the lower Court ordered that the proclamation be issued and sale be held on 10-11-1981. It ordered that the publication be made in "Yadukrishna Bhagavan", a local daily. It was posted to 17-11-1981. On 10-11-1981, the Court recorded part-satisfaction of Rs.500/- and on a petition filed by the JDrs., the sale was adjourned to 24-11-1981 on the same proclamation. On 24-11-1981 also, the Court recorded part satisfaction of Rs.1500/-. It adjourned the sale to 8-12-1981 on the petition filed by JDrs.2 and 3, on the same proclamation. On 8-12-1981, it was endorsed that sale batta was paid. The EP was adjourned to 31-12-1981. The docket entries made on 31-12-1981 and 30-1-1981 are crucial. They read as under:

"31-12-1981:

Sale.

Fresh sale proclamation. Publish in "Digvijayam", Kovvur. Call on 30-1-1982."

"30-1-1982

Sale batta paid.

Publication filed stating that the measurements of item Nos.1 to 3 are not furnished in the publication. On application, adjourned to 11-2-1982."

The record shows that the said application was filed on behalf of the decree-holder seeking to adjourn the sale to 11-2-1982. On 11-2-1982, as already stated, sale was held. It is to be noticed here that in the very beginning itself, the office returned the sale papers and ECs on number of occasions for rectification of defects. On the last occasion i.e., on 24-4-1981, the sale papers were represented but the office returned the same again for rectification of the defects pointed out. Thereafter, there is no endorsement anywhere in the docket as to whether the sale papers are re-presented and if so, whether they were accepted or not. However, subsequently, since the Court ordered for publication of sale proclamations, it must be presumed that sale papers must have been represented after rectification of all the defects pointed out by the office. As already seen, on 31-12-1981, the lower Court ordered for publication of sale proclamation. On 4-1-1982, the Proclamations of sale as required under the provisions of sub-rule (1) of Rule 66 of Order 21 CPC were issued, in the prescribed proforma. It was expressly mentioned therein that the EP schedule properties would be put to Court auction on 30-1-1982. Sale publication was also published in the local daily "Digvijayam" on 9-1-1982 issue. It was also published therein that the EP schedule properties would be sold on 30-1-1982. But, on 30-1-1982, the office noticed a defect in the publication to the effect that the measurements of items 1 to 3 of EP schedule properties were not furnished in the sale publication. It is needless to say that unless and until those defects are rectified and a fresh sale publication is issued, sale of EP schedule properties cannot be held and the sale needs to be adjourned till those formalities are completed. Therefore, having noticed the defects on 30-1-1982, the executing Court adjourned the matter to 11-2-1982 so that the defects are rectified in the meanwhile. But, on 11-2-1982, there is no mention in the docket sheet as to whether the defects which were pointed out on the previous date of adjournment were rectified and if rectified, whether any fresh proclamation is issued or not. Instead of insisting the parties for rectifying the defects, the Court straight away proceeded to conduct a sale on 11-2-1982. Even if it is presumed that on 11-2-1982, the DHrs., have given better particulars of the EP schedule properties, admittedly, no fresh proclamation is issued including all those better particulars. The sale was conducted on the very same proclamation which was drawn even before rectification of the defects. These circumstances clinchingly go to show that the date on which the sale was conducted is not a date which is

actually fixed for sale and it was fixed only for the purpose of rectification of the defects in the sale proclamation. The contention of the learned Counsel for the appellants raised before me is, therefore, well founded.

7. Another important contention which is raised on behalf of the appellants is that the JDrs., had no notice as required under Order 21 Rule 66 (2) CP before drawing the so called defective sale proclamations. It is true that in addition to the general notice issued to the JDrs., after filing the EP, the JDrs., are entitled to notices at various subsequent stages. One such notice is the notice that is issued under Rule 66(2) of Order 21 CPC. It reads thus:

"66. Proclamation of sales by public auction :--(1) Where any property is ordered to be sold by public auction in execution of 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 an 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 that where notice of the date for settling the terms of the 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;

....."

The proceedings under Order 21, Rule 66 of the Code are very material for both the parties, because in these proceedings, both the parties have an opportunity to state all those features of the property which helps the intending purchasers to judge the nature and the- correct value of the property. As has been held by the Supreme Court in Satyanarain Bajoria and another Vs. Ramnarain Tibrewal and another, , these proceedings are more useful to the judgment-debtor than to the decree-holder, as it is well known that the decree-holder always tries to under-value the property whereas the judgment-debtor is interested in getting good price for the property. Therefore, a notice to the judgment-debtor at this stage of the proceedings will give an opportunity to highlight the features of the

property to be sold and fetch fair and reasonable price for the said property. Thus, the notice under Rule 66(2) of Order 21 of the Code is more beneficial to the judgment-debtor than to the decree-holder and such a notice is, therefore, issued essentially to the judgment-debtor before drawing up of sale proclamations. The non-issuance of such a notice, in my opinion, will have a bad impact on the very sale itself. The first Proviso to Rule 66 of Order 21 CPC is, however, an exception to sub-rule (2). Under this proviso, notice under Rule 66(2) of Order 21 to the judgment-debtor can be dispensed with if the judgment-debtor has already been served with notice under Rule 54 of Order 21 CPC. Rule 54 reads thus:

"54. Attachment of immovable property-

(1) Where the property is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.

(1A) The order shall also require the judgment-debtor to attend Court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale."

Thus, sub-rule (1) of Rule 54 empowers the executing Court to attach the EP schedule property by issuing a prohibitory order. Sub-rule (1 A) of Rule 54 mandates that such an order shall also require the judgment-debtor to attend the Court on a specified date "to take notice of the date to be fixed for settling the terms of the proclamation of sale", which will be done under the provisions of Rule 66 of Order 21, to which a reference was already made. Thus, if a notice as required under Rule 54 is issued to the JDr., requiring him to take notice of the date to be fixed for settlement of terms of the proclamation of sale, no separate notice to the judgment-debtor under the provisions of Rule 66 of Order 21 of the Code need be issued for the very same purpose. The above is the rule position. When coming to the case on hand, except the general notice, which was issued at the time of filing of the EP, no other notice was served on the judgment-debtors uptill the date of sale. It is no doubt true that the EP schedule properties were attached before judgment and the said attachment, by virtue of the provisions of Rule 11-A of the Order 38 of the Code, will continue even after the judgment is rendered and during the pendency of the EP. Therefore, by virtue of the provisions of Rule 11 of Order 38 CPC, the EP schedule properties need not be re-attached in execution proceedings. Perhaps, it must be the reason why no separate prohibitory order as required under Rule 54 of Order 21 CPC could not have been issued in this case and, therefore, the judgment-debtors were not served with any notice as required under sub-rule (1A) of Rule 54 of Order 21 CPC. In such a case, the first proviso to Rule 66 of Order 21 CPC becomes inapplicable and consequently, the judgment-debtors in this case are entitled to a notice under Rule 66 of Order 21 CPC, which, as a matter of fact, was not served on them before drawing the sale proclamations. As held by the Supreme Court in *Desh Bandhu Gupta Vs. N.L. Anand and Rajinder Singh*, , the non-service of such

a notice before the drawing up of sale proclamation, sometimes causes irreparable injury to the judgment-debtor. In view of the particular factual-matrix of the case which has been brought to my notice and which will be explained in the following paras, I hold that the non-service of notice as required under Rule 66 of Order 21 caused great prejudice to the interests of the JDrs.

8. Had a notice as required under Order 21, Rule 66 CPC been issued to the judgment-debtors before drawing up of sale proclamations, there could have been the possibility to avoid so many incurable defects, which ultimately rendered the very sale as illegal. One such defect is the non-mentioning of the value of the judgment-debtors of the EP schedule properties in the sale proclamations. Catena of decisions of various High Courts and also the Supreme Court show that a sale proclamation without disclosing the two valuations i.e., both of the decree-holder and that of the judgment-debtor suffers from irregularity which cannot be cured (See V. Rajagopal Naidu Vs. Smt. Muthulakshmi Ammal and Others, ; P.K. Chidambaram Iyer (died), Legal Representatives S. Sivaramakrishnan and Others Vs. Kattakath Kunhumodan's Son Kunhamuthammad, ; K.S. Nagendra Iyer and Another Vs. M. Varadaraja Pillai and Others, ; T.E. George v. Sambamurthy, 1984 (2) ALT 19. In Gajadhar Prasad and Others Vs. Babu Bhakta Ratan and Others, , the Supreme Court also took the same view.) The sale proclamations issued in this case, admittedly, do not contain the valuation as put by the judgment-debtors. It contained only the valuations as mentioned by the decree-holders and the Amin. These valuations alone do not reflect the true value of the EP schedule properties, as the decree-holders always try to under-value the property and the valuation of the Amin, in the absence of any concrete proof, cannot always be regarded as correct and independent valuation, as he proceeds on mere statements by the decree-holders and as he does not try to assess the value of the property with the help of any documents, or registers being maintained by any authority in this regard. Had the proclamation contained the valuation of the JDr., also, it could have become the upset price being the highest, in which case, the property would have fetched higher price. Non-mentioning of value of the judgment-debtors in the sale proclamation, therefore, goes to the very root of the sale, which ultimately vitiates the sale.

9. It is nextly contended that the EP schedule properties are valuable properties, but they were sold away for a song by playing fraud upon the Court and the valuable properties were knocked away by the henchmen of the decree-holders for very low and nominal prices. In support of their contention, the judgment-debtors had adduced oral evidence in the Court below. PW1 is one of the judgment-debtors. PWs.2 to 6 are independent witnesses. PW1 deposed in his evidence that item 1 of the EP schedule (i.e., house) was constructed with stone and mud. Its measurements are 45" x 25". It was agreed to be purchased by one Khaja Hussain for Rs.12,000/-. While so, item 2 was constructed with stone and cement about 10 years prior to his giving evidence. Its measurements are - 50" x 25". This house has a septic tank latrine. He deposed that one Abdukhassim

agreed to purchase this house for a sum of Rs.15,000/-. Item No.3 (house) was also constructed with stone and cement about seven years back. Its measurements are - 40" x 20". One Akbar Sab wanted to purchase the same for Rs.14,000/- but as there was attachment, they could not sell these house properties. In regard to the agricultural lands, PW1 deposed that they own about six acres of land and there is a well measuring 25" x 25" x 30" in their lands with an engine and engine room. The value of the land was estimated by PW1 at Rs.65,000/-. Except giving some suggestions in the cross-examination, nothing important was elicited from PW1 to disprove his version. PW2 (Khaja Hussain), a resident of Pedda Thambalam village, deposed in his evidence that he offered to purchase the house of the JDrs., situated near Mosque (i.e., Item No.1) for Rs.12,000/-. PW3 (Khasim) deposed that he belongs to Pedda Thambalam village and he offered to purchase the house of the JDrs. (item No.2) for Rs. 15,000/-. PW4 (Mohammad Hussain), a resident of Peddathumbalam village, deposed that their land and the land of the JDrs., is separated by other's land and that he sold his land, measuring an extent of Ac.5.04 cents to one Basanna for a sum of Rs.20,000/-. PW4 deposed that out of the land sold by him, an extent of Ac.3.00 of land is saline land and the remaining extent of Ac.2.00 is cultivable. He further deposed that the land of the judgment-debtors is having well, which sufficiently irrigates their entire extent of Ac.6.00 of land. He assessed that their land would have fetched about Rs.60,000 to Rs.70,000/-. PW5 (Akbar Sab), a resident of Chinna Thumbalam village, deposed that he owns Ac.20.00 of land. He offered to purchase the item No.3 (house) of the JDrs. for a sum of Rs. 12,000/- PW6 (Allabakash), who is having 60 acres of land, deposed that the JDrs., have 6 1/2 acres of land near their village border in Chinna Thumbalam village. He deposed that those lands of the JDrs., are red fertile lands, There is also a well and a big room in their lands. According to him, the well provides sufficient water to irrigate the said extent of six acres of land. He was prepared to purchase the said land which was valued by him at Rs.60,000/-. All these witnesses were subjected to cross-examination in the Court below but nothing important could be elicited from them to disprove their oral testimony. On behalf of the respondents-decree-holders, RWs.1 to 4 were examined. RW1 is a clerk in Kosigi Sub-Registrar's office. He brought basic value register of Pedda Thumbalam and Chinna Thumbalam villages. According to the Basic Value register, the lands in S.No.49 and 48/E of Peda Thumbalam village are valued at Rs.1,800/- per acre and the lands in S.No.106 of China Thumbalam village are valued at Rs.2,000/- per acre. But, RW1 himself admitted in his cross-examination that after fixation of prices in the Basic Value Register, the prices have increased. RW2 is the Karanam of Chinna Thumbalam village. He deposed that the present market value of the lands of JDrs., (measuring Ac.6.60 cents in S.No.1016 of Chinna Thambalam village) is only Rs.3,000 to Rs.4,000/- per acre. He, however, admitted in his chief-examination itself that a well was dug in that land about 10 years back. But, he stated that the said well can irrigate only two acres of land and if there are good rains, it can irrigate upto an extent of Ac.3.00. This admission of RW2, who is the village Karanam, about the existence of a well in the lands of JDrs., is

quite relevant, but the sale proclamation is completely silent about the said well. RW2 further admitted in his cross-examination that PW1 installed an oil engine of 7-1/2 H.P. capacity at the said well for drawing water and two crops are raised in that land every year. The existence of oil engine in the lands, it is needless to state that, completely changes the very nature of the lands enabling the judgment-debtors to raise crops twice in an year. But, this factum is not mentioned in the sale publication. The evidence of PWs.1 to 6 and the admissions of RWs.1 and 2 clinchingly establish that the lands of the judgment-debtors are red fertile lands, having good irrigation facility, wherein two crops are raised every year. But, the sale proclamations which are issued in this case in regard to landed properties do not reveal the existence of irrigation facilities in the said land, which is major factor for determining the value of an agricultural land. The non-mentioning of the existence of well and oil engine in the sale proclamation would tantamount to under-valuing the EP schedule lands. But, the decree-holders tried to contend that the values mentioned in the sale proclamations are quite reasonable and are well in accordance with the prices fixed in the Basic Value Register. To prove their contention, they examined RW1, clerk in Sub-Registrar's office. It is quite common in these parts that the landed properties are always sold over and above the prices that are fixed in the Basic Value Register, sometimes at abnormal prices also. In reality, no body would like to sell away his land at the minimum rates of prices fixed in the Basic Value Register. He proceeds to sell the land depending upon the demand that is existing in the vicinity and the price that is offered by the intending purchasers. The prices mentioned in the Basic Value Register can be taken as a basis to fix the minimum price of the land. Therefore, the rates quoted by RW1, on the basis of Basic Value Register, can only be taken as the minimum rates that were prevailing for the lands, that too, as on the date on which the said Register was updated. Even according to RW1, the values of the lands are increasing after fixation of prices in the Basic Value Register. If that is the position with regard to the value of the lands, the values mentioned by the decree-holders in the sale proclamations must definitely be said to be the minimum values of the lands but not the actual values. Similarly, as already seen, the sale proclamation _do not reveal the extents of the house properties. Without knowing the extent of any immovable property, can it be possible to assess its value ? The decree-holders, in my opinion, have wantonly failed to mention the extents of the house properties, which is apparently with a view to under-value the houses. The above discussion would clearly go to show that the decree-holders have under-valued the EP schedule properties in the sale proclamations. Lower-estimate in the proclamation is a material irregularity which would cause substantial injury to the interests of the judgment-debtors. The sale of such properties held on the basis of such under-valued estimates is, therefore, liable to be set aside. This view of mine is fortified by the decisions of the Privy Council in Nagendra Iyer v. Varadaraja, (supra), the Allahabad High Court in Abdul Rauf Khan Vs. Mt. Qamrunnissa and Another and the Karnataka High Court in Hotel Nataraj and Others Vs. Karnataka State Financial Corporation and Others, . For the above

reason, the sale is liable to be set aside.

10. As already seen, as per the so called sale proclamation, the auction was to be held on 30-1-1982. But, the same could not be held on that day as the Court noticed certain defects in the said sale proclamation. But, it is alleged that, having noticed the defects in the sale proclamations, the executing Court adjourned the matter to next date but the bidders who were present on that day were not informed about the said adjournment. The witnesses examined on behalf of the judgment-debtors deposed that even though they waited till 4.30 p.m. on that day, the Court did not announce the next date of adjournment and, therefore, they had to leave the Court premises without knowing the next date of auction. As has been held by various High Courts in *Krushna Mohan Mohanty Vs. Govinda Chandra Sahu*, *Abdul Rauf v. Mt. Qamrunnissa*, (supra) and *Babu Ram Vs. Inamullah*, the Court is bound to specify the date and hour of next adjournment date on which sale is proposed as required under Order 21, Rule 69 CPC. Evidently, in the instant case, the Court below had failed to stick on to the above provision while adjourning the EP from 30-1-1982 till the next date of hearing and it did not announce the next date of adjournment in the presence of all the bidders. Non-mentioning of date and hour of sale is also a material irregularity.

11. It is not out of place to mention here that the auction purchaser in this case is none other than the brother's son of the decree-holder. It is also seen that on the date on which sale was held, no independent bidders could be present as there was no proper announcement on 30-1-1982 about the next date of sale. All these circumstances go to establish clinchingly that the valuable EP schedule properties were sold away for a song and such a sale, for the reasons aforementioned, is liable to be set aside.

12. It is also contended before me that the sale proclamations were not affixed in the property. But, there is no sufficient evidence to prove this aspect.

13. Lastly, it is seen that under sub-rule (1) of Rule 66 to Order 21 of the Code, the sale proclamation shall be published in the language of the Court. The languages of the executing Court, as has been announced by the Government of A.P. in A.P. Gazette No.32 dated 9-8-1962, (published in G.O. Ms. No.1295 Home (Courts-A), dated 16-7-1962), are -- Telugu, Urdu and Kannada (for Kurnool District). But, the sale proclamation in this case was published in English, which is clearly in violation of the provisions of Order 21, Rule 66 (1) CPC.

14. For all the reasons aforementioned, I am of the view that the sale of EP schedule properties conducted on 11-2-1982 is vitiated by illegalities. The sale is, therefore, liable to be set aside.

15. In the result, the CMA is allowed and the order of the lower executing Court is set aside. Consequently, the EA is allowed and the sale of the EP schedule properties is hereby set aside. No costs.