

(1927) 12 MAD CK 0001
In the Madras High Court

Ambi Aiyar alias Venkatarama Ayyar	Vs	APPELLANT
B. Sundaresa Ayyar and Others		RESPONDENT

Date of Decision : 07-12-1927

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 69

Citation : 110 Ind. Cas. 779

Hon'ble Judges : Ramesam, J; Jackson, J

Bench : Division Bench

Judgement

This appeal is against an order of the Subordinate judge of Kumbakonara refusing to set aside a sale held on the 24th to 28th April, 1924, and

concluded on the 26th of April, 1924. The appellant complains of several irregularities in the conduct of the sale.

The first irregularity is not pressed. It relates to the description of the property to be sold. The second irregularity is that the taxes and other

payments to which the land is subject was described as Rs. 50 in the proclamation whereas really it ought to have been Rs. 53-8-2. The property

consisted of two lots, lot No. 1 was subject to an annual assessment of Rs. 51-6-0 and lot No. 2 to a Municipal assessment of Rs. 2-2-2. Thus

the total of Rs. 53-8-2 ought to have been mentioned in the column provided for assessment and taxes But the figure that was mentioned was Rs.

50. The variation is so small that it is very difficult to believe that this variation could have produced any serious injury to the appellant. The price

realised in auction is Rs. 7,000 and a small realisation would have practically no bearing at all in a sale which resulted in the realisation of Rs.

7,000.

The next irregularity is the one which is most seriously pressed. This relates to the adjournment of the sale from the 14th. February, 1924. to the 24th April, 1924. The sale was originally fixed to 14th February. On that day the petitioner filed a petition before the Subordinate Judge asking for an adjournment for two months, waiving fresh proclamation. On the petition there was an endorsement by the Vakil for the decree holder: "No objection to sale being adjourned without fresh proclamation to 17th April, 1924, etc." The 14th of February, was a Thursday. It seems the practice of that Court was to hold sales on Thursdays; presumably, this was known to all the parties and the Vakils. The appellant is one who is accustomed to Courts because in his evidence he admits that he used to conduct suits for others. The Thursday which is nearest to two months from the 14th February, was 17th April, that is why this date was inserted in the endorsement of the decree-holder's Vakil. This petition was presented in open Court; and it bears the endorsement "Received on the 14th February". It was also numbered and it runs the order, "the sale is adjourned to the 24th April, as prayed by the petitioner." The reason for adjourning to 24th April, was that 17th April, was a holiday (Easter). The petitioner says that after the petition was handed to the Subordinate Judge he left the Court and did not know the contents of the order up to the 23rd of April, 1924, when he learnt that the sale was posted to 24th April. In the first place, when a petition was handed in open Court to the Subordinate Judge for the purpose of having the sale adjourned, it is rather unlikely that the petitioner, would have gone away without knowing the result of the petition. When a petition is handed personally to a Judge it is likely that the order is passed almost immediately. It might be that the petition was sent to the sheristadar to see whether it was in order. Subject to a delay of a few minutes, probably the order might have been passed almost immediately, because the hour for sale was fixed as 12 noon and the likelihood is that the petition was presented immediately after the Judge took his seat in Court and the order must, therefore, have been passed some time before the hour fixed and the petitioner must have known of it. The probability is that he was present in Court. There is no other evidence beyond the statement that he left the premises before the order was passed. But assuming that he really left the Court and did not know the contents of the order, it is incredible that the petitioner remained ignorant of

the contents up to the 23rd April while the contents of the order could have been easily ascertained, That the petitioner did not care to enquire and

did not ascertain what the exact order was from the 14th February to the 23rd April is incredible. He says he came to Court on the 17th April but

found that was a holiday. Assuming that he did not know these facts up to the 17th April, when he came to Court and found it was a holiday, it is

still more incredible that he was ignorant of all this up to the 23rd April. When he waived fresh proclamation the idea was that he will take steps to

make known the fact of sale on the adjourned date to various people who were likely to be bidders anyhow, he will take the risk of there being no

fresh proclamation. If he had known the correct date on the 17th of April, the situation is exactly the same as if he had known the date from the

very beginning. Order XXI, Rule 69 (2) says that a fresh proclamation under Rule 67 shall be made unless the judgment-debtor consents to waive

it. It is now argued that the judgment-debtor consented to waive fresh proclamation only if the adjournment is made to the 17th of April and not to

the 24th of April. If he was present in Court at the time the order was passed, then he must be taken to have consented to the adjournment to 24th

April. But even if it is otherwise, he has certainly consented to an adjournment of about two months, that is, to the nearest Thursday after two

months. That date happens to be the 24th of April and he must be taken to have consented to that. Now if he really did not know it to be the 24th

of April, it might be that a date arrived at by this sort of inference might cause some injustice, but as I have already shown, it is impossible to

believe that the petitioner remained ignorant of the date to which the sale was adjourned all along during the intervening period of two months. For

these reasons, we are inclined to agree with the judgment of the Subordinate Judge.

The next irregularity complained of is that the adjournment was not made to any fixed hour. Order XXI, Rule 69 says:

The Court may, in its discretion, adjourn any sale hereunder to a specified day and hour." This means, as the appellant's learned Vakil contends

that the adjournment is in the discretion of the Court, but when it does adjourn it ought to be to a specified day and hour. It is certainly not

desirable that the lower Courts should not conform to the provisions of this section if for no other reason at least for the reason that they will avoid

such objections as this. It is better that they get into the habit of mentioning the date and hour, whenever an order of adjournment of sale is passed.

It looks as if the directions in this section are not properly observed. In *Babu Ram v. Inamullah* 99 Ind. Cas. 926; 25 A.L.J. 302: A.I.1927 All.

241; 49 A. 402 Walsh, acting C.J., observed that the rule was not properly followed. This state of things is certainly not desirable. But the

question in the present case is how far this is an irregularity and how far it has led to any substantial injury to the petitioner. On the other cases

bearing upon this point and cited before up, *Bhikari Mina v. Rani Surja Moni Pat Maha Dai* 6 C.W.N. 48 and *Surno Moyee Debi v. Dakhina*

Ranjan Sayal 24 C. 291; 12 Ind. Dec. 861 it does not appear that even the original proclamation contained the hour. It may be observed that the

decision in *Bommayya Naidu v. Chidam Baram Chettiar* 22 M. 440; 8 Ind. Dec. 315 was misquoted in the judgment of the lower Court. In the

present caee the sals was fixed to 12 noon on the 14th February and when it is adjourned to the 24th April, it is a reasonable inference to make

that the sale was adjourned to the same hour on the new date. By making this observation I do not say that Courts: need not mention the hour

when they pass the order of adjournment. It is better that they strictly conform to the provisions of the section as already observed. However, in

the present case, one may reasonably infer that all understood that the sale was adjourned to 12 noon on the 24th April. Again, according to the

practice of Courts in conducting sales, important sales are not finished in a few minutes or seconds but they are conducted for a number of hours

sometimes the whole day and in the present case it went on for three days. On the 24th April the petitioner requested that the sale should continue

beyond the 24th that is to the 25th and the 26th and then adjourned to the reopening day after the summer vacation and should be closed only on

the 30th of June. The last part of the request was refused, but the sale was allowed to be continued up to the 26th. That being so, it is very difficult

to believe that not mentioning the hour of the 24th April could have any bearing on the ultimate result of the sale. In ths petition which the petitioner

filed on the 24th of April asking for the continuance of the sale beyond the summer vacation, no complaint was made of the non-mention of the

hour in the order for adjournment. It is now suggested that he was probably ignorant of that fact but as I have already said it is very difficult to

believe that, the petitioner did not know really the contents of the order even on that date. The result is, we agree with the Subordinate Judge in

holding that though this is an important provision of the Code which ought to be followed by the lower Courts and though there may be cases in

which the non-mention of the hour may be considered a material irregularity causing substantial injury on the facts of the present case we are not

prepared to say that this particular irregularity has caused any substantial injury to the petitioner.

At this stage it may be necessary to say a few words on the value of the property to show that it cannot be regarded that there is any substantial

injury resulting on account of such irregularities as have occurred, assuming they are irregularities. The property sold was a rice mill. It originally

belonged to three partners. One of the partners sold it to the other two and ultimately one of the two others became the sole owner by a release.

He became an insolvent and prior to his becoming an insolvent he gave the property as security to the present plaintiff (decree-holder). There was

an attempt by the Receiver to sell the property on eight different occasions. Though we have not got complete information on the details of the sales

on these eight different occasions we must take it that these sales were bona fide attempts to realise good price for the property, but the result was,

as a matter of fact, there were no bidders on any of these occasions. Ultimately the property was sold to one Venkataramaiyer, a cousin of the

present appellant and now P.W. No. 2 for Rs. 2,750 subject to a charge of Rs. 15,000. So that, in March 1921 the property fetched Rs. 17,750.

In February, 22 the property was sold to the appellant by Ex. A for Rs. 21,000. The Subordinate Judge considers that the purchase by the

appellant's cousin Venkataramaiyer was itself a benami purchase for the appellant. We do not think it is necessary to go into this question.

Probably the later price of Rs. 21,000 is a pulled up price, because it is unlikely that as between the two cousins there will be an attempt to make a

profit of more than Rs. 8,000 in an interval of eight months. Whatever it may be, at the time of the Court sale the property could not be worth

more than Rs. 14,000. Assuming that the property is worth now thirteen or fourteen thousands it cannot be said that the actual amount realised is

such a gross under value as to lead to the inference that the irregularities complained of must be the cause for this inadequate price. It must be said,

that the price realised is somewhat inadequate but, on the other hand, it must be remembered that the property sold is of some speculative kind, a rice mill. It may be the price of machinery deteriorates and probably some time after the war the prices are falling and it is not every body anyhow that purchases property of this kind and one cannot expect a large number of bidders for a rice mill. Necessarily, the bidders must be limited and it cannot be said that the price realised was such a grossly inadequate price seeing that in Court sale's one must always be prepared to a smaller price being realised. Having regard to all these facts we are not prepared to interfere with the order of the Subordinate Judge. The appeal fails and is dismissed with costs of the 1st respondent (purchaser).