
(1982) 08 KL CK 0006
In the High Court Of Kerala
Case No : C.R.P. No. 1913 of 1982-D

A.V. Janardhanan

APPELLANT

Vs

Official Receiver and Others

RESPONDENT

Date of Decision : 26-08-1982

Acts Referred:

Citation : (1982) 08 KL CK 0006

Hon'ble Judges : Kader, J

Bench : Single Bench

Advocate : P.G. Parameswara Panicker, for the Appellant; P.N. Ramakrishnan Nair, K.V. Sadananda Prabhu and C.S. Madhavan Pillai, for the Respondent

Final Decision : Dismissed

Judgement

Kader, J.—This revision petition is filed by one Janardhanan, said to be the Manager of Chandra Oil Expellers, Alleppey, challenging an order passed by the Additional Sub Judge, Alleppey, on a report filed by the Official Receiver, the first Respondent herein permitting him to conduct fresh sale of the copra involved in the suit O.S. No. 166/82 in public auction after due notice. The learned Sub Judge directed the Official Receiver to take possession of 200 bags of copra said to be weighing 84*96 quintals involved in the suit. On receipt of the report from the Official Receiver that he took possession of the copra, the learned Sub Judge permitted him to sell the copra after due notice, and deposit the sale proceeds in court. Pursuant to this order, the Official Receiver after due publication and giving notice to the parties, invited tenders from copra dealers and oil millers. Ext. P-I produced in the case is said to be a copy of the notification published by the Official Receiver in this regard and sent to Chandra Oil Expellers, Alleppey, and received by the Petitioner who in his capacity as Manager, participated in the auction which was conducted in the forenoon of July 26, 1982. As per the terms of the notification, the copra in question was to be sold to the highest bidder at 10 a.m. on the said date. On duly opening the tenders received, it was noticed that the tender offered by the Petitioner was the highest. The Petitioner had

quoted Rs. 716.25 per quintal and according to him, being the highest bidder his tender was said to have been accepted by the Official Receiver who was then paid Rs. 10,000 in accordance with the terms of the notification. The Petitioner alleges that thereafter the copra was weighed and he offered to pay the balance amount of Rs. 50,852.60 to the Receiver but as it was late in the evening, the Receiver told the Petitioner that the money need be paid and the copra removed only on the next day. The complaint of the Petitioner is that instead of releasing the copra to him, the Receiver filed a report to the court on the next day stating that the market rate of the copra was Rs. 945 and the rate quoted by the Petitioner was inadequate, that one Thara Enterprises had quoted Rs. 850 per quintal and in the circumstances seeking appropriate direction and orders of court on his report. It was on this report that the learned Subordinate Judge passed an order as stated earlier.

2. Attacking this order, the counsel appearing for the Petitioner strongly contended that the order is illegal and vitiated by material irregularities in the exercise of jurisdiction; that the learned Subordinate Judge failed to note that the contract between the Petitioner and the Respondents has been concluded; that thereafter it was not open to the court to set aside the sale and order a fresh sale; that it was without hearing the Petitioner that this order was passed; that the price offered by him was reasonable; that the Petitioner had entered into agreements with third parties on the basis of this purchase by him and that therefore the order should be set aside and the sale in favour of the Petitioner may be confirmed or the matter may be sent back for disposal afresh after hearing all parties.

3. Supporting the order of the court below the counsel appearing for the bank and the Receiver submitted that the offer made by the Petitioner has not been accepted; that there was no concluded contract; that this was not an independent sale by the Official Receiver; that he was acting as an agent of the court; that the sale conducted was subject to confirmation by the court; and that therefore the Petitioner who does not have any vested right has no locus standi to question the correctness of the order. It was also submitted that it was after hearing all the parties concerned and the trial court was satisfied that the price quoted by the Petitioner was inadequate that fresh sale was ordered.

4. The main question that arises for determination in this revision petition, is whether there was a concluded contract between the Petitioner and the Official Receiver who was acting on behalf of the court. It is true that in Ex. P-I notification it has not been stated that the sale is subject to confirmation by the court. Ext. P-I contained only some of the terms, and it has been specifically stated therein that the persons who intend to participate in the sale must approach the Receiver to ascertain further conditions and terms. There is an affidavit filed by the Official Receiver who is an advocate affirming that before the sale was conducted he made it clear to the Petitioner and other persons who participated in the auction that the sale was subject to the confirmation by the

orders of the court and that none of the parties acquired any right on the basis of acceptance of this tender.

5. It was argued that the Official Receiver was given absolute power to sell the goods in question and deposit the sale proceeds in court; and, therefore there was no necessity for confirmation and if there was no necessity for confirmation, there was a concluded contract entered into between the Petitioner and the Official Receiver who has accepted part consideration of the sale price. It is not necessary in a case of this nature while directing the Official Receiver to sell that the court should always state in its order that the sale is subject to confirmation. In cases of this nature it is implied that the contract of sale can be taken as concluded only on confirmation of the same by the court. The order of the court was as follows:

21st July 1982. D-6 agree. No objection. Permitted to sell with due notice and deposit the amount in Court.

It is not disputed that the Official Receiver was acting as an agent of the court. This aspect has been made clear from the affidavit filed by the Official Receiver. The decisions reported in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and *Bhagwati Debi Goenka Vs. Kishorilal Goenka and Others*, have no application to the facts of the present case. It is true that in *Thangal v. State of Kerala* 1968 KLT 520, it was held by a Division Bench of this Court, that even if a person makes an offer after confirmation of the sale, to purchase the property at higher amount, the court is not bound to conduct an enquiry or set aside the sale. But in the same decision it has also been held, that the condition that the sale is subject to confirmation of court is only a safeguard against irregularity or fraud in connection with the sale and against property being sold at an inadequate price. A sale conducted by a Receiver appointed by the court, out of court, is also a sale by the court. A Receiver does not acquire a power of sale by virtue of his appointment. A sale is often effected by the Receiver entering into a conditional contract subject to the approval of the court: Where sale by tender is directed, there is under the usual conditions no binding contract until the sale has been confirmed by the order of the master: An offer received after the close of the date for tenders may therefore be accepted. (Kerr on Receivers, 15th edn. a.p. 219). It is the settled law that any sale by an officer of the court has to be confirmed by the court. In *Kutti Enuri Neithiar v. Union Timber Traders* 1959 K.L.J. 691, Vaidialingam, J., as then he was, had occasion to consider almost an identical question. Following the decisions of the Madras High Court, the learned Judge observed: "even in the absence of any specific recital reserving a power in the court, the court has always an inherent jurisdiction to give its approval or not to a sale conducted by an officer of court. In *Ratnasami Pillai Vs. Sabapathy Pillai and Others*, , a Division Bench of the Madras High Court, while considering the various legal implications of a court sale, held that when an auction is held without any reservation, ordinarily an implied condition will be understood that the highest bid will be accepted but that

rule does not hold good in the case of a sale by a Court Officer under the directions of the court. When a court-sale takes place, the sale in favour of a particular individual is not complete unless and until it receives the confirmation of the Court. It is the acceptance of the court that concludes the contract. When the person asserts that the Court Officer had power to bind the court by his acceptance of a bid, he must prove his contention. The mere fact that in the order or in the published conditions of sale, there is no statement to the effect that it is subject to the confirmation of the court cannot be treated as implying that the court had renounced its power of confirming the sale before it could take effect. It has to be noted that a Receiver appointed by the court has no powers except what the court grants him. He is only an officer of the court and whatever powers he exercises are delegated powers of the court which it expressly gives him.

6. In another case, *A. Subbaraya Mudaliar Vs. K. Sundararajan, (Joint Receiver) and Others*, , a Division Bench of the Madras High Court, consisting of Rajamannar, G.J., and Venkatarama Ayyar, J., as he then was, held, that merely by reason of the fact that a person was the highest bidder at the auction sale conducted by the receiver under orders of court, the person does not obtain any enforceable right to the property, sold at the auction. The condition as regards confirmation of the court is a safeguard against property being sold at 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, even though there is no suggestion of irregularity or fraud. A sale conducted by an officer of court would 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 that case there was a condition that the sale will be subject to confirmation by the court. Their Lordships approved in that case the observations or dictum laid down in *A. Subbaraya Mudaliar Vs. K. Sundararajan, (Joint Receiver) and Others*, , that even in the absence of such a condition the result might have been the same. The Receiver, as stated earlier, is an officer of the court. The sale conducted by him is a sale held on behalf of the parties interested in the sale subject to the supervision by the court. A Receiver is appointed for the benefit of all concerned. Therefore, he is a representative of all the parties interested in the litigation. He has to be very careful and take all necessary steps in safeguarding and protecting the interests of all concerned. There is therefore nothing wrong or illegal if the Official Receiver, first Respondent, made a report, especially when there was a complaint that the price offered by the highest bidder was inadequate to the court, and requesting for further directions in the matter. While laying down principles which governed the confirmation of sale the Supreme Court in *Navalkha and Sons Vs. Ramanuja Das and Others*, , has stated as follows:

Where the acceptance of the offer by the Commissioners is subject to

confirmation of the court, the offeror does not by mere acceptance get any vested right in the property so that he may demand automatic confirmation of his offer. The condition of confirmation by the court operates as a safeguard against the property being sold at inadequate price whether or not it is a consequence of any irregularity or fraud in the conduct of the sale. In every case it is the duty of the court to satisfy itself that, having regard to the market value of the property, the price offered is reasonable. Unless the court is satisfied about the adequacy of the price the act of confirmation of the sale would not be a proper exercise of judicial discretion.

7. On the facts and circumstances disclosed from the records, it is clear that no contract has been concluded between the Petitioner and the Official Receiver and that the Petitioner has not acquired any vested right by the mere fact of offering or by the acceptance of Rs. 10,000 by the Receiver as required under one of the clauses of Ext. P-1 notification. The Petitioner has also therefore no right to be heard, as he has no enforceable right in the transaction and the court below was not bound to hear him before it passed any order on the report of the Receiver after hearing the parties to the suit. The petition therefore fails and is hereby dismissed, but without costs in the circumstances.