
(2001) 09 AP CK 0108
In the Andhra Pradesh High Court
Case No : CRP No. 1101 of 1994

Dinesh R. Mehta and Others

APPELLANT

Vs

UNO Bank, Secunderabad and Others

RESPONDENT

Date of Decision : 13-09-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 92, Order 21 Rule 94, 65

Citation : (2001) 6 ALD 688 : (2001) 6 ALT 379 : (2001) 3 APLJ 217 : (2002) 1 CivCC 524

Hon'ble Judges : B. Prakash Rao, J

Bench : Single Bench

Advocate : C. Subba Rao, for the Appellant; V.S.R. Anjaneyulu and Eranki Subba Rao, for the Respondent

Final Decision : Dismissed

Judgement

1. In this revision, the petitioner No. 1 who is the auction purchaser and petitioner Nos.2 to 8 who claim to be represented by petitioner No. 1, are aggrieved against the orders in EA No. 40 of 1992 in EP No. 13 of 1988 dated 19-7-1993 on the file of the Additional Chief Judge, City Civil Courts, Secunderabad.

2. Though served, none appeared on behalf of the respondents. Hence this Court appointed Sri V.S.R. Anjaneyulu, Advocate, to assist the Court.

3. The facts in brief and not in dispute are that in pursuance of execution of a decree for money, the property consisting of a double storeyed building situated at Ramgopalpet, Secunderabad was attached and sold in an auction. The sale was held on 16-12-1992. The petitioner No. 1 herein was the highest bidder and the sale was knocked down in his favour. The bid was for Rs. 4,02,000/- and a sum of Rs. 1,00,500/-i.e., 1/4th of the bid amount was deposited immediately and the balance was deposited on 30-12-1991. Later, the sale was confirmed on 6-8-1992.

4. At this stage, the present application is filed by the petitioner No. 1, the auction purchaser along with the other petitioners 2 to 8 purporting to be under Order 21, Rule 94 CPC seeking to issue sale certificate in their joint names stating that the building in its two storeys consist of 4 flats each and each of which is in their occupation separately. Further, it was claimed that in fact the bid by the petitioner No. 1 was on behalf of all the petitioners. However, all the names were not mentioned at the time of execution and the bid was knocked in favour of the petitioner No. 1 even though all of them have made contribution of the respective amounts.

5. On a consideration of the aforesaid plea, the Court below rejected the application on the ground that there being no assignment by the petitioner No. 1 in favour of the other petitioners 2 to 8, there cannot be a valid transfer. Therefore, it was held that no sale certificate could be issued to the other petitioners.

6. Heard Sri C. Subba Rao, the learned Counsel for the petitioner and Sri V.S.R. Anjaneyulu, the Counsel appointed as *amicus curiae*.

7. With the above aspects in the background, the question which falls for consideration in this revision is as to whether a sale certificate can be issued to a person other than the auction purchaser in a Court auction?

8. Rule 94 of Order 21 of the Code of Civil Procedure, which is relevant for the purpose of this case, reads as under:

"94. Where a sale of immovable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which sale became absolute."

9. It is thus evident from the above rule that the certificate necessarily has to be granted in the name of the person who at the time of sale is declared to be the purchaser. This expression, which has been incorporated in the aforesaid rule, will have a lot of bearing on the question to be decided. May be, if one allows any third parties to avail of the benefit of having a sale certificate, it would lead to many applications (sic complications) apart from defeating the provisions of other substantive laws including the Stamp and Registration Act.

10. In *Pattam Khader Khan v. Pattam Sardar Khan* [1997 (1) ALT 20 (SC)], Apex Court while considering the provision of Order, 21 Rules 92 and 94 CPC in regard to a Court auction sale, held that the Court sale is a compulsory sale conducted by or under the orders of a Court. The title to the property sold does not vest in the purchaser immediately on the sale thereof unlike in the case of a private sale. After the sale had become absolute, a certificate is required to be granted to the purchaser by the Court termed as certificate of sale as provided by Rule 94. Such a certificate bears the date on which the sale becomes absolute. It is on the sale becoming absolute that the property sold vests with the purchaser. The vesting

property thus relates back to the date of sale as required u/s 65 of CPC. The title of the auction purchaser becomes complete on the confirmation of sale under Order 21, Rule 92 and by virtue of the thrust of Section 65, the property vests in the purchaser from the date of sale; the certificate of sale by itself not creating any title but merely evidence thereof. The sale certificate rather is a formal acknowledgment of a fact already accomplished, stating as to what stood sold. Such act of the Court is pristinely a ministerial one and not judicial. It is in the nature of a formalisation of the obvious.

11. In *Sagar Mahila Vidyalaya, Sagar Vs. Pandit Sadashiv Rao Harshe and others*, , considering Rule 94 of Order 21 CPC in a case where the sale certificate was issued in favour of a society on the ground it was the real purchaser and not in favour of the person in whose favour the final bid was knocked down and the said order not being challenged, it was held that it cannot be challenged in a suit for declaration of possession after 16 years. Further, it was held that by virtue of the issuance of sale certificate in the name of the society i.e., other than the auction bidder, the sale does not become void thereby and the society holding the sale certificate cannot be held to be a trespasser. It was also held:

"The issue of sale certificate under Order XXI, Rule 94 CPC in favour of the auction-purchaser though mandatory, but the granting of certificate is a ministerial act and not judicial."

12. This decision, however, cannot be said to be a direct one to say that on request, a sale certificate can be issued in favour of a person other than the auction purchaser.

13. In *Seth Mohandas Vasudev Vs. M.R. Ramamoorthy*, , a learned single Judge of the Madras High Court held:

"A transferee from an auction purchaser, successful bidder in a Court auction sale is not entitled to the issue of a sale certificate in his favour directly from the Court unless it is proved that the bidding by the successful bidder was one for or on his behalf. It is open to such a transferee to take a regular sale deed from the auction purchaser bidder after the issue of sale certificate in his favour, but the Court would not issue the sale certificate in the name of the transferee from a successful auction-bidder in execution sale, so long as the transferee was not the patent or latent bidder. It makes no difference that both the transferee and auction purchaser bidder have filed a joint consent memo praying for the issue of the sale certificate. It may be that in certain cases where the Court has issued the sale certificate in the name of a transferee it may be only an irregularity and not an illegality. But no Court is bound to commit an irregularity at the request of the party even by consent."

14. In *Shivadas Subrao and Company v. Divekar* [AIR 1969 My. 73], considering the said rule in a case where the property was purchased in an auction by a deceased partner on behalf of the firm, it was held that the certificate can be issued to the legal representative of the deceased partner on the ground that

there is nothing in the said rule to prevent the Court from granting the certificate to a legal representative of the auction purchaser or an assigns from him.

15. In *A.V. Sreenivasalu Naidu Vs. V.K. Nataraja Goundan and Another*, , considering Rule 94 of Order 21, it was held:

"Where the person bidding at the auction informs the Nazir that he is bidding on behalf of his wife, it must be held that the person was acting as the agent of his wife despite of the fact that no power of attorney was filed by him asking for permission to bid on behalf of his wife. The entry in the bidder's list has to be interpreted on the footing that the person bid on behalf of his wife and the property was knocked down to him as the agent of his wife. Hence the wife must be deemed to be the person who at the time of the sale was declared to be the purchaser. The sale certificate issued in the name of the wife is proper."

16. In the said case, the Court has accepted the participation by the auction purchaser on behalf of his wife and, therefore, it was found that the act of participation is on behalf of his wife.

17. From the above, it is thus evident that there is no escape more so in view of the express provisions contained in the rule that a sale certificate cannot be issued to any person other than a person who was the purchaser in a Court auction. Admittedly, in this case, there is no transfer much less any assignment by the auction purchaser-petitioner No. 1 in favour of the petitioners 2 to 8 herein nor there is any such valid authority from them. Further, there is also nothing on record to show that there was any attempt on the part of the auction purchaser to show that his participation was in fact on behalf of the petitioners 2 to 8 herein. It is only for the first time in the present application that the petitioners have come up with the theory that they are the real participants and who contributed to the fund, which was deposited by the auction purchaser. It is very difficult to accept the said theory at this length of time and more so later to the stage of confirmation of sale.

18. In the circumstances, it has to be held that the petitioners cannot claim for issuance of a sale certificate in their favour. Accordingly, I do not find any merits in the revision and it is therefore, dismissed.

19. Before parting with the case, this Court places on records its appreciation for the assistance rendered by Sri V.S.R. Anjaneyulu, the learned amicus curiae in the adjudication of the question.

20. There shall be no order as to costs.