(1960) 07 MP CK 0005

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 186 of 1958

Firm Jagmohanlal Ramnath APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 29-07-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90, Order 21 Rule 92
Madhya Pradesh Land Revenue Code, 1954 — Section 41

Citation : AIR 1961 MP 298 : (1961) 6 MPLJ 49

Hon'ble Judges : T.C. Shrivastava, J;S.P. Bhargava, J

Bench : Division Bench

Advocate : Y.P. Verma, J.N. Tiwari and R.R. Shivahare, for the Appellant; H.L. Khaskalam, Additional Government Advocate and R.K. Pandey, for the Respondent

Final Decision : Dismissed

Judgement

Shrivastava, J.

This petition under Articles 226 and 227 of the Constitution is directed against the order passed by the Board of Revenue on 31-5-1958. The petitioner prays for a writ of certiorari to quash the impugned order.

Three houses belonging to the petitioner were sold in auction sale in 1956 for recovery of arrears of Income Tax. He applied under Rule 29 of Schedule II, Madhya Pradesh Land Revenue Code 1954, for setting aside the sale on the ground that there were material irregularities in conducting the sale. The application was rejected by the Deputy Commissioner on the 17th, October, 1956 and the sales were confirmed on 22-10-1956. The petitioner filed an appeal before the Board of Revenue in which he impleaded only the State Government. Subsequently, on 29-1-1957 he sought leave to implead the auction-purchasers (respondents 4 and 5) also as respondents to the appeal. On this date, the appeal was barred by time and so the petitioner also filed an application u/s 5 of the Limitation Act for condonation of delay. That application was rejected by the

Board of Revenue. It was further held that the auction-purchasers were necessary parties to the appeal and the appeal was dismissed.

Shri J. N. Tiwari, learned advocate for the petitioner, did not challenge the rejection of the application for condonation of delay u/s 5 of the Limitation Act. His only contention is that the auction-purchasers were not necessary parties to the appeal and therefore the Board committed an error in rejecting the appeal on that ground. The Board relied upon AIR 1930 5 (Nagpur) for its view; but Shri Tiwari contends that that decision is no longer good law.

He referred to the decision of a Division Bench of the Rajasthan High Court in Alladin v. Karimbux AIR 1955 Raj 51. In that case, the question whether it was necessary for the judgment-debtor to name the auction-purchaser in the formal array of parties in an application under Order 21, Rule 90, Civil Procedure Code, was considered. After pointing out the conflict of views between the different High Courts on this point, their Lordships concluded :

"The consensus of opinion, therefore, of ail High Courts is that if an application is made under Order 21, Rule 90 within 30 days of the date of sale, it is the duty of the Court to dispose it of, and the fact that there is no formal array of parties in the heading would not make the application barred by limitation, and that it is the duty of the court under the proviso to Order 21, Rule 92(2) to give notice to all parties affected by the application."

So far as original proceedings in the executing Court are concerned, this is also the view of this High Court. In AIR 1948 303 (Nagpur) Padhye, J. observed :

"The law nowhere requires that an auction-purchaser should be impleaded as a party to an application under Order 21, Rule 89. It is sufficient if he has notice of this application before it is disposed of."

In view of the express provision in Order 21, Rule 92 (2) enjoining the executing Court to give a notice to the parties affected, including the auction-purchaser, it is not necessary for the applicant-judgment-debtor to mention the name of the auction-purchaser in the formal array of parties. That does not, however, imply that he is not a party to the proceedings. Obviously, he becomes a party on notice by the court and is heard as regards the contentions in the application to set aside the sale. A person whose interests are affected by the relief sought and in whose absence the relief cannot be given to the appellant is always a, "necessary party". As the auction-purchaser is vitally interested in the result of appeal, he is a necessary party.

The situation in pending execution proceedings and in an appeal are quite different. In the first case, the proceedings are pending and all who are interested are before the court already. Further, as an extra caution the court is required to give them a notice under Order 21, Rule 92. In an appeal, the parties are not before court unless they are impleaded. Order 21, Rule 92 has no application and it is not therefore the duty of the appellate court to issue notices to all concerned without their being impleaded. It is clearly the duty of the appellant to implead all persons who would be affected by the acceptance of his prayer by the appellate court. Auction-purchaser is certainly one of such persons and is therefore a necessary party.

The decisions relied upon by the learned counsel for the petitioner deal with the situation arising in an executing Court. He did not refer to any case in which the question is considered in the context of appeals. On the other hand, the decision in AIR 1930 5 (Nagpur) is itself a case relating to necessary parties at the stage of appeal. We may quote the relevant part of the decision:

"The proviso under Sub-sections (1) and (2) of Rule 92 of Order XXI of the First Schedule of the CPC runs as follows: ''Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.''

Auction-purchaser is certainly one of the persons likely to be affected by the application made under Order XXI, Rule 90, and is a person who must have notice of the application. If he is a necessary party in the Court which makes the enquiry, he is also a necessary party in the appeal, filed against that order. The defect is fatal and must result in the dismissal of the appeal, in which a necessary party has not been joined as a party"

In our view, this decision is still the correct law and is not at all affected by what is said on the point as regards the proceedings in executing Court. We may in this connection refer to the decision in Birdichand v. Ganpatsao ILR 1940 Nag 302: (AIR 1938 Nag 525. The following passage occurs in that judgment at page 305 (of ILR Nag): (at p. 527 of AIR):

"Finally it is said that this appeal must fail because the auction-purchaser has not been joined: AIR 1930 5 (Nagpur) . But in our opinion in this case after the auction-purchaser had been given notice and had expressed no interest one way or another, it was entirely unnecessary to join him: Nitai Dutta Vs. Bishun Lal Sao, . It would have been quite different were the purpose of the appeal tp set aside the sale: AIR 1930 5 (Nagpur) was it case where the purpose of the appeal was to set aside the sale and no notice was given to the auction-purchaser who was the person most likely to be affected and not unnaturally the Court held that in the absence of the person most concerned the appeal could not succeed."

In that case, the auction-purchaser was not impleaded, but the omission was not considered material, as in the executing court he had expressly stated that he was not interested. However, that decision clearly lays down that he would be a necessary party otherwise.

We may here refer to two decisions of the Lahore High Court in Ramlal v. Kidar Nath AIR 1936 Lah 478 and Nanak Chand v. Raja Singh AIR 1933 Lah 324. In both these cases, it has been held that an auction-purchaser is a necessary party at the appellate stage and omission to implead him is fatal to the appeal. The difference in the appreciation of the material question at the stage of execution and at the stage of appeal is noticed in the latter case thus :

"It is urged on behalf of the petitioner that the learned Senior Subordinate Judge has acted with material irregularity in exercise of his jurisdiction in holding that Ladha Singh was a necessary party to the appeal before him. The learned counsel has referred to Bakshi Sain Das v. Punjab National Bank Ltd., Sargodha AIR 1928 Lah 418 in support of his contention, but that ruling does not appear to be in point inasmuch as it deals with the proceedings before the executing Court. According to the provisions of Order 21, Rule 92, Civil Procedure Code, all that is necessary is that notice should be given to all persons affected thereby, but in the present instance the sale had been confirmed and an appeal had been preferred from the order confirming the sale. Ladha Singh purchaser was obviously the principal person interested in the appeal and was a necessary party.''''

In view of these decisions, we have no doubt that the Board of Revenue was right in its observation that the auction-purchasers were necessary parties to the appeal. As they were impleaded after the expiry of the period prescribed for filing an appeal, the appeal was rightly dismissed.

Other grounds mentioned in the petition were not pressed.

In the result, the petition is dismissed with costs. Hearing fee is fixed at Rs. 100/- only. Only one set of fee shall be allowed to be shared equally by the counsel for the State and the counsel for the auction-purchaser-respondents. The balance of security deposit, after deducting costs payable to the respondents, shall be refunded.

