

(1973) 08 SC CK 0017

In the Supreme Court Of India

Case No : Civil Appeal No. 1648 of 1967

Gajadhar Prasad and Others

APPELLANT

Vs

Babu Bhakta Ratan and Others

RESPONDENT

Date of Decision : 14-08-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 66, Order 21 Rule 66(2), Order 21 Rule 90

Citation : AIR 1973 SC 2593 : (1973) 2 SCC 629 : (1974) 1 SCR 372 : (1973) 5 UJ 775

Hon'ble Judges : M. Hameedullah Beg, J; K. K. Mathew, J

Bench : Division Bench

Advocate : J.N. Chatterjee and E.C. Aggarwala, for the Appellant;

Final Decision : Allowed

Judgement

M.H. Beg, J.—This is a judgment debtors' appeal, by Certificate of fitness of the case for appeal to this Court granted by the High Court of Allahabad, arising out of an application filed under Order 21, Rule 90, Civil Procedure Code.

2. The Respondent decree-holders had obtained a decree for about Rs. 76,000/- against the appellants in a mortgage suit. In execution of that decree sales of three items of property, shown as houses belonging to the Judgment debtors took place on 5-5-1955 and 7-5-1955. The items were described as follows in the sale proclamation :

Boundaries East West North South 1. Pucca build house bearing University Lane and House of Colonel previous No. 8 and present No. 5 Road temple of Marium Ganj situate in Colonelgunj, city of Kaliji Bibi & Road Allahabad, together with site Mohd. and building materials entire Raza. 16 anna share value at Rs. 10,350/-. 2. Entire house tearing previous House of Lane House of Way No. 805 situate in Mohalla Gajadhar here after Gajadhar Katra, pasiyan City of Prasad. House of Prasad. Allahabad, valued at Rs. 5040/-. Maheshwary Prasad Vakil. 3. Bungalows bearing Nos. 8 and Lyal Road Bungalow Thornhill Club 10 situate on

Club Road, City No. 12 Road. Road of Allahabad with compound plot No. 129 together with trees, four walls and out houses etc. all things rights and interests, appertaining to bungalows the site land whereof has been acquired on lease dated 20-11-1948 and which lies within the same boundary. Bungalow No. 8 valued at Rs. 24000/- Bungalow No. 10 valued at Rs. 31200/-. There is no encumbrance. 3. The main objection of the judgment-debtors-appellants to this proclamation is that the execution Court had, in giving the valuation of the properties in the proclamation, practically accepted the statements made on behalf of the decree-holders, and, without assigning any reason, failed to mention the values put by the judgment-debtors on these properties. The respective valuations of the properties by the two sides were :

1. No. 10 T.B. Sapru Road Valuation put by the Valuation put by the D.H. Rs. 40,000/- J.D. Rs. 100,000 2. No. 8 T.B. Sapru Road 3. No. 5 Colonelgunj Rs. 10,000/- Rs. 60,000/- 4. No. 805 Katra. Rs. 1,000/- Rs. 25,000/-

4. On 18-5-1948, long before the proclamation of sale was drawn up on 31-3-1955, the judgment debtors had put in an objection to the execution Court's order of 14-2-1948 relating to the framing of the sale proclamation, particularly with regard to the two bungalows situated in the heart of the Civil Lines, the best residential area of Allahabad. They had stated that the area of land in the compound in which the two bungalows were situated was three acres and that the whole property was not worth less than Rupees one lac. They had objected to the sale of the two bungalows in one lot. They had also asserted that the latest municipal assessment of 1944 had displaced the municipal assessment of 1934 relied upon by the decree-holder. According to the judgment-debtors, the two bungalows Nos. 8 & 10 on Tej Bahadur Sapru Road were assessed at annual rents of Rs. 1500/- and Rs. 1200/- per year. In an affidavit of 19-4-1947 they had asserted that a bungalow situated nearby, assessed at an annual rent of Rs. 1500/-, was sold for Rs. 50,000/- on 23-4-45 when prices were lower. On 18-5-1948, the judgment-debtors had also prayed for the issue of a commission, at their expense, presumably to view the property and give a report on relevant facts before actually framing a sale proclamation in accordance with the court's order of 14-2-1948 directing insertion of the value made by it.

5. On 5-5-1955, the Court Amin had himself put up house No. 5 situated in Colonelgunj, Allahabad, separately for sale and sold it for Rs. 10,500/-. On the same date, the Amin sold house No. 5-A in Colonelgunj for Rs. 8500/- and also house No. 5-B separately for Rs. 7,000/-. Thus, a total amount of Rs. 26,000/- was realised from the sale of the three houses in one compound at Colonelgunj described as one item of property in the sale proclamation. They had been valued at Rs. 10,000/- by the decree-holder and Rs. 60,000/- by the judgment-debtor. The court had valued the whole property at Rs. 10,350/-, and thus practically assented to the decree-holder's valuation and rejected the judgment-debtor's without assigning any reason beyond expressing the opinion that it was exaggerated. The property in Katra was sold for Rs. 3,750/- on 5-5-1955.

6. After the sale, the judgment-debtors applied to set aside the sales on the ground of fraud and material irregularity in conducting them and complained of substantial injury. They relied on uncontroverted assertions made in their affidavit of 19-4-1974 as well as on the assertions made in an application dated 18-5-1948 where it was stated :

That the judgment debtor is informed that the whole game of the decree holder is to undervalue the property get the auction for a song and purchase the property himself. This underhand game may be stopped and justice be done.

7. The learned Counsel for the judgment-debtors submitted that, on die uncontroverted assertions of the judgment debtors, the conclusion is irresistible that the decree-holder had deliberately misled the Court and had committed a fraud upon it. It was urged that the decree holders' game had succeeded because they had themselves bought the two bungalows on Tej Bahadur Sapru Road for Rs. 56,000/-. According to the judgment-debtors, Bungalow No. 8, in which they carried on the business of cabinet making, could be let for Rs. 250/- per month and was itself worth that much.

8. The Execution Court had relied upon the Amin's report for holding that the two bungalows could be properly sold as a single unit because the servants' quarters for the two bungalows, which were situated in one compound, were the same. The judgment debtors' application had been dismissed for absence of material irregularity or fraud and want of proof of substantial injury as a result of these auction sales. A Division Bench of the High Court had affirmed these findings, but had certified the case, under Article 133 of the Constitution of India, as fit one for an appeal to this Court.

9. Two questions arise before us for decision. They are : firstly, whether there was either fraud upon the court or material irregularity in conducting the auction sales; and, secondly, whether substantial injury to the judgment-debtor had been proved have resulted from the auction sales.

10. It may be mentioned here that no one has put in appearance on behalf of the decree-holders respondents, Mr. J.N. Chatterjee, appearing on behalf of the judgment-debtors-appellants, stated that he did not want to press objection to sales of Colonelgunj and Katra properties. Indeed, their auction purchasers were not impleaded. Therefore, we will refrain from deciding any question relating to Colonelgunj and Katra properties.

11. We will now consider the question of material irregularity in ordering and conducting the auction sale of the two bungalows on Sir Tej Bahadur Sapru Road (formerly known as Club Road). The provision which was said to have been infringed is Order 21, Rule 66(2).

12. The whole of Rule 66 reads as follows :-

R. 66(1) Where any property is ordered to be sold by public auction in execution of a 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;

(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.

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by Sub-rule (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

13. It was submitted that the Court should not have put its own valuation on the property, as such a procedure was certain to prejudice the minds of prospective purchasers with regard to the value of the property to be auctioned. We find that there is some conflict of opinion in the High Courts on this question. The Madras High Court, in *S. K. Veeraswami Pillai Vs. Kalyanasundaram Mudaliar and Others*, *R. Srinivasan and Ors. v. the Andhra Bank Ltd.* AIR 1949 Mad. 398. V.A.S. *Yellappa Naidu v. G. Venugopal Naidu* AIR 1958 Mad. 423 and the Allahabad High Court, in *Md. Said Khan Vs. Md. Abdus Sami Khan and Another*, *Dwarka Dass Vs. Bhawani Prasad and Others*, have held that it is unnecessary for the Court to give its own estimate. The Calcutta High Court in *Rajah Ramessur Proshadnarain Singh v. Rai Sham Krissen and Ors.* 8 CWN 257 *Saurendra Mohan Tagore v. Rurruk Chand and Ors.* 12 CWN 542 *Bejoy Singh Dadhulia Vs. Ashutosh Gossami and Others*, *Lachira Vs. Rameswar Singh and Others*, (Kumar) *Pashupati Nath Maliah and Another Vs. Bank of Behar*, *New Birbhum Coal Co., Ltd. Vs. Surendra Nath Laik and Others*, the Patna High Court, in *Raghunath Singh v. Hazari Sahu and Ors.* AIR 1917 Pat. 381 . and *Musammat Golab Kuer and Another Vs. Musammat Bibi Saira and Another*, and the Rangoon High Court in *A.M.K.M. Finn V. Baishmaw* AIR 1937 Rang 137. have expressed opinions favouring giving of the Court's own estimate of the value of the property to be sold. But, a mere

acceptance of the valuation given by the decree-holder has been held to be material irregularity in *A.M.K.M. Firm v. Baishmaw* (Supra). The High Court of Bombay, in *Charandas Vasanji and Anr. v. Dossabhoy Maganlal and Ors.* AIR 1939 Bom. 182 . *Premaraj Pannalal Shop Vs. Sadabai and Others*, has held that, although, it is not necessary for the execution Court to value the property to be sold, yet, it may do so if it thinks fit. In *Sitabai Rambhau Marathe v. Gangadhar Dhanram Marwadi and Anr.* AIR 1935 Bom. 331 however, the Bombay High Court held that the Court is bound to hold an enquiry as to the value of the property and to state it in the sale proclamation. Although the Madras High Court had held that it is not necessary for the Court to give its own valuation, it expressed the opinion that it is desirable, where there is a wide divergence between the valuation of the decree-holder and of the judgment debtor, to have property valued through an Amin and to state it in the proclamation. The Calcutta view, in some of the cases mentioned above, was that, although the Court need not give its own valuation of the property in the sale proclamation, it would be justified in stating the valuation given by the parties.

14. It may be noticed here that there have been amendments of Order 21, Rule 66 by different High Courts from 1929 onwards dealing with the question of valuation. The Calcutta and the Punjab High Courts have made it clear that "it shall not be necessary for the Court itself to give its own estimate of the value of the property but the proclamation shall include the estimate, if any, given by either or both the parties". In Andhra Pradesh, Order 21, Rule 66(2)(e) has been amended to make it obligatory to give the value of the property as stated : (i) by the decree-holder; (ii) by the judgment-debtor. The Madras and Kerala High Courts have also adopted the rule as amended by the Andhra Pradesh High Court. The Madhya Pradesh High Court amendment only mentions that the particulars to be provided may include the decree-holder's estimate of the approximate market price. The Patna High Court amendment provides :-

that no estimate of the value of the property, other than those, if any, made by the decree-holder and judgment-debtor respectively together with a statement that the Court does not vouch for the accuracy of either, shall be inserted in the sale proclamation.

15. A review of the authorities as well as the amendments to Rule 66(2)(e) makes it abundantly clear that the Court, when stating the estimated value of the property to be sold, must not accept merely the ipse dixit of one side. It is certainly not necessary for it to state its own estimate. If this were required, it may, to be fair, necessitate insertion of something like a summary of a judicially considered order, giving its grounds, in the sale proclamation, which may confuse bidders. It may also be quite misleading if the Court's estimate is erroneous. Moreover, Rule 66(2)(e) requires the Court to state only the facts it considers material for a purchaser to judge the value and nature of the property himself. Hence, the purchaser should be left to judge the value for himself. But, essential facts which have a bearing on the very material question of value of the property

and which would assist the purchaser in forming his own opinion must be stated. That is, after all, the whole object of Order 21, Rule 66(2)(e), Civil Procedure Code. The Court has only to decide what all these material particulars are in each case. We think that this is an obligation imposed by Rule 66(2)(e). In discharging it, the Court should normally state the valuation given by both the decree-holder as well as the judgment debtor where they have both valued the property, and these do not appear fantastic. It may usefully state other material facts, such as the area of land, nature of rights in it, municipal assessment, actual rents realised, which could reasonably be expected to affect valuation. What could be reasonably and usefully stated succinctly in a sale proclamation has to be determined on the facts of each particular case. Inflexible rules are not desirable on such a question.

16. In the case before us, the execution Court had practically accepted, as its own valuation, without indicating reasonable grounds for this preference, whatever the decree holders had asserted about the value of the property. It did not bother to seriously even consider the objections of the judgment-debtors. We think that the duty to consider what particulars should be inserted in the sale proclamation and how the sale ought to be conducted should be performed judicially and reasonably. If the execution Court does not, as it did not in the case before us, apply its mind or give any consideration whatsoever to the objections of the judgment-debtor, we think a material irregularity would be committed by the execution Court. It is not necessary for the execution Court to order the insertion of a judicially passed order in the sale proclamation itself, but, it should pass an order showing that it applied its mind to the need for determining all the essential particulars, which would reasonably be looked for by a purchaser, and which should be inserted in the sale proclamation. The order should show that it considered the objections, if any, of the decree-holders or the judgment debtors, as the case may be. It should not merely accept unhesitatingly the ipse dixit of one side. We think that the execution Court had not performed its duty fairly and reasonably in this case. After embarking on the difficult task of valuation, it rejected the judgment debtors' figures by merely observing that they are exaggerated and practically accepted without hesitation whatever the decree-holders submitted, but this valuation was proved to be incorrect judged by the results of auction sales taken as a whole.

17. Mr. J.N. Chatterji relied upon the following passage in AIR 1945 67 (Privy Council) : "If the respondent knew the true facts, if he purchased at what he knew was too low a figure based on an upset price accepted by the Court owing to his own initial misrepresentation and subsequent suppression of material facts, his conduct would amount to fraud on the Court as the learned subordinate judge points out".

18. It is not necessary for us to decide whether the decree-holders' conduct in the case before us would amount to actual fraud practised on the Court with regard to the valuation. The judgment-debtors were there with their own

valuation and had even applied for the appointment of a Commissioner at their expense to report about matters affecting the value of the property. They had asserted that the two bungalows at Tej Bahadur Sapru Road would fetch a much higher value if sold separately. The execution court should have at least performed the duty of considering whether these objections were well-founded.

19. We find from a perusal of the sale proclamation in this case that even the area of the compound in which the two bungalows were situated was not there. The land in the compound is evidently nuzool leasehold land but the unexpired period of the lease or rent payable on it are not mentioned. It was not stated whether the bungalows, which were valued separately, would be sold as one or two items of property. Probably, it was left to the Amin to exercise his own discretion in this matter, as he had exercised it in the case of Colonelgunj property. The cumulative effect of all the features of the case mentioned above is that we think that there was material irregularity here in the conduct of the execution sale of the two bungalows.

20. We now turn to the question of substantial injury. The result of the separate sales of the houses in Colonelgunj was that, when sale prices were added up, they fetched a considerably higher price than that put upon these properties, lumped together in one lot, by the decree-holders. The High Court had also found that sales of the two bungalows on the Tej Bahadur Sapru Road separately would probably similarly have fetched a higher price. The affidavit dated 19-7-1947 filed by the judgment-debtors, as stated above, had not been controverted by any material put forward by the decree-holders.

21. We, therefore, think that there is enough evidence to indicate that the judgment-debtors had suffered substantial injury so far as the sale of the two bungalows numbers 8 & 10 on Tej Bahadur Sapru Road, Allahabad, is concerned.

22. The result is that we allow this appeal to the extent that we set aside the judgments and orders of the High Court and of the execution Court with regard to the sale of bungalows Nos. 8 & 10, together with their compound, and dismiss it as regards the other properties. We also set aside the execution sale of 7-5-1955 of these two bungalows with all the land in their compound. We order that these two bungalows will be sold afresh after judicially considering and deciding the question whether they can be sold separately and what particulars should be inserted in the sale proclamation. The parties will bear their own costs.