

(1935) 09 BOM CK 0005

In the Bombay High Court

Case No : Civil Revision Application No. 175 of 1935

Ganapati Manja Hegade

APPELLANT

Vs

Subraya Rayappa Shetti

RESPONDENT

Date of Decision : 26-09-1935

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 24

Citation : AIR 1936 Bom 137 : (1936) 38 BOMLR 104

Hon'ble Judges : Broomfield, J

Bench : Single Bench

Judgement

Broomfield, J.—The question in this case is whether the sale certificate to be granted by the Court under Order XXI, Rule 94, of the Civil Procedure Code, can be given to the assignee of the auction-purchaser. The auction-purchaser was opponent No. 2. He bought the lands in suit at a Court-sale and the sale in his favour has been confirmed. Subsequently he sold his right, title and interest in the lands to the applicant. The applicant asked for the sale certificate under Rule 94, and his request was refused because the learned Subordinate Judge was of opinion that he had no power to issue a sale certificate to the assignee of the purchaser.

2. I think the learned Judge is clearly wrong. He says that under the rule in question a sale certificate can be granted to a person, who at the time of sale is declared to be the purchaser. But that is not what the rule says. The rule is this: " 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 the sale is declared to be too purchaser". It is true that the marginal heading to the rule is " Certificate to purchaser ", but there is nothing in the rule itself which requires either that the purchaser should make the application, or that the certificate should be granted to him and to no one else. The rule is mandatory, i.e. the Court is bound to grant the certificate and in the certificate the name of the person declared to be the purchaser at the time of the

sale is to be stated. The rule does not state, however, that he is the only person entitled to receive the certificate. Actually there is nothing said about any application by anybody. No doubt an application by some one is contemplated. But it has been held in *Hira Ambaidas v. Tekchand Ambaidas* I.L.R(1889) 13 Bom. 670 that no formal application is necessary; it may be made orally.

3. There is an authority on the actual point in dispute in *Re Vinayak Narayan* I.L.R(1899) I 24 Bom. 120 : S.C. 1 Bom. L.R. 645. It was held there that a sale certificate may be granted to the representatives of a deceased purchaser. The learned Subordinate Judge refers to this case but thinks that it does not apply, because the applicant here being an assignee from the auction-purchaser is not his legal representative within the definition in Section 2(11). But the case cannot really be distinguished on that ground. As Sir Lawrence Jenkins pointed out in his judgment, the rule is "callous as to whether the purchaser is alive or dead; it wants him neither as applicant nor recipient." The learned Judge also pointed out that the marginal heading cannot be allowed to control the natural meaning of the rule itself. Then there is also Section 146 of the Code to be considered. That lays down that where any proceedings may be taken or application made by or against any person, then the proceedings may be taken or the application made by or against any person claiming under him. That no doubt is subject to any contrary provision in the Code or in any other law. But as far as I am aware, there is nothing whatever to prevent an assignee from the auction-purchaser applying for the sale certificate, nor to prevent the Court granting it to him. I, therefore, make the rule absolute with costs, and direct that on proof of the assignment to the applicant, if proof be required, the sale certificate should be given to him.