

(1987) 05 KAR CK 0004
In the Karnataka High Court
Case No : M.F.A. No. 509 of 1979

Govind Janardhan Mahale

APPELLANT

Vs

Ramdas Keshav Kamath

RESPONDENT

Date of Decision : 28-05-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 22, Order 21 Rule 69 (1), Order 21 Rule 69 (2), Order 21 Rule 72

Citation : (1987) ILR (Kar) 2617

Hon'ble Judges : Kulkarni, J

Bench : Single Bench

Advocate : B.V. Krisnnaswamy Rao, for the Appellant; K.I. Bhat, for R-2 and 4, T.S. Ramachandra, for R-3, K.V. Hegade Kangod, for R-5, for the Respondent

Final Decision : Dismissed

Judgement

Kulkarni, J.—This is an appeal by the Judgment Debtor against the order dated 4th April 1978 passed by the Civil Judge, Uttara Hanmada, Karwar, in Miscellaneous Case No. 9 of 1972 dismissing the same.

2. The decree-holder had filed a Suit in O.S. 177/1942 OH the file of the Civil Judge, Senior Division, Karwar. A preliminary decree was passed in the said Suit on 24-10-1944. Final decree was passed on 20th of April 1951. There was an Appeal in C.A. No. 142/1951. Thereafter the matter was taken to the High Court. It appears from the Execution petition, that there was a compromise decree in R.S.A. No. 303/1953 and it is this compromise decree that is being executed now. The decree-holder sued out the present execution in Execution Case No. 1/1969 and the cause notice was issued under Order 21 Rule 22 CPC.

3. The judgment-debtor, as can be seen from the order-sheet, raised various contentions. On 18-9-1969 an order was passed by the Executing Court to the following effect :

"Shri V. G. Hegde filed application, praying to issue summons to the the witness.

This witness was once served with the Court summons. Yet he has remained absent. It appears that he is unwilling to attend Court and give evidence as is clear from the endorsement made by him on one of the summons. It is also evident, that he is avoiding service of summons. Under these circumstances, the application of the J. D. which is only a means to protract the proceeding does not deserve to be allowed, hence rejected, for hearing."

Order-sheet dated 19-9-1969 in the Execution reads as :

"The J. D. and his counsel are absent, since the J.D. has not substantiated his contentions/they are overruled. Issue sale notice returnable by 9-10-1969."

4. As can be seen from the Order-sheet dated 9-10-69 the sale notice was served on the Judgment-debtor and he does not appear to have filed any objections after being served with the sale notice.

Order-sheet dated 9-10-1969 in the Execution reads as :

"Sale notice received back duly served to the J. D. J.D. has not filed any objections to the sale notice though he is represented by his counsel Sri V. G. Hegde, who is present. Attached property to be sold. Issue sale warrant and sale proclamation. Issue warrant under order 21, Rule 35 CPC in respect of the area of land as prayed for returnable by 3-11-69.

Sale in village Ankola by 8-12-69, at Babruwada by 10-12-69, at Kone village by 12-12-60, at Kodibag village by 15-12-69, sale in Court by 23-12-69."

Order-sheet dated 16-10-69 in the Execution reads as :

"(i) Sale warrant prepared and sent to Karwar Court under No. 626-69.

(ii) Sale proclamation prepared and sent to Karwar Court under No. 627-69.

(iii) Possession warrant prepared and sent to Karwar Court, under No. 628-1969."

Order-sheet dated 3-11-69 in the Execution reads as :

"Sale warrant and sale proclamation received back duly effected. Possession warrant received back duly executed and possession was handed over to the D. H. as per the terms of the application."

5. On 5-12-1969 the Decree-holder filed an application under Order 21 Rule 72 read with Section 151 CPC praying for permission to bid set off. It was granted.

6. The judgment-debtor, it appears, being aggrieved by the said order dated 19-9-1969 passed in the Execution, preferred Execution, First Appeal No. 41/1969 and obtained a stay order. In view of the stay order passed by this Court in the said Execution First Appeal, the sale was not held on 23-12-1969 in the Court, though the spot sale was held earlier. On 23-12-1969 the sale" proceedings were adjourned awaiting the decision of the High Court. On 6-6-1970 the Executing Court received an intimation that the stay granted by

this Court in the said Execution Appeal had been vacated.

Order-sheet of 6-6-1970 in the Execution reads as :

"Intimation received from High Court of Mysore, vacating the stay order. Issue an order for sale of properties in Court (except S. No. 166/2A, 166/2B, 167/1 and 169/1) accompaniments of notice to the specifying the date of previous sale of spot held on 8-12-69, 10-12-69, 12-12-69 and 15-12-69. Call on 4-7-70 for sale. Notice returnable by 26-6-70."

Order-sheet dated 8-6-1970 in the Execution reads as;

"Sale warrant and sale proclamation sent to Munsiff, Karwar for publication of sale in Court."

Order-sheet dated 26-6-70 in the Execution reads as :

"Sale warrant and sale proclamation received back after service to the previous bidders. Sheristedar to conduct sale in Court on 4-7-70."

The Order-sheet dated 1-7-1970 reads as :

"Application under Order 21, Rule 69 C.P.C. read with Section 151 C.P.C. filed by Shri V. G. Hegde, praying to stay the sale and issue fresh sale proclamation.

Issue notice to other side, i.e, Shri G. S. Hegde as requested by Shri V G. Hegde Returnable by 2-7-70 "

This application was numbered as I.A. No. III.

The Order-sheet dated 2-7-1970 reads as :

"Notice to G. S. Hegde, Advocate received duly served. Shri G.S. Hegde filed objection to I.A. No. III Posted for hearing of I.A. III by 3-7-70."

For the objections to LA. III, the case was posted for hearing on 1.A.III to 3-7-1970.

The order-sheet dated 4-7-1970 reads as;

"I.A. No. III is dismissed and the sale to be conducted today in the Court by the Sheristedar in respect of properties shown in the sale proclamation."

7. I.A. No. IV was filed on 4-7-1970 by Sri S.P. Kamath under Order 21 Rules 58 and 62 read with Section 151 C.P.C. praying to stay the sale. Objections to LA. IV were filed by Shri G.S. Hegde. It appears that the Court heard Sri P.S. Kamath for the third party and Shri G.S. Hegde for the Decree-holder and the I.A.IV was dismissed. It was ordered that the sale should proceed.

8. The Judgment-debtor being aggrieved by the rejection of LA. No. III approached this Court with C.R.P. No, 932 of 1970. In the meanwhile, the sale was held in the Court on 4-7-1970 and 6-7-1970.

On 7-8-1970 the judgment-debtor filed an application IA VI under Order 21 Rule 90 read with Section 151 of the Code of Civil Procedure, praying for setting aside of the sale. In view of I.A. No. VI, the confirmation of sale was postponed. Ultimately after a long drawn battle and trial the I.A.VI was dismissed.

9. The judgment-debtor being aggrieved by the rejection of I.A, No. VI approached this Court with Miscellaneous First Appeal No. 389 of 1970. The Civil Revision Petition No. 932 of 1970 was dismissed holding that the grounds urged in I.A. No. III were available to the Judgment debtor for being canvassed in I.A. No. VI and the Miscellaneous First Appeal No. 389 of 1970. So observing, the said C.R.P 932/1970 was dismissed.

10. Miscellaneous First Appeal No. 389 of 1970 was allowed by this Court with an observation that I.A.No. VI should be numbered as a Miscellaneous case. Accordingly, on account of the order passed in Miscellaneous First Appeal No. 389/1970, LA. No. VI was registered as Miscellaneous Case No. 9 of 1972.

11. The case of the appellant, who is the petitioner in the case, is that he is the mortgagor and Mulagemdar of the properties at Sl. Nos. 1 to 10 and that the properties were brought to sale illegally. Sl. Nos. 1 to 9 were auctioned on 4-7-1970. Sl. No. 10 was auctioned on 6-7-1970, The said sale is contrary to law. Opponent No. 2 has purchased the property at Sl. No. 1 for Rs. 325/-which is a fertile land and first class garden land and the same would have fetched Rs. 1,000/- per gunta. The sale of item No. 1 is contrary to law. Properties at Sl. Nos. 2 to 7 wherein there are 5 independent buildings were auctioned in one lot by the Court and they were purchased by opponent-3 for consideration of Rs. 16,025/-. The said sale is contrary to law. Opponent-4 has purchased properties at Sl. Nos. 8 and 9 for Rs. 17,650/-. Opponent-5 has purchased the property at Sl. No. 10 for Rs. 205/- on 6-7-1970. The Panch valuation is made in September, 1969, was too low. The procedure followed by the Court in conducting and publishing the same is contrary to law has resulted in material irregularity, fraud and heavy and irreparable loss to the Judgment Debtor, The Court of the Civil Judge, Karwar, has no jurisdiction to entertain the petition for execution and hence all further orders and development of the Court are void. The interest was illegally calculated. Verified statement is not according to law. There is no publication of sale even in 1969. 1 here was no fresh proclamation issued in 1970. There was no publication of sale in 1970 as required by law. The proclamation of sale was not sent to the village Chawadi and Taluka Office and the Office of the Deputy Commissioner, nor was it affixed to the Notice Board of the Court. No sale was held in the villages in which properties are situate. The sale which was fixed in 1969 had been adjourned or postponed for more than six months without an order of postponement as required under Rule 69(2) of Order 21 of the CPC. The order for sale passed on 6-6-1970 is a nullity. The sales held on 4-7-1970 and 6-7-1970 are void. The Court ought to have sold the properties separately, in order to enable the Judgment Debtor to get more price for his properties and if the Court would have done it, the properties would have

fetched five times the bid amount- As the Panch Valuation of the properties is too low, it has resulted in material irregularity and fraud in conducting and publishing the sale. The Judgment Debtor has suffered irreparable loss to the extent of more than one lakh of rupees. Substantial buildings in the heart of Karwar and Ankola towns were sold for a song. Opponent-2 not being an agriculturist was not entitled to purchase agricultural properties. The bid offered by him is too low. Hence, he prayed for setting aside of the sale.

12. The respondents resisted the Petition.

13. The appellant examined himself. No other evidence had been adduced by the others.

14. The Trial Court dismissed the Petition. Hence, this appeal.

15. The learned Counsel Sri B.V. Krishnaswamy Rao for the Appellant, submitted that after the stay was vacated, a fresh proclamation as required under Order 21 Rule 66 C.P.C. ought to have been settled and published also. According to him, as no fresh proclamation was settled and published, the sales held on 4-7-1970 and 6-7-1970 are void ab initio and a nullity.

16. The Order sheet dated 9-10-1969 in the Execution Case shows that the notice as required under Order 21 Rule 22 C.P.C. was issued to the Judgment Debtor, objections were filed by Judgment Debtor and those objections were overruled. The Order sheet shows that the sale notice was also issued and it was served. The Order sheet also shows that the sale notice was served on the Judgment Debtor and the Judgment Debtor had not filed any objections though he was represented by the Counsel Sri V.G. Hegde, who was present. The Executing Court on 9-10-1969 ordered issue of sale warrant and proclamation fixing the sale in the village Ankola on 8-12-1969, at Babruwada on 10-12-1969 at Kone on 12-12-1969 and at Kodibag on 15-12-1969 and fixing the sale in Court on 23-12-1969. The Order sheet dated 16-10-1969 in the Execution Case shows that the sale warrant and the proclamation was settled, prepared and sent to Karwar Court. The Order sheet dated 3-11-1969 in the Execution Case shows that the sale warrant and the sale proclamation was received back after due proclamation and service. Therefore, the contention of the appellant that no proclamation had been settled as required under Order 21 Rule 66 C.P.C. even in 1969 and that it was not duly published, cannot be accepted at all. Therefore, it becomes crystal clear from the evidence on record that a sale warrant was issued in 1969 and the terms of the proclamation were settled in 1969 and that it was duly published in the villages and other places as required by Order 21 Rule 67 C.P.C.

17. It is no doubt true that on account of the Civil Revision Petitions and the appeals filed by the Judgment Debtor, and the stay granted by this Court the sale which was required to be held on 23-12-1969 could not be held at all. The material on record shows that the spot sale was held on 8-12-1969 in Ankola village, on 10-12-1969 in Babruwada village, on 12-12-1969 in Kone village and

on 15-12-1969 in Kodibag village. Thus, the spot sales as ordered in the proclamation issued have been held and that cannot be doubted at all. But on account of the stay order granted by this Court, the Court sale fixed on 23-12-1969 could not be held and was postponed to be held awaiting the decision of this Court in M.F.A. No. 389/70. The stay was vacated in M.F.A. No. 389/70. The intimation about the vacation of the stay was received by the Executing Court on 6-6-1970. The Order sheet dated 6-6-1970 in the execution case reads as :

"Intimation received from High Court of Mysore, vacating the stay order. Issue order of sale of properties in Court (except Sy. Nos. 166/2A, 166/2B, 107/1 and 169) accompanying notice specifying the dates of previous sales at spot held on 8-12-1969, 10-12-1969, 12-12-1969 and 15-12-1969. Call on 4-7-1970 for sale."

As can be seen from the Order sheet dated 26-6-1970 sale notices were served on the previous bidders, who had bid the properties on the spot in 1969 and they were returned and the Sheristadar was directed to conduct the Court Sale on 4-7-1970. At this stage, on 1-7- 1970 the Judgment Debtor had filed 1.A.111 requesting the Court to settle afresh the sale proclamation and issue fresh proclamation. But that was rejected on 4-7-1970 and the sale was held on 4-7-1970 and 6-7-1970. Now the question is whether the settlement of the terms of proclamation, issuance of the fresh proclamation and publication of the fresh proclamation would be necessary even if previously a proclamation was settled and published and if the sale could not be held on account of the stay granted in M.F.A.No. 389/70.

18. The learned Counsel Sri B.V. Krishnaswamy Rao referred me to Order 21 Rule 69 C.P.C. It reads as;

"69(1) The Court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment :

Provided that, where the sale is made in, or within the precincts of, the Court-house, no such adjournment shall be made without the leave of the Court.

(2) Where a sale is adjourned under Sub-rule (1) for a longer period than (thirty) days, a fresh proclamation under Rule 67 shall be made, Unless the judgment debtor consents to waive it.

(3) Every sale shall be Stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court which ordered the sale."

19. The Karnataka Amendment to Order 21 Rule 69(2) C.P.C. reads as :

"Where a sale is adjourned under Sub-rule (1) for a longer period than 30 days, there shall be a fresh publication of the proclamation of sale in the manner

prescribed by Rule 67 C.P.C. unless the Judgment Debtor consents to waive it "

20. The learned Counsel Sri B.V. Krishnaswamy Rao contended that as per Rule 69 of Order 21 C.P.C. the Court sale Was required to be held on 23-12-1969 and on account of the stay granted in M.F.A.389/70 the sale was postponed indefinitely and after the stay was vacated in 1970 the sale Was ordered to be held on 4-7-1970. Thus, according to him, the sale had been postponed for more than 30 days. Therefore, according to him, a fresh proclamation as required by Order 21 Rule 69(2) C.P.C. was necessary within the meaning of Rule 67. According to him, the judgment debtor had not consented to waive it. Therefore, this circumstance also was pressed into service by him in support of his contention that a fresh proclamation as required by Order 21 Rule 69(2) C.P.C. had to be made. According to him, as it has not been followed, the sales held on 4-7-1970 and 6-7-1970 were bad and were a nullity.

21. On the other hand, Sri T.S. Ramachandra, learned Counsel for respondent-3, submitted that Order 21 Rule 69 C.P.C. do not, at law, apply to the present cast at all. According to him, if the sale had been postponed by the Court in its discretion, a fresh proclamation was required to be done under Order 21 Rule 69 C.P.C. According to him, Order 21 Rule 69 C.P.C. not only required that the sale should be adjourned by the Court itself in its discretion, but also the sale should be adjourned to a specified day and hour by the Court itself. Thus, the learned Counsel Sri T.S. Ramachandra constructed an argument that unless the sale was adjourned by the Court in its own discretion and unless the Court adjourned the sale to a specified day and hour, Order 21 Rule 69 (2) CPC would not apply to the facts of the present case at all. He contended that the Executing Court had no option, but to postpone the sale as the stay of further proceedings had been granted by this Court in M.F.A. No. 389/70 filed by the judgment debtor himself. According to him, the postponement of the sale fixed on 23-12-1969 could not be said to be adjourned by the Court in its own discretion. According to him, the said sale was not adjourned to any specified day and hour as required by Rule 69(2) of Order 21 C.P.C.

22. The Learned Counsel Sri B.V. Krishnaswamy Rao referred me to Gujrajmati Teorain Vs. Saiyid Akbar Husain, The facts in the said case were :

"The Rate was held under a decree of the Subordinate Judge of Gorakhpur by the Collector of Basti. The sale proclamation was duly issued. The sale was fixed for the 20th of February 1897 It was held on the 23rd, but before the Collector had finished the sales listed for the 20th.

It appears that an order was made exparte on the 11th of February 1897 by the Subordinate Judge of Gorakhpur staying the sale. On the 16th of February the Collector of Basti, in obedience to this order, struck the proceedings off the pending file. However, on the 22nd, in consequence of notice received from the Court of the Subordinate Judge, from which it appeared that the order staying the sale had been set aside, the case was then brought forward, as the Collector

notes, "in continuation of the sale proceedings in other cases." The sales was commenced, but adjourned till the following day. On the 23rd the decree-holders, who had leave to bid, purchased at the auction the interest of the judgment-debtors, and the sale was concluded in their favour subject to confirmation by the Civil Court.

On the application for confirmation the judgment-debtors, applied to have the sale annulled. The Subordinate Judge confirmed the sale, finding that although there were irregularities in the conduct of the sale, the judgment-debtors had not sustained any damage. On appeal the High Court at Allahabad confirmed the decision of the Subordinate Judge."

23. The matter, after the disposal by the High Court, came up before the Privy Council. The Privy Council held in the said case at page No, 84 as :

"The order committing the sale to the Collector of Basti is not in evidence, nor does it appear clearly in what capacity the Collector sold, or on what grounds the order staying the sale was made or on what grounds it was revoked, or whether any notice was ever given to the public that the sale had been stayed, and that the case was for a time struck off the pending file. It appears, however, to have been assumed in the present litigation, and their Lordships assume for the purpose of their judgment, that the case came within Section 291 of the Code of Civil Procedure, and that when the stay of proceedings was removed, a fresh proclamation ought to have been issued in compliance with the terms of that section.

The Subordinate Judge held that, inasmuch as no fresh proclamation was issued, the sale was void, and therefore he pronounced a decree in favour of the judgment-debtors.

The Court of appeal, assuming that a fresh proclamation ought to have been issued, held that the omission was an irregularity which had involved no loss to the debtor; that the only course open to the judgment debtors was to object, as they did, to the confirmation of the sale, and that it was not competent for them to impeach the sale by regular suit."

24. Thus, this case lays down the proposition that even if a fresh proclamation is required by the provisions of the C.P.C., 1882 to be issued and published after the vacation of the stay, the non-issuance of the same was only a material irregularity and that material irregularity by itself was not sufficient to set aside the sale, unless the judgment debtor proves that as a result of material irregularity substantial injury has been caused to him. Therefore, the said Bombay ruling will not help the appellant. On the other hand, as could be seen from it, it appears that Section 291 of the C.P.C., 1882 required the making of a fresh proclamation after the stay was vacated. I do not find any such prevision in the present C.P.C. even amended by the Amendment Act of 1976. Therefore, the said Bombay ruling, even if assumed to be applicable to the facts of this case, will not help the appellant, because it clearly lays down that even if a fresh

proclamation is required to be made and it is not complied with after the vacation of the stay, it is only a material irregularity within the meaning of Rule 90 of Order 21 C.P.C. and inasmuch as the judgment debtor failed to show that substantial injury was caused to him as a result of that material irregularity, the sale cannot be set aside at all.

25. Sri B. V. Krishnaswamy Rao then relied on Firm Bindeshri Prasad Bhola Nath and Others Vs. Raja Ram and Another, It reads as :

"The authority of a Court to adjourn a sale is indeed assured by the above provision. But the question which readily arises in the present case is whether the order appointing the sale to take place on 9-1-1957- we have notice that this order was made on 8-1-1957- can be held to be an order adjourning the sale. To adjourn a sale really means that an appointed sale is deferred or postponed to a late date. The rule requires that while adjourning a sale the adjourned date and time shall be specified. It further says that where the sale is adjourned by the Sale Officer and the sale is to take place within the precincts of the Court, the sale officer shall do so with the leave of the Court- The intention is clear that the adjournment, and that is implicit in the word adjourn also, must be ordered before the occasion, namely, the appointed sale has arrived or at least is over.

In any case, where the occasion is allowed to lapse, since there is no longer anything to be postponed or deferred, adjournment is out of question. It is implicit in adjournment that the postponement or deferring of the sale is ordered before the time etcetera previously appointed in that behalf is over. It is then only that it is deferred to a future date and time."

It has been stated in para-9 of the said Judgment as :

"In the instant case no order deferring the sale to 9-1 1957 was made on or before the 6th January either by the Court or by the Sale Officer. On the other hand, what actually happened was that the Amin put up a report on 7-1-1957 a day later moving the Court to appoint some date for sale. Beyond taking the above step the Amin took no steps at the spot on 6-1-1957 nor adjourned the sale on that date.

It was on 8-1-1957 that the Court made an order fixing 9-1-1957 for the taking place of sale. This order which was made on 8-1-1957 cannot be construed to be an order adjourning the sale. It was virtually an order appointing a fresh date for sale i.e, 9-1-1957. There was thus no adjournment of the sale notified for 6-1-1957, indeed this could not be done on 8-1-1957."

In para-10 of the Judgment, the Allahabad High court has stated thus :

"In the above view of Rule 69 and the facts of this case, the sale held on 9-1-1957 which was neither a sale held on an adjourned date, nor a sale held in pursuance of any sale proclamation published for the particular date in accordance with Rule 66 etc., was invalid for that reason alone."

In the said Allahabad High Court's case, the sale had not been adjourned by the Court to a specified date and hour. It is only after the expiry of the date fixed for the sale, the Court ordered issue of fresh sale proclamation. Thus, as required by Rule 69(1) of Order 21 C.P.C., there was no question of adjournment of the sale at all in the said case. But, it was the sale adjourned by the Court itself in its discretion. Therefore, the Allahabad High Court held that a fresh proclamation was required to be made. But, in this case, the sale which was required to be held on 23-12-1969 could not be held on account of the stay order granted by this Court. Therefore, it cannot be said to be an adjournment or postponement of sale within the meaning of Order 21 Rule 69(1) C.P.C. at all. Therefore, the said Allahabad High Court ruling will not help the Learned Counsel Sri B.V. Krishnaswamy Rao.

26. He then relied on Abdul Hakiem and Anr. v. Nga Ni Gri AIR 1923 Rang 154. It was a case where in execution of a mortgage decree, the Court postponed the sale "till further orders". Further, after hearing the parties the sale was ordered to take place on the following day. It was held that it was obviously not an adjournment to a specified date under Order 21 Rule 69 CPC. It was held that the sale having been stayed and not adjourned to a fixed date the action of the Court, in ordering that the sale should take place the following day without issue of fresh proclamation was extremely irregular not to say high handed. It was also the case where the Executing Court itself stayed the sale, pending further orders. It did not involve the question of postponement of the sale on account of the stay order granted by the Superior Court. Therefore, the said ruling also will not be of any help to the appellant, in this case.

27. Sri B. V. Krishnaswamy Rao, learned Counsel, then referred me to the case of Madappa Vs. Lingappa and Another, It has been held in the said case that Order 21 Rule 66 is a mandatory provision, and non-settling of the terms of proclamation and non-issuance of the proclamation make the sale void ab initio. In the said case, there was no proclamation settled and issued at all and there was no publication at all. In the instant case, as already stated above, the terms of proclamation were settled in 1969 and it was duly published. Therefore, the said Madappa's case AIR 1923 Rangoon 154 will not help the appellant in the present case.

28. In Radhobai Ghubbaji v. Kondba Shioram (196(sic)) 63 BomLR 351, it has been held that Section 3 of the Madhya Pradesh Temporary Postponement of Execution of Decrees Act, 1956, does not apply to proceedings in execution in respect of a certificate issued by the Deputy Commissioner u/s 13(3) of the Central Provinces and Berar Relief of Indebtedness Act, 1939. It has been held in the said case that under Order 21 Rule 66 C.P.C. read with Order 21 Rule 69 C.P.C., 1908, a fresh sale notice is not required to be given when a sale is merely adjourned in the discretion of the Court for certain reasons. The said decision lays down a principle that if the sale is adjourned by the Court for some reason on its own accord and if the sale is required to be held subsequently after a lapse

of time, a fresh sale notice is not necessary. If a fresh sale notice is not necessary, then it follows that a fresh proclamation need not be made at all.

29. It has been laid down in *S. Ranga Rajendran and Others Vs. S.K.A.R.S.M. Ramanatham Chettiar*, that where a sale in execution of a decree is adjourned after the settlement of the terms of the sale proclamation, not at the discretion of the Court, but because of some new statutory provision like the Madras Indebted Agriculturists (Temporary Relief) Act (V of 1954) which stayed all such proceedings for one year, there is no need for a fresh proclamation in the manner prescribed by Order 21 Rule 66, Civil Procedure Code, and there is no obligation to give any fresh notice either to the judgment debtor if the proclamation is re-published without any alteration. Therefore, the said Madras decision lays down a principle that if the sale is adjourned or postponed on account of some statutory enactment, no fresh proclamation need be made. In the instant case also, the sale could not be held on 23-12-1969 and it had to be postponed only on account of the statutory requirement that the stay is granted by the superior Court. Therefore, it is not as if the Executing Court adjourned the sale on its own accord or in its discretion, but it is on account of the stay order granted in M.F.A. No. 389/70 that the sale could not be held on 23 12-1969 and it had to be postponed awaiting the decision of the High Court. Therefore, the principle laid down in the said Madras case will apply to the facts of the present case.

30. Even looking to Order 21 Rule 66 C.P.C. it becomes clear that the Court shall cause a proclamation to be made only where any property is ordered to be sold by public auction in execution of a decree. The Court as required by Rule 66 settled the terms of proclamation and issued it and it was published as required by Rule 67. As already stated above, Order 21 Rule 69 would not apply to the facts of the present case, as the sale was not adjourned by the Court in its own discretion, and as, the sale had not been adjourned to a specific day and hour. Further, Order 21 Rule 66 C.P.C. requires the settlement of the terms of the proclamation and the issuance of the same. Rule 67 prescribes the mode as to how it is to be published. Once, Order 21 Rules, 66 and 67 C.P.C. have been complied with, one has to find out as to whether there is any provision for making or issuance of a fresh proclamation in the C.P.C. As already stated above, Rule 69 of Order 21 requires that if the sale is adjourned by the Court in its discretion to a specified day and hour and if the sale is adjourned under Sub-rule (2) of Rule 69 for a longer period than 30 days, then a fresh proclamation under Rule 67 shall be made, unless the judgment debtor consents to waive it. Therefore, the making of fresh proclamation within the meaning of Rule 69 (2) would come into play only if the sale is adjourned under Rule 69(1). If the adjournment of the sale is not covered by Rule 69(1), then Rule 69(2) will not come into play at all. Therefore, in the present case, as the sale is not adjourned by the Court in its own discretion and as it is not adjourned to a specified day and hour it cannot be a case which would come within the ambit of Rule 69(2). Therefore, the contemplation of making of a fresh proclamation under Order 21 Rule 69(2) will not be applicable to the present case at all. Order 21 Rule 87

contemplates the issuance of a fresh proclamation. It reads as :

"Every re sale of immovable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore prescribed for the sale."

This rule would come into play if the auction-purchaser does not deposit the money within 15 days as laid down by Order 21 Rule 85. Rule 86 prescribes the procedure if there is a default in payment within the meaning of Rule 85. Rule 87 would come into play only if a re-sale is required to be held, on account of non-payment of the purchase-money by the caution purchaser as required by Rule 85. That is not the case in the present matter. There is no question of resale at all in this case, because no sale was held previously and it was postponed only on account of the stay order. These are the only provisions in Order 21 C.P.C. which require making or issuance of a fresh proclamation of sale. No other rule requiring the making of a fresh proclamation or issuance of a fresh proclamation or publication of a fresh proclamation is brought to my notice. Therefore, I do not think that any fresh proclamation in the present case in respect of the sale held on 4-7-1970 and 6-7-1970 was required to be done under the law or rules of the C.P.C. But, however, in this case, as a matter of pre caution and as a matter of abundant caution and in order to see that no loss was caused to the judgment debtor, a notice was ordered to be issued to the previous bidders, who had bid the properties on the spot in 1969 and it was duly served on those previous bidders. Therefore, it is not as if nobody came to know about the holding of the sale on 4-7-1970 and 6-7-1970. Therefore, under these circumstances, it cannot be said that any prejudice or injury is caused to the judgment debtor by the holding of the Court sale on 4-7-1970 and 6-7-1970.

31. Even assuming for a moment that a fresh proclamation was necessary within the meaning of Rule 69(2), as con tended by Sri B.V. Krishnaswamy Rao, Learned Counsel for the appellant, it would at the most amount to non-compliance and it may amount to material irregularity only and it would not be an illegality. Even if it is a case of material irregularity, then the question still remains as to whether any substantial injury as a result of the said material irregularity has occurred to the judgment debtor. The lower Court on a proper circumspection of the material and after taking into consideration the panch valuation made in 1969 and also after taking into consideration the valuation made in the previous sale proclamation in 1969, has come to the conclusion that no injury, much less, substantial was caused to the judgment debtor on account of the holding of the sale on 4-7-1970 and 6-7-1970. The only grievance made out by the appellant in the course of his evidence is that the properties were very valuable and that the opponents had bid for a low price. Except stating so, he has not placed any material before the Court to show that properties would have fetched any better price. It is a matter of common knowledge that in these days when the tenanted properties are in danger of being lost, no person would be

interested in purchasing the tenanted lands. As stated by the learned Counsel Sri T. S. Ramachandra, the purchase of such properties would be as good as inviting the devil itself to the house. Therefore, I do not think that the properties could have fetched any more price than the one offered by the bidders in the sale held on 4-7-70 and 6-7-1970. Further, taking into consideration the nature of the properties, taking into consideration the panch valuation and taking into consideration the valuation mentioned in the proclamation, I do not think that any injury can be said to be caused to the judgment debtor.

32. The simple insufficiency or inadequacy of the consideration does not amount to a substantial injury within the meaning of Rule 90 of Order 21 C.P.C. The Commentary of the Learned Author Mulla on the Code of Civil Procedure, 14th Edition, Volume II on page 1626 makes it abundantly clear that simple inadequacy of the price does not amount to a substantial injury within the meaning of Rule 90. As laid down by the Author there must be evidence establishing a nexus between the material irregularity and the inadequacy of price realised. In this case the appellant has not been able to show that the so-called inadequacy of price was due to the material irregularity consequent on the non-making of the publication of the proclamation. The Court below, after considering the entire material on record, has come to the conclusion that the value offered by the bidders cannot be said to be insufficient or inadequate. It also concluded that the appellant has failed to show that any substantial injury has been caused to him. I think that the said findings recorded by the Court below are absolutely correct.

33. Then the learned Counsel Sri B. V. Krishnaswamy Rao has submitted that it was not a case where the judgment debtor had consented to waive the proclamation of the sale. According to the learned Counsel Sri T. S. Ramachandra, the judgment debtor used to be present on all the dates fixed and he was present even when the Court ordered the issue of notice to the previous bidders after the vacation of the stay by this Court. Apart from this, according to the learned Counsel Sri T. S. Ramachandra, the Judgment Debtor by his own conduct consented to the waiver of making of a fresh proclamation. But it cannot be forgotten that before the sale was held, he filed I.A.3 on 1-7-1970 requesting the Court to issue afresh proclamation. Therefore, these circumstances would go to show that, however, belated it might be, the judgment debtor cannot be said to have waived the same. No other ground has been urged before me by the appellant's Counsel.

34. Further, it can be seen that a preliminary decree was passed against the judgment debtor on 24-10-1944 in O.S. No. 177/1942. The final decree was passed against him on 20th April 1951. His first appeal C.A. No. 142/1951 was disposed of on 30-11-1963. The second appeal R.S.A. 305/63 filed by him resulted in compromise on 15-12-1967. Thus, it becomes crystal clear that the judgment debtor was successful in protracting the original proceedings from 1942 onwards till the end of 1967. I do not mean to say that the Judgment

Debtor was not justified in preferring appeals, but I have pointed out the dates only to show as to how the matter has been dragged on from stage to stage. Further, the present Execution has been filed on 2-1-1969 itself. The judgment debtor by questioning every order passed by the Court in the Execution case, kept the Execution alive till the sale was held in July, 1970. In fact, as per the rights given to him by Order 21 Rule 90 C.P.C. he filed an application to set aside the sale. The Court ultimately dismissed his application in 1978 and now the present appeal has been filed. Therefore, it is a case where the Decree Holder has been deprived of the fruits of his decree ever since 1944 till today. The proverb that the pains of the decree holders start only after the decree, has become quite true in this case. Whatever it be, the order passed by the Court below dismissing the application filed under Order 21 Rule 90 C.P.C. does not need any interference.

The Appeal is dismissed.