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In the Madras High Court

Gurijala Subramanyam and Others — APPELLANT

Vs

Damavarapu Venkatasubba Reddi and Others — RESPONDENT

Date of Decision : 29-01-1935

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1

Citation : AIR 1935 Mad 421 : 156 Ind. Cas. 949

Hon'ble Judges : King, J;Curgenven, J

Bench : Division Bench

Judgement

1. This appeal is against an order dismissing a petition to set aside a sale in execution preferred by some of the judgment-debtors against whom the respondents obtained a mortgage decree. Various grounds were adduced before the lower Court in support of the application but only one of them has been pressed before us, viz., that the purchaser of certain items had been appointed a Receiver in respect of them and had not obtained permission to bid at the auction in that capacity. The mortgage decree-holders were respondents Nos. 1 to 8 and it appears that on January 16, 1928, the 8th respondent, who was the 7th plaintiff in the suit, was appointed a Receiver of the property under Order XL, Rule 1, Civil Procedure Code. Prior to this in August 1927 he had obtained leave to bid as one of the decree-holders, but he had obtained no such leave as Receiver and we do not think that leave given to a decree-holder as such can be taken to give him leave to bid when he is subsequently appointed Receiver, because the two capacities are entirely distinct. The learned District Judge has dealt with the objection raised on this score in para. 30 of his order, and has stated that there was no Indian case on the point. Since that observation was made, a case has been decided in Jiteswari Dassi Vs. Sudha Krishna Mukherjee, which we are unable to distinguish in principle from the case now before us. The learned Judges have followed an English case Nugent v. Nugent (1908) 1 Ch. 546 : 77 L.J. Ch. 271 : 98 L.T. 354 : 24 T.L.R. 296 where the same question arose whether a Receiver appointed by the Court can purchase property of which he is Receiver without the leave of the Court. The circumstances there were

slightly different, as the sale was under a mortgage and outside the Court, while the Receiver was appointed by the Court in a partition action but we do not think that any difference in principle is involved. The gist of the decision is that a Receiver is in a fiduciary position and has special opportunities of knowledge and that if he is allowed to figure as a purchaser at an auction, he places himself in a position in which his interests as buyer conflict with his duties as Receiver. It is essential therefore to enforce the principle that a Receiver ought not to be allowed to purchase, and it should be enforced not with reference to the merits of individual cases but by imposing an absolute prohibition. Cozens Hardy, M. R. observes:

The Court in dealing with this class of cases, does not proceed upon the footing that there has been fraud or improper concealment, or any special advantage taken by that Receiver; but it proceeds upon the general rule that in cases of this kind the purchase ought not to be allowed at, because it is a dangerous thing to allow, as in most cases it is almost impossible to ascertain whether the Receiver has or has not taken undue advantage of his position.

2. Similar observations were made by Fletcher Moulton, L.J. There can be no doubt that this case states the law as it stands in England and now that we also have an Indian decision in the same terms, we think that we should have strong grounds for differing from these authorities. Mr. Somayya has endeavoured to argue that a Receiver in a mortgage action occupies a special position, inasmuch as he is appointed in the interests solely of the mortgagee decree-holder and not at all in those of the judgment-debtors. We do not think in the first place that that is any clear reason why the rule should not be enforced, and in the second place we think it very difficult to say that the proposition is universally true, though it may be true in the special circumstances in particular cases. It is undoubtedly the duty of a Receiver in a mortgage action not only to ensure that the income is conserved but also that the property is kept at its maximum value. In other words, his duty as a Receiver or at least the effect of discharging that duty, is to maintain the property in the most favourable condition for an eventual auction, whereas as a bidder, his private interest must necessarily be to secure the same property at a minimum price. It seems clear that in general a judgment-debtor is interested in the amount of the sale price because on it depends the extent to which the decree against him is satisfied or, if it is wholly satisfied, the extent of the surplus which will be paid into his hands. We cannot accordingly agree that a Receivership of this character should afford an exception to the general rule laid down in Nugent v. Nugent (1908) 1 Ch. 546 : 77 L.J. Ch. 271 : 98 L.T. 354 : 24 T.L.R. 296 and we think that the considerations in favour of enforcing a general prohibition against allowing Receivers in general to bid at Court sales are so strong that we have little hesitation in approving and following Jiteswari Dassi Vs. Sudha Krishna Mukherjee, supported as it is by the English Law upon the subject. That being the only point which is raised in the appeal, we allow the appeal with reference to the items which were purchased by the Receiver and set aside the sale. In regard to the item not so purchased the

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appeal is not pressed and is dismissed. Respondents Nos. 1 to 8 will pay the petitioners'' costs here and below.

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