

(2016) 03 KAR CK 0308

In the Karnataka High Court

Case No : Civil Revision Petition No. 486 of 2005.

Gurumurthayya

APPELLANT

Vs

Venkatesh Ramachandra Janadri and another.

RESPONDENT

Date of Decision : 23-03-2016

Acts Referred:

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

Citation : (2016) 2 AirKarR 719 : (2016) 4 ICC 577 : (2016) 4 KCCR 3747

Hon'ble Judges : B.S. Patil, J.

Bench : Single Bench

Advocate : Anand R. Kolli, Advocate, for the Appellant; Manjula R. Kamadolli & K.V. Hiremath, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Patil, J. - This matter was heard at length on 18th March, 2016. After recording the sub mission of the learned counsel for petitioner, as the learned counsel for respondents were not present, in order to give them a final opportunity. The matter was ordered to be re-listed today.

2. Facts stated and the contentions urged, as extracted in the order dated 18th March, 2016, are reproduced hereunder to avoid repetition:

"2. Petitioner is aggrieved by the order passed by the Executing Court dismissing the application filed by him under Order 21, Rule 90 of CPC seeking cancellation of the auction sale conducted on 09.07.2004 on the ground that sale conducted in respect of lands bearing R.S. No. 428/1B/1 and 428/1 A/1 was illegal and vitiated by fraud.

3. It is principally urged before the Court below that decree holder had suppressed material fact with regard to the lands having been ordered to be converted into non-agricultural lands and what remained on the part of the judgment debtor was just to pay the conversion charges and thus, value of lands was more than Rs. 20,000/- per gunta, but entire extent of land measuring 2

acres 19 guntas came to be sold in public auction for paltry sum of Rs. 1,00,000/-.

4. Learned counsel for petitioner further contends that ignoring the mandatory requirement of law as prescribed under Order 21, Rule 64 of CPC and the judgment of the Supreme Court in the case of S. Mariyappa (Dead) By LRs. and others v. Siddappa and another, (2005) 10 SCC 235, the property was brought for sale without considering and recording any finding as to whether sale of only part of the property would be sufficient to meet the decretal amount.

5. He has also placed reliance on the judgments of the Supreme Court in the case of Ambati Narasayya v. M. Subba Rao and another, AIR 1990 SC 119 and another in the case of Balakrishnan v. Malaiyandi Konar-(2006) 3 SCC 49 to contend that before bringing the property for sale, the Executing Court has to first decide how much of the property has to be sold as would be necessary to satisfy the decree and that if the property is large and the decretal amount to be satisfied is small, the Court must bring only such portion of the property, proceeds of which would be sufficient to satisfy the claim of the decree holder.

3. An application was filed by the decree-holder under Order 21, Rule 54 of the Code of Civil Procedure, 1908 (for short 'the CPC'), seeking prohibitory order restraining the judgment debtor from transferring the lands in question. Decree holder has also filed verified statement on 08th August, 1999 under Order 21, Rule 66 (3) of CPC valuing the properties at Rs. 1,00,000/-. The judgment debtor did not file any objection to the said application. The application was allowed on 10th March, 2003. It is thereafter proclamation was issued by publishing it in the local newspaper 'Nadu Nudi'. Sale warrant was issued on 31st May, 2004 by fixing the spot sale on 02nd July, 2004 and the Court Sale by 09th July, 2004.

4. It transpires that the highest bid was for a sum of Rs. 1,00,000/- by respondent No. 2. When the matter was called out in the Court on 09th July, 2004, except the highest bidder, no one was present before the Court. Hence, the highest bid offered by respondent No. 2 was improved and accepted at Rs. 1,10,000/-. On the same day, the bidder deposited a sum of Rs. 30,000/- and sought permission to pay the balance amount. He was granted time till 16th July, 2004. It is only then that the judgment debtor appeared before the Court and filed application I.A. No. III seeking to set aside the sale. However, respondent No. 2-auction purchaser deposited the balance amount of Rs. 80,000/- before the Court with the permission of the Court.

5. Thus, it is clear that value of the property was indeed assessed approximately by the decree holder and stated that lands measuring 2 acres 9 guntas in all were of the value of Rs. 1,00,000/- whereas, the amount for which the auction of the property was brought was Rs. 86,241/-. In such circumstances, it is clear that if part of the property was to be sold, it would not have satisfied the decretal amount and therefore, the entire land has been sold. The judgment debtor, who has not raised any objection to the valuation of the property made

by the decree holder at Rs. 1,00,000/- and who has not furnished his own valuation, cannot be heard to say that value of the property was quite substantial.

6. Mere fact that by the time property was sold, there was an order converting the land, cannot be taken into consideration to hold that valuation of the property was substantially higher than Rs. 1,00,000/-, particularly in the absence of such valuation made by the judgment debtor. Therefore, the judgments, on which reliance has been placed by the learned counsel for the judgment debtor-petitioner, will not help.

7. This is not a case where several acres of land worth several lakhs has been sold to pay off the decreetal amount of Rs. 86,241/-. It is only 2 acres and 9 guntas of land that has been sold for a sum of Rs. 1,10,000/- to pay off the decreetal amount of Rs. 86,241/-. The auction purchaser has deposited the amount way back in the year 2004. We are now in the year 2016 . If the sale is cancelled at this distance of time, on the spacious plea taken by the petitioner-judgment debtor, it will seriously affect the interest of the auction purchaser in a Court auction. Therefore, the grievance made by the petitioner cannot be entertained.

8. Hence, the Civil Revision Petition is dismissed.

9. As the Revision Petition is dismissed, application filed by the petitioner seeking permission to deposit the decreetal amount along with interest is also dismissed.