

(2014) 10 SC CK 0044

In the Supreme Court Of India

Case No : Civil Appeal No. 9658 of 2014 (Arising out of Special Leave Petition (Civil) No. 1627 of 2014)

Guttikonda Venkataramaiah

APPELLANT

Vs

Godavarthy Venkateswarlu

RESPONDENT

Date of Decision : 13-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 64, Order 21 Rule 66, Order 21 Rule 90

Citation : (2015) 1 AD (SC) 185 : (2015) 1 ALD 1 : (2014) 107 ALR 738 : (2015) 2 AWC 2044 : (2015) 1 CDR 220 : (2015) 4 MhLj 96 : (2014) 4 RCR(Civil) 953 : (2014) 12 SCALE 24 : (2015) 2 SCC 46 : (2014) 4 WLN 156

Hon'ble Judges : Uday Umesh Lalit, J;Anil R. Dave, J

Bench : Division Bench

Advocate : A. Subba Rao, Advocates for the Appellant; K. Sita Ram Rao and Shree Pal Singh, Advocates for the Respondent

Final Decision : Allowed

Judgement

Anil R. Dave, J.—Heard the learned Counsel.

2. Leave granted.

3. In this appeal, the Appellant-an auction purchaser, has challenged the validity of the judgment dated 13th December, 2013, delivered in Civil Revision Petition No. 6528 of 2012 by the High Court of Judicature of Andhra Pradesh at Hyderabad.

4. The Appellant is an auction purchaser, whereas Respondent No. 1 is a principal debtor and Respondent No. 2 is a creditor in this case.

5. The facts giving rise to the present litigation, in a nutshell, are as under:

Respondent No. 2 had filed OS No. 45 of 2006 in the Court of Principal Senior Civil Judge, Tenali against Respondent No. 1 for recovery of Rs. 1,78,000/-. An

ex-parte decree was passed on 29th December, 2006 and the decretal amount was Rs. 3,55,732/-. It appears from the record that no successful effort was made by Respondent No. 1 to challenge the said ex-parte decree.

6. Thereafter, the execution proceedings had been initiated by Respondent No. 2 for sale of immovable property - agricultural land belonging to the principal debtor-Respondent No. 1 herein and the sale was conducted on 30th May, 2011. The property had been sold for Rs. 13,05,000/- in an auction and the said amount had been paid by the Appellant, who is the auction purchaser.

7. Subsequently, Respondent No. 1 had filed Civil Revision Petition No. 2610 of 2011 in the High Court of Andhra Pradesh pointing out certain irregularities in the execution proceedings. The said civil revision petition had been disposed of on 22nd July, 2011 as it was open to him to file an application Under Rule 90 of Order XXI of the Code of Civil Procedure. In pursuance of the aforestated order passed by the High Court, E.A. No. 426 of 2011 had been filed by Respondent No. 1. However, the same had been dismissed for default on 22nd February, 2012. An effort to get the said application restored to file had also been failed.

8. Finally, the Executing Court had also permitted the auction purchaser to take possession of the property in question vide its order dated 7th November, 2012.

9. In the aforestated circumstances, Respondent No. 1 had filed Civil Revision Petition No. 6528 of 2012 challenging the order dated 7th November, 2012 passed by the executing Court before the High Court of Andhra Pradesh.

10. After hearing the concerned counsel, the High Court by the impugned judgment dated 13th December, 2013, allowed the petition and set aside the sale and directed the Executing Court to take appropriate action for sale of the property in question in accordance with the provisions of Rules 64 and 66 of Order XXI of the Code of Civil Procedure. It was also directed that Respondent No. 1 i.e. the Petitioner before the High Court should deposit the amount which had been paid to the decree holder i.e. the present Respondent No. 2. The amount deposited by the auction purchaser was directed to be refunded to him by the executing Court and it was also directed that Respondent No. 1-the judgment debtor should be put into possession of the property in question.

11. We would also like to record some of the proceedings of this Court in this judgment. At the time when the appeal was notified for hearing on 14th July, 2014, this Court had directed Respondent No. 1-the judgment debtor, to pay Rs. 15,50,000/- to the present Appellant because the Appellant had paid Rs. 13,05,000/- when the property in question had been purchased by him on 30th May, 2011. The amount so paid by the Appellant had been tied up since long and so as to return his amount with some additional amount by way of compensation, we had directed Respondent No. 1 to pay Rs. 15,50,000/-, but Respondent No. 1 failed to do so upto 4th August, 2014, the date on which the hearing was adjourned.

12. Once again, on 4th August, 2014, we granted further time to Respondent No. 1 to make payment of the aforesaid amount to the Appellant before 15th September, 2014. However, in spite of this additional time granted to Respondent No. 1, he did not pay the amount to the Appellant and on 15th September, 2014, Respondent No. 1, who was personally present in the Court had expressed his inability to pay the aforesaid amount to the auction purchaser. We are narrating the said fact so as to show that the principal debtor was not only careless at an earlier point of time while defending his case, but even after losing his case and after getting his property sold in an auction, he was not even prepared to pay back the amount to the auction purchaser. It was also clarified at that time that upon payment of the said amount to the auction purchaser, Respondent No. 1 was entitled to withdraw the amount which had been deposited by the auction purchaser with the Court while purchasing the property in question. The aforesaid directions were given by this Court from time to time so as to know the bona fides of Respondent No. 1-the principal debtor.

13. The aforesaid proceedings show behaviour and nature of the principal debtor.

14. It had been mainly submitted on behalf of the Appellant-the auction purchaser that he had made complete payment for purchasing the property in question at an auction and even the sale had been confirmed in his favour by an order dated 23rd February, 2012. In spite of the said fact, Appellant was not having peaceful possession of the suit property which had been purchased by him. It had been submitted on behalf of the Appellant that the submission made on behalf of Respondent No. 1 to the effect that the property was worth Rs. 30 lakhs was not correct. Had it been so, there would have been several other bidders who would have offered higher bids at the time of the auction. According to the Appellant, the price offered by the Appellant was quite reasonable and fair market value of the property in question.

15. In the aforesaid circumstances, it had been submitted by the learned Counsel for the Appellant that the judgment delivered by the High Court, whereby the property is to be put to sale once again, would act harshly upon the Appellant, especially when the Appellant had offered the highest bid and had purchased the property, sale of which had also been confirmed on 23rd February, 2012. According to him, the entire proceedings should come to an end. It had also been specifically submitted that Respondent No. 1 had shown his negligent approach towards the entire proceedings and even before this Court, though he had shown his willingness to make the payment to the Appellant at one point of time. Finally, he had shown his inability to make the payment and his intention was only to see that the proceedings were prolonged unnecessarily. In the circumstances, the learned Counsel had prayed that the impugned judgment should be quashed and set aside so that the entire exercise with regard to sale of property in question may not have to be repeated.

16. On the other hand, it had been submitted on behalf of the learned Counsel

appearing on behalf of Respondent No. 1-the judgment debtor, that the execution proceedings had not been conducted properly. Though the decretal amount was Rs. 3,55,732/-, the entire property was put to sale by the executing Court. According to the learned Counsel for Respondent No. 1, by sale of a portion of the property, the dues of the principal debtor could have been satisfied and therefore, there was violation of the provisions of Rules 64 and 66 of Order XXI of the Code of Civil Procedure. He had, therefore, submitted that the impugned judgment delivered by the High Court was just and proper.

17. Upon hearing the learned Counsel for the parties, we are of the view that the judgment delivered by the High Court is not just and proper for the reason that Respondent No. 1-debtor had never shown his fairness in the entire proceedings. Though an ex-parte decree was passed against him, he never made sincere efforts to get the decree set aside. Even at the time when the sale proclamation had been issued, he did not raise any objection to the effect that even by sale of lesser area of his land, the decree-holder would get his dues. Only after the auction sale had been concluded, he had initiated different proceedings before different Courts, perhaps only with an intention to see that the property in question is not transferred to the auction purchaser.

18. In our opinion, Respondent No. 1 ought to have raised his objection at the stage when the property in question was to be sold by an auction. He did not do so. Subsequently, after the property was sold at the auction, he approached the High Court, though a proper remedy for him was to file an application Under Rule 90 of Order XXI of the Code of Civil Procedure. When the High Court had directed him to file appropriate proceedings before an appropriate forum, he did so, but there also he was so careless that the proceedings had been concluded against him on account of defaults committed by him.

19. The aforestated circumstances very well show that the intention of the principal debtor is to avoid making payment to the decree holder. If the judgment delivered by the High Court is upheld, the entire proceedings with regard to execution will commence de novo and one does not know as to when the proceedings would be concluded and the decree holder would get the decretal amount. By this time, the decretal amount, which was Rs. 3,55,732/- somewhere in 2006, must have increased substantially and it would not be just and proper to keep the decree holder waiting still more.

20. For the aforestated reasons, in the interest of justice, we feel that the impugned judgment delivered by the High Court deserves to be quashed and set aside. If the auction purchaser is not in possession of the property in question or if there is obstruction by Respondent No. 1, such obstruction shall be removed and the Appellant shall be put in possession of the property in question.

21. For the aforestated reasons, the appeal is allowed. The impugned judgment is quashed and set aside, however, with no order as to costs.