(1976) 03 AP CK 0020

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 223 of 1974

Kalala Laxma Reddy and another — APPELLANT

Vs

Syed Burhamuddin Hussain and others — RESPONDENT

Date of Decision : 18-03-1976

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 84, Order 21 Rule 84(1), Order 21 Rule 85, Order 21 Rule 86

Citation : AIR 1977 AP 78

Hon'ble Judges : Sambasiva Rao, J;Jayachandra Reddy, J

Bench : Division Bench

Advocate : K. Pratap Reddy, for the Appellant; M. Krishnamacharyulu for Govt. Pleader, for Revenue and Om Prakash Misra, for Respondent Nos. 3 to 5 and 7, for the Respondent

Final Decision : Dismissed

Judgement

Jayachandra Reddy, J.—This appeal at the instance of respondents 2 and 3 in W.P. No. 4740 of 1973 is directed against the judgment of our learned brother Obul Reddi J. as he then was. The question that falls for consideration is whether the sale of property held by a public auction under the provisions of the Madras Revenue Recovery Act, ceases to be a sale on the failure of the auction purchaser depositing the amounts as required under clauses (3) and (4) of Section 36 of the said Act.

2. The necessary facts that gave rise to this question may briefly be stated. The writ petitioner, an agriculturist, obtained a loan from the Government for purchasing a tractor and did not repay the loan in spite of demands by the Revenue Authorities. As a result, proceedings u/s 36 of the Madras Revenue Recovery Act (hereinafter referred to as "the Act") were launched and the lands belonging to the writ petitioner were notified for sale. The sale was held by a public auction on 4-3-1964 and the appellants herein were the highest bidders in respect of some of the Survey Nos. Clause (3) of Section 36 of the Act requires

that 15% of the price of the land should be deposited by the purchaser at the time of the purchase and the remainder of the purchase money should be paid within 30 days, failing which the 15% of money deposited earlier would be liable for forfeiture. The 1st appellant herein deposited the amount representing 15% of the price on 11-3-1964, and the 2nd appellant deposited the same on 5-3-1964. But they failed to pay the balance within 30 days as enjoined u/s 36 of the Act. Thereupon the Revenue Divisional Officer, in exercise of his powers, directed forfeiture of the deposits made by the appellants and also ordered resale. Aggrieved by the said order the appellants went in appeal to the Collector and the same was dismissed. Later they filed a revision before the Government u/s 57-A of the Act. The Government after considering the petition allowed the revision without notice to the 1st respondent writ petitioner and set aside the order relating to forfeiture and directed the appellants to pay the balance of the bid amount together with interest thereon according to the rules within 30 days from the date of communication of the order, and the concerned Collector was directed to take necessary action. It may be mentioned here that the appellants deposited the balance amount accordingly. The 1st respondent preferred W.P. No 1229 of 1966 against this order of the Government and the same was dismissed, carried in writ appeal and a Division Bench of this Court allowed the appeal on the ground that no opportunity was afforded to the respondent and directed the Government to dispose of the same after hearing both parties. The Govt. complied with the same and after hearing both sides passed G.O. Ms. No. 655, Revenue, dated 26-7-1973 whereby it confirmed the sale in favour of the appellants herein affirming its own earlier order. As against the said Older the present writ petition has been filed. Our learned brother Obul Reddi, J. as he then was, following a judgment of the Supreme Court in Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another, and another judgment or a Division Bench of this court in writ Appeal No. 74 of 1970 (dated 30-8-1971) (Reported in ILR (1972) AP 990), allowed the writ petition holding that the sale to question in favour of the appellants is a nullity since they failed to make initial deposit of 15% of the price at the time of purchase.

3. Sri K. Pratap Reddy, the learned counsel for the appellants, contended that the learned single Judge ought to have followed the decision of the Madias High Court in Sonaya Pillai v. Kalameghain, ILR 5 Mad 130 and of a Division Bench of this Court in KALWA DEVADATHAM AND OTHERS Vs. UNION OF INDIA AND OTHERS, and in which the scope of clauses (3) and (1) of Section 36 of the Act was considered, and that the two decisions relied upon by the learned Judge do not deal with those provisions and as such they are not direct on the point. The learned counsel maintains that the Government had ample power u/s 57-A of the Act to pass the impugned order and the same is in accordance with the view taken in the abovesaid two decisions. It is true that in Sonaya Pillai v. Kalamegham ILR 5 Mad 130 the learned Judges of the Madras High Court held that if the balance of the purchase money referred to in clause (3) of Section 36 is not paid within the time prescribed, it is in the discretion of the Government to

forfeit the deposit money. In that case it appears the auction purchasers did not pay the balance of the purchase money within the prescribed time. So, the effect of not depositing 15% of the price of the land at the time of purchase did not fall for consideration in that case. In KALWA DEVADATHAM AND OTHERS Vs. UNION OF INDIA AND OTHERS, the learned Judge dealt with a case arising under clause (4) of Section 36 of the Act, where the purchasers had not paid the balance of purchase money within the prescribed time. The Division Bench followed Sonaya Pillai''s case (cited supra) and held thus:

"The clause ''the property'' shall be resold at the expense and hazard of such purchaser etc. only implies that the resale is at the risk and hazard of the first purchaser. It does not mean that the Collector is compelled to hold a resale in the event of the first purchaser not depositing the remainder of the purchase money within thirty days. It is in the discretion of the officer concerned to take action under that rule and he is under no obligation to put it into operatic." It can thus be seen that even in this case the learned Judge did not consider whether failure to deposit 15% of the bid amount at the time of purchase invalidates the sale as such. Further in that case it was the defaulter that prevented the purchasers from making necessary deposits by obtaining stay of further proceedings from the High Court. The learned Judges took this circumstance also into consideration while holding that the officer had the discretion to hold the resale and that the provisions do not always compel him to hold the resale.

4. In Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another, their Lordships had to construe the scope of Rules 84, 85 and 86 of Order 21 C.P.C. while deciding the appeal brought by the auction-purchasers who failed to make the deposit as required under these provisions. The Court, after referring to the above-mentioned provision of law in the C.P.C. observed thus:-

The provision regarding the deposit of 25 per cent by the purchaser other than the decree-holder is mandatory as the language of the rule suggests. The full amount of the purchase money must be paid within fifteen days from the date of the sale but the decree-holder is entitled to the advantage of a set-off. The provision of payment is however, mandatory (Rule 85). If the payment is not made within the period of fifteen clays, the court has the discretion to forfeit the deposit and there the discretion ends but the obligation of the court to re-sell the property is imperative. A further consequence of nonpayment is that the defaulting purchaser forfeits all claim to the property.

It may be pointed out here that in the case before the Supreme Court the auction-purchasers failed to deposit 25% of the purchase money and also failed to pay the full amount of the purchase money within fifteen days from the date of the sale as prescribed. Their Lordships after referring to the facts and the authorities cited and also the relevant rules, held thus:

Having examined the language of the relevant rules and the judicial decisions bearing upon the subject we are of opinion that the provisions of the rules requiring the deposit of 25 per cent of the purchase money immediately on the person being declared as a purchaser and the payment of the balance within 15 days of the sale are mandatory and upon non-compliance with these provisions there is no sale at all. The rules do not contemplate that there can be any sale in favour of a purchaser without depositing 25 per cent of the purchase money in the first instance and the balance within 15 days.

The Division Bench of this court in Writ Appeal No. 74 of 1970 (Reported in ILR (1972) AP 990) had to consider the scope of Section 135 of the Hyderabad Land Revenue Act. The learned Judges held that this provision of law is in pari materia with Order 21 Rules 84 and 85 C.P.C. and following the judgment of the Supreme Court in Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another, held thus:

We have already seen that Section 135 of the Act is in pari materia with rules 84 and 85 of Order XXI C.P.C. What follows from our view is that the said rules and Section 135 are mandatory and not directory and any omission to adhere to them or any violation of these provisions make the sale a nullity.

However the attention of the learned Judges was invited to the decisions of the Madras High Court and this Court, viz. Sonaya Pillai v. Kalamagham, ILR (1882) Mad 130 and KALWA DEVADATHAM AND OTHERS Vs. UNION OF INDIA AND OTHERS, respectively. Justice Gopalarao Ekbote as he then was, who spoke for the Bench, after having reached the conclusion stated (supra), observed thus:

In view of this, we consider it unnecessary to compare and contrast Section 135 of the Act with Section 36 of the Madras Land Revenue Recovery Act and consider the decisions relied upon by the petitioners decided u/s 36 of the Madras Revenue Recovery Act. It is enough if we say that in so far as those decisions hold that "Section 36(4) of the Madras Revenue Recovery Act does not mean that the Collector is compelled to hold a resale in the event of the first purchaser not depositing the remainder of the purchase money within 30 days, it goes contrary to what is decided in Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another, In the said Supreme Court decision it is categorically held that "....the court has the discretion to forfeit the deposit but it was bound to resell the property with the result that on default the purchaser forfeited all claim to the property". Those decisions therefore cannot be said to be good law in view of the said Supreme Court decision.

5. At this juncture it is also necessary to refer to two more decisions of this court. In Mudragada Suryanarayanamurthi Vs. Southern Agencies, Rajahmundry and Another, a Division Bench of this court consisting of Chandra Reddy, C.J. and Chandrasekhara Sastry J. had an occasion to consider the scope of order 21 rules 85 and 86 C.P.C. and the learned Judges following the Supreme Court decision in Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another, held that the court had no jurisdiction to extend the time prescribed by

Rule 85 of Order 21 either for depositing the full amount of the purchase money or the full amount required for the general stamp for the certificate under R. 94 and that in default of the deposit of either amount the court was bound to re-sell the property. In Raghavalu v. Venkamma, AIR 1962 AP 334 another Division Bench consisting of Chandra Reddy C.J. and Narasimham, J. as he then was following the Supreme Court decision in Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another, reiterated, "Rule 85 of Order 21, CPC is mandatory; the omission to satisfy the requirement of that rule vitiates the execution of sale."

6. In the present case the learned single Judge had no hesitation in holding that the language employed in clause (3) of Section 36 of the Act, is to the same effect as the language employed in Rule 84(1) of order 21, C.P.C. and that the scope of clause (3) of Section 36 has to be considered in the light of clause (4) of the said section, and accordingly reached the conclusion that the sale itself is wiped out as the initial deposit of 15% of the price of the land was not made at the time of purchase, i.e., on 4-3-1964. In reaching this conclusion the learned single Judge relied on Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another, and on the judgment in W.A. 74 of 1970 (Andh Pra) (Reported in ILR (1972) AP 990).

7. The learned counsel for the appellants endeavoured to show that the language employed in clauses (3) and (4) of Section 36 of the Act is different from that employed in Order 21 Rule 84(1) C.P.C. and in Section 135 of the Hyderabad Land Revenue Act. and tried to maintain that the decisions on these provisions of law cannot be pressed into service while construing the scope of clauses (3) and (4) of Section 36of the Act. We have carefully examined these provisions of law and we are not able to persuade ourselves to agree with the learned counsel. Rule 84(1) of Order 21, C.P.C is in the following terms:-

On every sale of immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty five per cent. On the amount of his purchase-money to the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be re sold.

A plain reading of this provision of law shows that immediately after being declared as the purchaser, the said purchaser, should deposit 25 per cent of the purchase money to the concerned officer and in default, the property shall forthwith be re-sold. No doubt the same language is not employed in clause (3) of Section 36 of the Act, which is in the following terms:

A sum of money equal to fifteen per cent of the price of the land shall be deposited by the purchaser in the hands of the Collector or other officer empowered by the Collector in that behalf, at the time of the purchase and where the remainder of the purchase money may not be paid within thirty days the money so deposited, shall be liable to forfeiture.

This clause clearly lays down that the purchaser should deposit 15 per cent of the purchase money at the time of the purchase and if the remainder is not deposited within 30 days the money so deposited shall be liable to forfeiture. Now it is necessary to refer to clause (4) of the same section, which reads thus:-

Where the purchaser may refuse or omit to deposit the said sum of money or to complete the payment of the remaining purchase money, the property shall be resold at the expense and hazard of such purchaser, and the amount of all loss or expense which may attend such refusal or omission shall be recoverable from such purchaser in the same manner as arrears of public revenue. Where the lands may, on the second sale, sell for a higher price than at the first sale, the difference or increase shall be the properly of him on whose account the said first sale was made.

This clause makes it clear that the property should be resold in case the purchaser refuses or omits to deposit the amounts referred to in clause (3). From a combined reading of these two clauses 3 and 4 of Section 36 the conclusion is irresistible that the effect of the language used in these two clauses is the same as we find in Rule 84 of order 21, C.P.C. In view of the decision of the Supreme Court, in Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another, the two decisions relied on by the learned counsel viz. Sonaya Pillai v. Kalamegham, ((1882) ILR 5 Mad 130) and KALWA DEVADATHAM AND OTHERS Vs. UNION OF INDIA AND OTHERS, cannot be followed. The language of Section 135 of [the Hyderabad Land Revenue Act is more or less the same as the language employed in clauses (3) and (4) of Section 36 of the Act. Section 135 of the Hyderabad Land Revenue Act is in the following terms:-

The purchaser shall pay the purchase-money as directed below:

(a) When the sale is concluded by an officer authorised to sanction and conclude it finally-

(1) on account of moveable property, in full immediately after the sale is finished or within such time as the officer conducting the sale may fix;

(2) On account of immoveable property, one fourth, as deposit, and the balance within thirty days from the date of sale, and if the thirtieth day be a general holiday, then on the day following such holiday.

(b) When sale is finished by an officer who is not authorised to sanction and conclude it finally-

(1) One fourth, as deposit, immediately after the sale is finished and (2) the balance, On account of moveable property, before sunset of the day on which the notice of confirmation of the sale is received and on account of immoveable property within thirty days of the receipt of such notice, and if the thirtieth day be a general holiday, then on the day following such holiday.

A plain reading of this section admits of no doubt that this provision is in pari materia with Order 84 Rule 21, C.P.C. as held by the Division Bench in Writ

Appeal No. 74 of 1970 (Andh Pra) (Reported in ILR (1972) AP 990). A comparative reading of Section 135 of the Hyderabad Land Revenue Act with clauses (3) and (4) of Section 36 of the Act leads to the same conclusion that the effect of the language employed in these provisions is the same. The learned counsel points out that in Sec. 134 of the Hyderabad Lands Revenue Act and in Rule 84 of Order 21, C.P.C it is laid down that the deposit should be made immediately after the sale whereas the same language is not found in clauses (3) and (4) of Section 36 of the Act. Though the word immediately is not used in clauses (3) and (4) of Section 36 a plain reading of the two clauses makes it clear that the deposit of 15% should be made at the time of purchase which means "immediately, after the sale."

8. Yet another difference pointed out by the learned counsel is that in cl. (4) of S. 36 the words "the property shall be resold at the expense and hazard of such purchaser, are of much significance and the Madras High Court and this court in Sonaya Pillai''s case ((1882) ILR 5 Mad 130) (cited supra) and in KALWA DEVADATHAM AND OTHERS Vs. UNION OF INDIA AND OTHERS, (cited supra) having regard to these expressions, had rightly held that the officer had the discretion to resale, and the same words are not to be seen in Section 135 of the Hyderabad Land Revenue Act or in Rule 84 of Order 21 C.P.C. and so the learned counsel pointed out that the judgment of the Supreme Court in Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another, and the judgment in Writ Appeal No. 74 of 1970 (Andh Pra) (Reported in ILR (1972) AP 990) are distinguishable. We see no substance in this contention. What all those words mean is that the property can be resold at the expense and hazard of such purchaser, but they cannot be construed as to mean that the sale is not vitiated in a case where even the initial deposit is not made. We cannot read these words in isolation and if we take into consideration the combined effect of clauses (3) and (4) of Section 36 of the Act we have no other option but to hold that if the initial deposit of 15% is not made at the time of the sale, the sale itself becomes invalid and the non-payment of the said amount, on the part of the defaulting purchaser renders the sale proceedings a complete nullity. In this case, admittedly the appellants did not make the initial deposit of 15% of the purchase money on the date of sale, but deposited the same subsequently.

Apart from that, they again committed default in payment of the balance of the purchase money within the time prescribed. For both these reasons, we cannot but hold that the sale itself is invalid. In this view of the matter also the impugned order of the Government has to be quashed.

9. For all these reasons we confirm the judgment under appeal and dismiss the writ appeal but under the circumstances without costs. Advocate''s fees Rs. 150/-.

