

(1959) 11 MAD CK 0037
In the Madras High Court
Case No : A.A.A.O. No. 25 of 1958

M. KN. N. Kannappa Chetthir

APPELLANT

Vs

S. P. P. Srinivasan Chettiar and Another

RESPONDENT

Date of Decision : 05-11-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144, 151, 47, 73

Citation : (1959) 11 MAD CK 0037

Hon'ble Judges : Subrahmanyam, J

Bench : Single Bench

Advocate : R. Gopalaswami Iyengar, for the Appellant; M. Natesan, for the Respondent

Final Decision : Allowed

Judgement

Subrahmanyam, J.—The defendant judgment-debtor in O. S. No. 4 of 1942 on the file of the Subordinate Judge, Sivaganga, was the appellant in the lower appellate Court and in the appeal in this appeal.

2. One Panchaksharam Chettiar obtained a decree on 25-9-1942, against the appellant's father for recovery of Rs. 3300 odd in O. S. No. 4 of 1942, on the file of the Subordinate Judge, Sivaganga. The appellant's brother filed I. A. No. 18 of 1950 on 14-9-1949 under S. 19 of Madras Act IV of 1938 to have the debt scaled down. An order was passed in that application on 29-8-1950 scaling down the debt to Rs. 2100 odd. The appellant's brother preferred an appeal A. S. No. 3 of 1951 to the District Judge, Ramanathapuram, praying that the debt be scaled down to a lower figure. The District Judge passed an order on 20-8-1951 not refusing merely that further scaling down that was prayed for, but disallowing altogether the appellant's claim to scaling down. He declared that the amount payable by the appellant and his brother under the decree was the amount due on the decree dated 25-9-1942 in accordance with its apparent tenor.

That was a wholly wrong order to make because the respondents, the legal

representatives of Panchaksharam Chettiar, who had obtained the decree, had themselves not appealed from the order passed by the Subordinate Judge scaling down the debt to Rs. 2100 odd. The District Judge had either to accede to the request of the appellant's brother to have the debt scaled down further or to dismiss the appeal thereby maintaining the debt at the level to which it had been scaled down by the Subordinate Judge in I. A. No. 18 of 1950. Against the order of the District Judge, the appellant's brother preferred C. M. S. A. No. 29 of 1952 on the file of this Court.

3. On 26-10-1951, that is about two months after the District Judge's order dated 20-8-1951, in A. S. No. 3 of 1951, the respondent filed E. P. No. 116 of 1951 for sale of the residential house of the appellant and his brother to recover Rs. 5200 odd due on the decree dated 25-8-1942. In C. M. S. A. No. 29 of 1951 the appellant's brother applied for stay of execution, but he was not able to furnish the security required. The execution proceedings in E. P. No. 116 of 1951 proceeded to the stage of sale. The 2nd respondent had obtained permission to bid at the sale and set off the amount due on the decree. The 2nd respondent purchased the property at the Court sale held, on 20-10-1953 for Rs. 4500. Since the amount recoverable on the decree as it stood on that date was over Rs. 5000 the 2nd respondent set off the purchase money against a part of the decree debt and paid only poundage. Confirmation of the sale was delayed by reason of proceedings which need not be set out here. While the sale was pending confirmation, C. M. S. A. No. 29 of 1952, which had been filed by the appellant's brother against the order of the District Judge, Ramanathapuram, in A. S. No. 3 of 1951, was allowed by this Court on 17-1-1955 and the debt was scaled down to the level of at which it stood, namely, Rs. 2100 odd, under the order passed by the Subordinate Judge on 28-8-1950 in I. A. No. 18 of 1950.

The decree-holders did not report to the executing Court that the debt had been so scaled down. In the belief that a sum in excess of Rs. 4500 continued to remain due on the decree the executing Court passed an order on 24-8-1955 confirming the sale and recording part satisfaction of the decree to the extent of Rs. 4500. In due course, a sale certificate was issued and, in pursuance of the sale certificate, the decree-holder purchasers took delivery of the property on 8-10-1955. On 26-1-1956 the appellant filed the application which has given rise to this appeal under Ss. 47, 144 and 151 C. P. C. praying that the sale which had been held in E. P. No. 116 of 1951 be set aside, that the property be redelivered to the appellant and that he be permitted to pay the decree amount in instalments, as provided by Act I of 1955. The application was dismissed by the lower Court. The appellant has hence preferred this appeal.

4. On 20-10-1953, the date on which the sale was held, the amount recoverable on the decree exceeded Rs. 5000. Even according to the Appellant's case, an amount in excess of Rs. 1500 was payable. Since the amount payable was not paid and there was no stay of execution, the sale had necessarily to be held. The decree-holders took the necessary steps for such sale and the sale which was

held by the Court was legal. (Please see Kuppa Sankara Sastri and Others Vs. Kakumanu Varaprasad and Another,

5. The 2nd respondent had obtained permission under O. 21 R. 72 to bid for and purchase the property and to set off the purchase money against the amount due under the decree. The respondents' bid for Rs. 4500 was the highest and the property was sold to the 2nd respondent. Since the amount due under the decree was in excess of Rs. 4500, she set off the purchase money against that part of the decree; amount and paid only poundage. But confirmation of the sale was delayed until September 1955. On 17-1-1955, this Court had passed an order in C. M. A. No. 29 of 1952 restoring the order passed by the Subordinate Judge on 28-8-1950 and scaling down the debt to a sum far below the sum of Rs. 4500 for which the 2nd respondent had purchased the property at the Court sale.

The decree-holders did not bring it to the notice of the Court that the decree debt had been scaled down and that the purchase money exceeded the amount payable on the decree. In ignorance of the fact that the decree debt had been scaled down, the Court passed an order on 24-8-1956 confirming the sale and recording part satisfaction as to Rs. 4500. If the Court had known the facts relating to scaling down of the decree, the Court could not, on that date, have recorded part satisfaction to the extent of Rs. 4500 of the decree on which very much less was due and would not have passed an order confirming the sale, unless the difference between the purchase money and the amount due on the decree had been deposited in Court. The point is whether the order of confirmation is legal.

6. That point is not covered by Kuppa Sankara Sastri and Others Vs. Kakumanu Varaprasad and Another, because, in that case, the order scaling down the decree debt was passed after the confirmation of the sale. In this case, if the decree debt had not been scaled down prior - indeed 8 months prior - to the order of confirmation, the order of confirmation would be legal. Any further relief which the judgment-debtor might seek by reason of scaling down subsequent to confirmation would have to be sought on the basis of a sale which was duly confirmed and under which title had passed to the purchaser. The position is different if the order seeing down the debt to a level below the purchase money is passed before the confirmation of sale. Order 21 R. 72 enacts :

(1) No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property;

(2) where a decree-holder purchases with such permission, the purchase money and the amount due on the decree may, subject to the provisions of S. 73, be set off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

Sub-rule (2) of R. 72 lays the obligation on the Court to enter up satisfaction of the decree up to the amount of the purchase money which had been set off.

Such an order entering up satisfaction can be passed only on the date on which the sale is confirmed, because until the sale is confirmed, the decree-holder does not get title to the property (although when once the sale is confirmed title relates back to date of sale), and, therefore, until the sale is confirmed and he obtains title, his decree cannot be recorded as satisfied to the extent of the amount set off. If, on the date on which the sale has to be confirmed, the amount that has been set off is in excess of the amount due on the decree, satisfaction of the decree upto the amount set off cannot be recorded.

It follows that the sale itself cannot be confirmed unless the difference between the amount that has been set off and the amount that is due on the decree is deposited by the decree-holder purchaser into Court. That is because no purchaser at a Court sale is entitled to have his sale confirmed until the judgment-debtor is paid the price in full. Payment is usually by appropriation in satisfaction of the debt due to the decree-holder in execution of whose decree the property was sold and of other decree holders, if any, who have obtained orders of rateable distribution and resolution of the value for payment to the judgment-debtor or other persons entitled to receive the money by reason of transfers made by him. In a Court sale, there can be no purchase on credit.

In a case where the amount due on a decree is varied to the judgment-debtor's advantage after the Court sale in execution of the decree and the amount as thus varied is less than the purchase money in a case in which the decree-holder purchases the property at the Court sale and sets off the purchase money against the amount due to him, the sale cannot be confirmed unless the decree-holder invites the attention of the Court to the alteration made in the decree and deposits the difference between the purchase money and the amount recoverable under the decree as altered. The obligation lies on the Court to ensure that degree of justice to judgment-debtors whose properties are sold through Court by reason of their inability to pay their decree debt. That relief judgment-debtors are entitled to under S. 151 C. P. C.

7. The respondent's learned counsel contends that the sale was bound to be confirmed under O. 21 R. 92, in the absence of any application being made under O. 21, R. 89, R. 90 or R. 91. But these rules, namely rules 89, 90, 91 and 92, proceed on the basis that the purchase money has been deposited in Court Subject to the proviso that where the purchase money is duly set off, being equal to or less than the decree amount, the purchase money would be deemed to be deposited in Court. Where the purchase money is not so deposited, the basis of those rules disappears and there can be no confirmation under O. 21 R. 92.

8. I hold that the error confirming the sale passed by the Subordinate Judge on 24-8-1955 and recording part satisfaction as to Rs. 4500 was illegal. That order is hereby set aside. The appeal is allowed to that extent. The Subordinate Judge will restore the E. P. to his file and will proceed to deal with it from the stage reached immediately before the order confirming the sale and recording part satisfaction was made. He will call on the decree holders and judgment-debtors

to file statements of the amount recoverable by the decree-holders under the decree as amended and ascertain such amount and will call upon the decree-holders to deposit in Court within a time to be specified the difference between the purchase money and the amount recoverable on the basis of the amended decree on the date of the sale. If the amount is deposited within the time allowed, the sale will be confirmed. If the amount is not so deposited, the sale will be set aside and a fresh sale will be ordered. Since the order confirming the sale is set aside, the judgment-debtor becomes entitled to redelivery of the property, pending fresh order of confirmation. Such redelivery will be effected on his paying the requisite fees. The appellant will have his costs in all these proceedings, viz., in E. A. No. 50 of 1956, A. S. No. 57 of 1957 and in this appeal. The respondents will be entitled to recover in the execution petition full costs of the execution inclusive of the costs of sale and poundage. No leave.