
(1972) 09 KAR CK 0007

In the Karnataka High Court

Case No : Civil Revision Petition No. 1046 of 1969

M. Panchaksharappa

APPELLANT

Vs

Shivayogeshwara Cotton Press Co. of Davanagere

RESPONDENT

Date of Decision : 19-09-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 72 (1), Order 21 Rule 84 (1), Order 21 Rule 90

Limitation Act, 1908 — Section 166

Citation : AIR 1973 Kar 135 : AIR 1972 Kar 135 : (1973) 1 MysLJ 1

Hon'ble Judges : A. Narayana Pai, C.J; E.S. Venkataramiah, J

Bench : Division Bench

Advocate : S.K. Venkataranga Iyengar, for the Appellant; Padubidri Ragavendra Rao and Surya Prakash, for the Respondent

Final Decision : Dismissed

Judgement

Venkataramiah, J.—On a reference made by Jagannatha Shetty, J., the above revision petition has come up for hearing before this Division Bench. It arises out of an application (I. A. 3) filed by the petitioner under Order XXI, Rule 90 of the CPC for setting aside a sale of immovable property belonging to him held on 11-4-1963 in Execution Case No. 476/ 62 on the file of the Munsiff, Davangere. The respondent had filed the above execution petition against the petitioner for the recovery of a sum of Rs. 3,846-86. The sale notice in the above case was issued to the petitioner. On 30-11-1962 and on his refusal to receive the same, service on the petitioner was held sufficient by the Munsiff. Thereafter, an application (I. A. 1) was filed by the petitioner requesting the Court to hear him on the objections that he had filed to the execution proceedings. After several adjournments, the case was set down for hearing of I. A. 1 on 1-3-1963. When the case was called on 1-3-1963, the judgment-debtor was absent and hence I. A. 1 filed by him was dismissed. The Court directed that the property be sold on 11-4-1963.

2. On 9-4-1963, the decree-holder filed an application (I. A. 2) under Order XXI, Rule 72 of the CPC praying that he might be permitted to offer bid at the sale and to set off the decretal amount against the price payable at the sale. The executing Court passed an order which reads as follows:--

"Permitted to bid for the estimated value and set off allowed."

The property was accordingly sold on 11-4-1963 and the highest bid of Rs. 8,000/- offered by the respondent was accepted by the Court. The respondent did not deposit twenty-five per cent, of the purchase money as required by Order XXI, Rule 84 (1) CPC as the decretal amount was more than Rs. 2,000/-. He however deposited in time the balance of purchase money after setting off the decretal amount in accordance with Rule 85 of Order XXI. Thereafter, the case was adjourned to 14-6-1963 to pass orders regarding the confirmation of sale. On 13-6-1963, the petitioner filed the above application under Order XXI, Rule 90 of the CPC for setting aside the sale held on 11-4-1963.

3. The following allegations were made in the said application:--

(1) That on 1-3-1963, on account of the sad demise of Dr. Rajendra Prasad who was the former President of India, the Courts were closed that day having been declared as a public holiday and the petitioner did not know actually what happened in Court in the above execution case on that date. He came to know only on 10-6-1963 that his property had been sold on 11-4-1963. Since no notice was given to him regarding the further execution proceedings after 11-4-1963, the sale held on 11-4-1963 was liable to be set aside.

(2) That the proclamation of sale had not been properly drawn up and that there was no due publicity of sale. It was alleged that there were no bidders at all when the sale was held. The fact that the sale was not held at the spot where the property was situated was also made a ground of attack in the said petition.

4. In addition to the above averments which come under Order XXI, Rule 90, Code of Civil Procedure, it was also pleaded that the entire sale proceedings were void since no part of the bid amount was deposited by the respondent as required by Rule 84 (1) of Order XXI, CPC on the date of sale. It was contended that in view of the non-compliance with the said provision, the sale was void.

5. The respondent denied the various allegations made in the application of the petitioner. He contended that the sale proceedings were valid and that the sale was not liable to be set aside. The several allegations of fact made by the petitioner regarding the conduct of sale were also denied.

6. Executing Court after enquiry held that the petitioner had not made out that there was any material irregularity in the conduct of sale which had the effect of vitiating the sale held on 11-4-63. It was also held that the petitioner had not established that on account of the irregularities, if there were any, he was materially prejudiced. The application which was filed on 13-6-1963 was held to be barred by time. In view of the above findings, the executing Court dismissed

the application. Aggrieved by the order of the executing Court, the petitioner filed an appeal before the Civil Judge, Chitradurga in M. A. No. 4/64 which was also dismissed. The above revision petition is filed against the order of the learned Civil Judge.

7. At the outset it should be mentioned that both the Courts below have concurrently found that there was no irregularity in the conduct of the sale at all and that the petitioner had not established that he was prejudiced on account of any irregularity. The only question which survives for consideration in this revision petition is whether the sale held by the Court can be considered as valid and binding on the petitioner even though the respondent did not deposit twenty-five per cent of the sale price at the conclusion of the sale as required by Rule 84 (1) of Order XXI, Code of Civil Procedure.

8. Sri Venkataranga Iyengar, learned counsel for the petitioner contended that under Sub-rule (2) of Rule 84 of Order XXI, Code of Civil Procedure, an express order dispensing compliance with Sub-rule (1) of Order XXI, Rule 84 was necessary in the case of a decree-holder to absolve him from compliance with Sub-rule (1) of Rule 84 of Order XXI which required that twenty-five per cent, of the purchase money should be deposited at the conclusion of the sale. According to him, the mere fact that the decree-holder had been permitted in this case to offer bid at the sale and to set off the decretal amount was not sufficient in the eye of law to hold that the sale was valid even though such a deposit as required by the Rule had not been made.

9. In order to appreciate the contention of the learned counsel for the petitioner, it is necessary to set out the relevant provisions of law. Rule 72 of Order XXI, CPC reads:

"72 (1) Decree-holder not to bid for or buy property without permission--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 decree-holder purchases, amount of decree may be taken as payment--Where a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, subject to the provisions of Section 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.

(3) * * * *

Order XXI, Rule 84 CPC reads:

84. Deposit by purchaser and re-sale on default. -- (1) 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.

(2) Where the decree-holder is the purchaser and is entitled to set off the purchase money under Rule 72 the Court may dispense with the requirements of this rule."

10. It is no doubt true that under sub-rule (2) of Order XXI, Rule 84, Code of Civil Procedure, an order of the Court is necessary to dispense with the requirement of Sub-rule (1) to enable the decree-holder" to purchase the property without depositing twenty-five per cent of purchase-money on the date of sale. But the question for consideration is whether at all events an express order has to be made by the Court under Order XXI, Rule 84 (2). It was contended on behalf of the respondent in this case that in view of the fact that the Court had passed an order permitting the respondent to purchase the property under Sub-rule (1) of Order XXI, Rule 72, Code of Civil Procedure, it should be assumed that by necessary implication, the Court had made an order under Sub-rule (2) of Rule 84 of Order XXI, Code of Civil Procedure, also allowing the decree-holder auction-purchaser to set off the decretal amount against that part of purchase-money which he was required to pay under Sub-rule (1) of Rule 84 of Order XXI, Code of Civil Procedure.

11. In support of his case, Sri S. K. Venkataranga Iyengar, learned counsel for the petitioner relied upon a decision of the Supreme Court in *Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another*, The Supreme Court in the course of the said decision has observed, -- that the provisions of Order 21, Rules 84, 85 and 86 requiring the deposit of 25 per cent of the purchase-money immediately, on the person being declared at a purchaser, such person not being a decree-holder, 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 stranger purchaser without depositing 25 per cent of the purchase-money in the first instance and the balance within 15 days. When there is no sale within the contemplation of these rules, there can be no question of material irregularity in the conduct of the sale. Non-payment of the price on the part of the defaulting purchaser renders the sale proceedings as a complete nullity.

12. But in the case of a decree-holder auction purchaser the said provision cannot be construed as mandatory. His case stands on a different footing altogether. A reading of Sub-r. (2) of Order XXI, Rule 72 would show that on the decree-holder being permitted to offer bid at the sale, he is entitled to set off the decretal amount due to him against the purchase-money and the executing Court is required to enter up satisfaction of the decree in full or in part accordingly. The effect of Sub-rule (2) of Order XXI Rule 72, CPC was considered by Wanchoo, C. J. (as he then was) in *Kanhaiyalal Vs. Sansmal and Another*, His Lordship observed that from a reading of Rules 72 and 84 of Order 21 together, it was clear that where a decree-holder was permitted to bid at an auction, there was an implied dispensation also that he need not deposit 25 per cent of the

purchase-money unless the said amount was more than the decretal amount. His Lordship held that when the Court permitted the decree-holder to bid at the sale and to set off the decretal amount by necessary implication, unless there was anything to the contrary from the order passed by the executing Court, it should be held that the Court had granted permission under Sub-rule (2) of Rule 84.

13. Same is the view expressed by a Division Bench of the Andhra Pradesh High Court in *M. Suryanarayana Rao v. B. Chinna Konda* AIR 1958 Andh Pra 472 wherein it was held that it could be presumed, in the absence of evidence to the contrary, that where the Judge had given the decree-holder the requisite permission to bid and purchase, he also dispensed with the requirement of Rule 84 (1), namely depositing the twenty five per cent, of the purchase-money as soon as he was declared to be purchaser.

14. Mr. Venkataranga Iyengar, learned counsel for the petitioner, however, relied upon another decision of a Single Judge of the Andhra Pradesh High Court in *Sivaraya Pundarikaksharao Vs. Lingareddi Venkatareddi*, in which it was observed that irrespective of the fact whether the purchase-money exceeded the amount due under the decree or not the requirement of the deposit of twenty-five per cent, of the amount of the purchase-money under Rule 84 (1) was mandatory even in the case of a decree-holder-auction-purchaser, who had obtained leave to set off under Rule 72 unless it was dispensed with by the Court under Rule 84 (2) by an express order.

15. It may be mentioned here that the above decision of the Andhra Pradesh High Court was dissented from in a subsequent decision of the same High Court as can be found in paragraph 9 of the decision in *Gadde Buchaiah Vs. Dasari Kotaiah and Others*, It is stated in the course of the said paragraph that the decision in *Sivaraya Pundarikaksharao Vs. Lingareddi Venkatareddi*, had been dissented from in C. M. S. A. 96/1965 Rajasthan and of the Andhra Pradesh High Court. It was held that unless there was any order to the contrary passed by the Court it should be implied that the order made on an application under Sub-rule (1) of Order XXI, Rule 72 permitting the decree-holder to offer bid must be construed as one granting permission under Sub-rule (2) of Rule 84 also dispensing with the requirement under Sub-rule (1) of Rule 84.

16. We are of the opinion that the decisions of the Rajasthan High Court in *Kanhaiyalal Vs. Sansmal and Another*, and of the Andhra Pradesh High Court in the cases of *M. Suryanarayana Rao Vs. Bommana Chinna Konda Reddy*, and *Gadde Buchaiah Vs. Dasari Kotaiah and Others*, lay down the law correctly. In this case it is not shown by the petitioner that there was any circumstance which showed that the executing Court intended that the decree-holder should comply with Sub-rule (1) of Rule 84 of Order XXI by depositing twenty-five per cent, of the purchase-money at the conclusion of the sale. We therefore, find that there is no substance in the above contention of the petitioner.

17. The next question that arises for consideration is whether the application under Order XXI, Rule 90, CPC was filed in time. Admittedly, the application was filed on 13-6-1963 and the sale was held on 11-4-1963. Under Article 166 of the Indian Limitation Act, 1908, which was in force at the time when the sale took place, an application for setting aside a sale in execution of a decree had to be filed within thirty days from the date of sale. It was contended by Sri Venkataranga Iyengar that since the case had been adjourned to 1-6-1963 after the sale was held on 11-4-1963, the time commenced to run under Article 166 from 1-6-1963 and therefore, the application filed on 13-6-1963 was in time. We find it difficult to agree with the submission made by Sri Venkataranga Iyengar. It is clear from condition 3 of the Sale Proclamation issued in this case that the Nazir who was asked to hold the sale had been permitted by the Court to accept the bid on the date of sale itself. Exhibit D-2 shows that the respondent was declared as the highest bidder and his bid was accepted by the Nazir on the same day. Below Exhibit D-2 we find the signature of the Munsiff also. It is no doubt true that below the signature of the Munsiff, no date has been put. It is reasonable to construe in the circumstances of the case that the Munsiff must have signed Exbt. D-2 on the same day on which the sale was held and that the bid offered by the respondent was also accepted on the same day by the Munsiff. In view of the pronouncement of this Court in *Thippaiah v. H. Ramiah* (1963) 1 Mys LJ 61 : AIR 1963 Mys 210, we hold that the executing Court in this case had not reserved to itself under condition No. 3 of the sale proclamation whether or not to accept the bid made at the auction sale and that the said power to accept or not to accept the bid had been delegated to the Nazir in this case. In the light of the above decision we hold that time commenced to run in this case under Article 166 from 11-4-63 itself and therefore, the application filed on 13-6-1963 was barred by time.

18. It was lastly contended by Mr. Venkataranga Iyengar that the petitioner was prejudiced on account of the fact that 1-3-1963 was declared as a holiday on account of the death of the former President of the Indian Union and that therefore, the petitioner did not know anything about the proceedings which took place subsequent to 1-3-1963. It is his case that it was only on 10-6-1963 when he was going through some records he came to know of the sale held on 11-4-1963. It was argued that if he had known that the sale of the property had been fixed to take place on 11-4-1963, he would have made necessary arrangements to secure sufficient bidders and to see that the property was sold for a proper price. We find it difficult to agree with the above submission also. The petitioner who has given evidence in this case has not stated what he did after the case was adjourned on 11--1-1963 to find out what took place in Court on that date. We have perused the order-sheet dated 1-3-1963 of the executing Court and there it is stated that the judgment-debtor was absent on that day and that I. A. 1 was rejected. Mr. Venkataranga Iyengar contended that all proceedings of the court which took place on 1-3-1963 which was declared as a public holiday must be considered as ineffective and that therefore, the sale held

on 11-4-1963 must also be held to be void on that ground. It must be remembered that until the Court received the communication about the declaration of public holiday on 1-3-1963, it could not stop its proceedings in the cases posted before it on that date. It is clear from the order-sheet that the Court must have come to know of the holiday only after orders were passed in the above case. Even otherwise, it is very difficult to accept in principle the submission made by Mr. Venkataranga Iyengar that at all events it must be held that all proceedings which take place before a Court on a date which is declared as a public holiday should be considered as void and ineffective. He has not brought to our notice any decision which has taken that view. He has referred to a decision of the Allahabad High Court in *The Official Liquidator of the Cotton Ginning Company, Limited, Cawnpore Vs. Ram Das Chakrabati*, but in that case, their Lordships did not go to the extent of saying that proceedings of a Civil Court which had taken place on a holiday were void for all intents and purposes. We are of the opinion that at the highest even if some judicial act has taken place on a holiday, it is only an irregularity capable of being waived by consent or conduct of parties. In this case it is clear from the order-sheet of the executing court that the petitioner did not take any action to bring to the notice of the Court subsequent to 1-3-1963 that the proceedings of 1-3-1963 should be reopened. It may be relevant at this stage to mention that having regard to the Registers maintained by Courts in this State in a Diary which is meant for inspection by the litigant public, the proceedings in each case before Court on a particular date are recorded and it must be assumed in this case also that in the Registers maintained for the purpose, the gist of the proceedings in the execution case before-us which took place on 1-3-1963 would have been entered. The petitioner cannot therefore, be heard to say that he has been prejudiced on account of the order having been passed on 1-3-1963. In the circumstances, we do not find any merit in this contention also.

19. In the result, this revision petition fails and is dismissed with cost`