
(1976) 10 AP CK 0009
In the Andhra Pradesh High Court
Case No : A.A.A.O. No. 2 of 1973

Mannem Peda Narisi Reddi	Vs	APPELLANT
Maddivenkayya (Died) and Others		RESPONDENT

Date of Decision : 11-10-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 66(1), Order 21 Rule 66(2), Order 21 Rule 69(2)

Citation : AIR 1977 AP 234

Hon'ble Judges : Ramachandra Rao, J

Bench : Single Bench

Advocate : P. Sitarama Raju, for the Appellant; M.V. Venkataramiah, for the Respondent

Judgement

1. This appeal is preferred against the Judgment of the learned Second Additional District Judge, Guntur, reversing the order and decree of the learned District Munsiff, Sattenapalli, and setting aside the Court auction sale and confirmation of the sale in execution of a decree.

2. The relevant facts are as follows : The respondents 1 and 2 borrowed a sum of Rs. 4,000/- by mortgaging the suit house in favour of the Arvapalli Venkata Seshadri. The mortgagee filed a suit O.S. No. 437/1957, on the file of the District Munsiff's Court, Sattenapalli, on the foot of mortgage and obtained a preliminary decree on 12-2-1958 and final decree on 4-9-1968. The respondents 3 to 6 are the legal representatives of the decree-holder. In E. P. 1342/1958, the hypotheca was brought to sale. The sale proclamation was drawn up on 21-2-1959. The upset price was fixed at Rs. 3,500/-. The sale was to be held on 8-6-1959. At that stage the respondents 1 and 2 (Judgment-debtors) filed an application E. A. No. 907/1959 (Ex. B-1) making part payment of Rs. 575/- and waiving fresh publication of the proclamation and praying for adjournment of the sale and for four months' time for payment of the balance. Accordingly the sale was adjourned to 29-6-1959 on which date the Judgment-debtors filed another

application E. A. No. 1016/1959 making part payment of Rs. 600/- and waiving fresh publication and requesting three months" time for payment of the balance. The sale was adjourned to 13-7-1959, on which date another application E. A. No. 1124/1959 was filed making part payment of Rs. 385/- and waiving fresh publication of the proclamation and requesting for the adjournment of the sale. The sale was then adjourned to 23-7-1959. On that day while the auction sale was proceeding, the judgment-debtors filed an application E. A. No. 1185/1959, making part payment of Rs. 200/- and praying for 15 days" time for payment of the balance and for adjournment of the sale and waiving fresh publication of proclamation. The sale was ordered to continue, and on 25-7-1959, the sale was held and the 3rd respondent the son of the decree-holder became the highest bidder for Rs. 4,000/- subsequently the sale was confirmed.

3. The appellant herein purchased the suit house under the sale-deed Ex. B-12 dated 12-4-1961 from the 3rd respondent. The judgment-debtors filed an application E. A. No. 19/1961, u/s 47 and Order 21, Rule 90, C. P. C. for setting aside the sale on the ground among others, that the judgment debtors had no notice of the settlement of the proclamation, that there was violation of the mandatory provisions of Order 21, Rule 66(2)(e) of the C. P. C. in not mentioning the valuation of the judgment-debtors in the sale proclamation, and that as a result of collusion between the second respondent and the bidders the sale was knocked down for a very low price.

4. This application was opposed by the decree-holder and the purchasers. The trial Court negatived all the contentions and dismissed the petition. On appeal, the learned Additional District Judge, allowed the appeal and set aside the sale and its confirmation. Before the learned District Judge, mainly three points were urged; that there was no notice of the settlement of the proclamation, that there was violation of the mandatory provisions of Order 21, Rule 66(2)(e) C. P. C. that the valuation of the property as given in the proclamation, was low and that the price fetched at the Court auction sale, was grossly inadequate. The learned Judge upheld the aforesaid contentions.

5. In this appeal, Sri P. Sitarama Raju, learned counsel for the appellants reiterated the same contentions. It is not disputed that the sale proclamation did not contain the judgment-debtors" valuation. Further the finding of the lower Court that the upset price given in the proclamation was low, that the value of the suit house could be reasonably taken to be between Rs. 8,000/- and Rs. 10,000/- and that the price of Rs. 4,000/- fetched at the Court auction sale was grossly inadequate, is not disputed.

6. Only two contentions were urged by the learned counsel for the appellant. The first contention is that the judgment-debtors had notice of the sale proclamation but they did not attend the settlement of the sale proclamation and avail the opportunity of giving the valuation of the suit property, the second contention is that their conduct in not attending the settlement of the sale proclamation and in seeking adjournments of the sale by making part payment from time to time and

waiving fresh publication would amount to waiver of any defect in the sale proclamation and that therefore the non-mention of the judgment-debtors' valuation as required by Order 21, Rule 66(2)(e), C. P. C. would not vitiate the sale.

7. When the matter was first heard by me on 2-8-1976 it was found that the notice Ex. A-8 issued to the judgment-debtors was not found in the record. As this document has a material bearing on the question as to whether the appellants had notice of the sale proclamation, the said document was called for from the lower Court and the appeal was directed to be posted after receipt of the document. The document has since been received and it is found that the said notice merely called upon the judgment-debtors, to be present on 30-12-1958 to offer their objections for sale of the property. The relevant portions of Order 21, Rule 66(1), (2) and Clause (3), C. P. C. read as follows :

" Order XXI, Rule 66(1) Where any property is ordered to be sold by public auction in execution of a decree the Court shall cause a proclamation of the intended sale to be drawn up in the language of such Court.

(2) Such proclamation shall be drawn up after notice to the decree-holder and judgment-debtors and shall state the time and place of sale, and specify as accurately as possible :

(a) to (d) xx xx xx xx xx xx xx xx xx (e) The value of the property as stated (i) by the decree-holder and (ii) by the judgment-debtors."

xx xx xx xx xx xx xx xx xx xx xx"

8. Rule 196 of the Civil Rules of Practice provides that the settlement of the proclamation of sale should be done after giving notice. The notice to be issued with regard to settlement of proclamation under Order 21, Rule 66, C. P. C. is prescribed in form No. 28 of App. E of the First Schedule which is to the following effect:

No. 28

"NOTICE OF THE DAY FIXED FOR SETTLING A SALE PROCLAMATION

(Order 21, Rule 66)

(Title)

To

judgment-debtors :

Whereas in the above named suit the decree-holder has applied, for the sale of You are hereby informed that the day of 19 has been fixed for settling the terms of the

proclamation of sale.

Given under my hand and the seal of the Court,

This day of 19 Judge."

9. It is not disputed before me that the notice Ex. A-8 is not in the prescribed form No. 28 and that it does not conform to the requirements of Order 21, Rule 66(2) of the C. P. C. On the first question, I find in agreement with the lower Court that no notice was issued to the judgment-debtors as required by Order 21, Rule 66(2) of the C. P. C.

10. The second contention urged by the learned counsel for the appellants is that want of such notice and the non-mention of the valuation by the judgment-debtors as required by Order 21, Rule 66(2)(e) of the C. P. C must be deemed to have been waived by the judgment-debtors.

11. This contention cannot be accepted because what can be waived and what has been actually waived by the judgment-debtors, is only fresh publication of the proclamation. Order 21, Rule 69(2) of the C. P. C provides that where a sale is adjourned under sub-r. (2) for a longer period than thirty days, there shall be a fresh publication of the proclamation in the manner prescribed by Rule 67, unless the judgment-debtors consents to waive it. The three steps required before a property can be brought to sale are (1) drawing up of proclamation of sale after notice to the decree-holder and the judgment-debtors giving the time and the place of sale (2) mentioning the particulars mentioned in Cls. (a) to (f) of sub-r. (2) of Rule 66 of Order 21, C. P. C. and (3) publication of the proclamation of sale as required by Order 21, Rule 67 of the C. P. C.

12. Under Order 21, Rule 69(2) of the C. P. C fresh publication of the proclamation can be waived by the judgment-debtors but it does not provide for waiver of the notice of the settlement of proclamation or specifying of the particulars as required by Order 21, Rule 66(2) of the C. P. C. The provisions of Order 21, Rule 66(1) and (2) of the C. P. C have been held to be mandatory, and want of compliance with the said provisions, would render the sale illegal. In the instant case, what the judgment-debtors have waived was only fresh publication of the proclamation of sale and not the notice of the settlement of the proclamation and the specification of the particulars as mentioned in Order 21, Rule 66(2) (e) of the C. P. C. There being non-compliance with the mandatory provisions of Order 21, Rule 66(2) of the C. P. C and also Clause (e) thereof, the auction sale held on 25-7-1959, and its subsequent confirmation, are illegal and are liable to be set aside.

13. Sri Sitarama Raju, relied upon the decision of the Privy Council in *Shyam Sunder v. Kaluram*, AIR 1938 PC 230. In that case, the property sought to be sold was not sufficiently described. The judgment-debtors did not raise any objection with regard to the insufficient description of the property sold though they had notice of the same. On those facts it was held that the defect in the

description of the property sold was apparent on the face of the sale proclamation and yet the judgment-debtors did not raise any objection to the same and therefore it was held that the judgment-debtors must be deemed to have waived the objection to the defective description of the property.

14. In *Dhirendra Nath Gorai and Subal Chandra Shaw and Others Vs. Sudhir Chandra Ghosh and Others*, , the judgment-debtors, though given notice of the settlement of proclamation, did not attend the drawing up of the sale proclamation and did not raise any objection to the non-observance of the provisions of Section 35 of the Bengal Money-Lenders Act. On those facts, it was held that the judgment-debtors must be deemed to have waived the defect apparent on the face of the sale proclamation.

15. In the present case, the judgment-debtors had no notice before the settlement of the proclamation nor were they aware of the particulars mentioned in the sale proclamation the defect of want of notice of the settlement of proclamation as required by Order 21, Rule 66(2) of the C. P. C is not a defect apparent on the face of the settlement of proclamation. Therefore it is not possible to infer a waiver of the said defect by the judgment-debtors. There being a clear violation of the mandatory statutory provisions of Order 21, Rule 66(2) of the C. P. C the sale is liable to be set aside.

16. No other contention has been raised in this appeal.

17. In the result, the appeal fails and is dismissed. In the circumstances the parties will bear their own costs throughout.

18. Appeal dismissed.