
(1955) 07 MAD CK 0011
In the Madras High Court

P. Natarajan

APPELLANT

Vs

K. Krishnaswami Goundar and Another

RESPONDENT

Date of Decision : 19-07-1955

Acts Referred:

Madras Co-operative Societies Act, 1932 — Section 57

Citation : (1957) ILR (Mad) 301 : (1955) 68 LW 710 : (1956) 1 MLJ 411

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Judgement

Rajagopalan, J.—In enforcement of the mortgage effected on 24th March, 1945, by Selvarangam and Shanmugam to the Salem Urban Co-

operative Society, the Society brought the hypotheca to sale. The sale was held under the orders of the Deputy Registrar on 9th November, 1951.

The petitioner purchased the properties at that sale for Rs. 555. The sale was eventually confirmed by the Deputy Registrar on 15th January,

1952. The first respondent, who had purchased the same property in a sale held by a civil Court on 25th January, 1951-that sale was confirmed

on 1st October, 1951-applied to the Registrar on 10th June, 1952, u/s 57 of the Madras Co-operative Societies Act to revise the order of the

Deputy Registrar dated 15th January, 1952, confirming the sale. The petition was disposed of by the Additional Joint Registrar on 29th

September, 1953. He set aside the sale which had been held on 9th November, 1951, mainly on the ground, that the property had been sold for a

grossly inadequate price far below its market value. The petitioner applied under Article 226 of the Constitution for the issue of a writ of certiorari

to set aside the order of the Additional Joint Registrar dated 29th September, 1953.

2. The contention of the learned Counsel for the petitioner was that the Additional Joint Registrar had no jurisdiction to set aside the sale which had been confirmed by the Deputy Registrar. No doubt the learned Counsel for the petitioner was well-founded in his contention, that if the Deputy Registrar himself could not have set aside the sale at any time after 9th November, 1951, the revisional authority could not set aside the sale, because it would not be a case of correcting any erroneous exercise of jurisdiction. Rule 22(10) of the Rules framed under the Madras Co-operative Societies Act provides for setting aside sales held under the provisions of the Act and the Rules framed thereunder.

3. Sub-rule (10)(i) of Rule 22 runs:

At any time within thirty days from the date of the sale of immovable property, the decree-holder or any person entitled to share in a rateable distribution of the assets or whose interests are affected by the sale, may apply to the Registrar of the district to set aside the sale on the ground of a material irregularity or mistake or fraud in publishing or conducting it:

Provided that no sale shall be set aside on the ground of irregularity or fraud unless the said Registrar is satisfied that the applicant has sustained substantial injury by reason of such irregularity, mistake or fraud.

There was no occasion to invoke this sub-rule, because no application was preferred to the Registrar of the District, that is, the Deputy Registrar, to set aside the sale held on 9th November, 1951. Sub-rule (10)(ii) provides, that if the application preferred under Sub-rule (10)(i) is allowed, the Registrar shall set aside the sale and may direct a fresh one. That contingency never arose.

4. It is the provisions of Sub-rule (10)(iii) that are really relevant. This rule runs:

On the expiration of thirty days from the date of sale, if no application to have the sale set aside is made under Sub-rule (9) or under Clause (i) of this sub-rule or if such application has been made and rejected the said Registrar shall make an order confirming the sale:

Provided that, if he shall have reason to think that the sale ought to be set aside, notwithstanding that no such application has been made or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons in writing, set aside the sale.

Without the proviso to Sub-rule (10)(iii) the obligation to confirm the sale comes into play by mere efflux of time. But the proviso makes it clear

that though the rule itself cast an obligation to confirm the sale on the expiration of thirty days from the date of the sale, in this case it should be

remembered that there was no application to set aside the sale, the Deputy Registrar had jurisdiction to refuse to confirm the sale, and he had

jurisdiction to set aside the sale "" for reasons recorded in writing "", which is all that the proviso to Sub-rule (10)(iii) requires. The learned Counsel

for the petitioner contended that the jurisdiction of the Deputy Registrar to set aside the sale under the powers conferred upon him by the proviso

to Sub-rule (10)(iii) would be limited to irregularity, mistake or fraud specified in Sub-rule (10)(i). I am unable to accept this contention. If an

application were made to set aside the sale, that application would be confined to the grounds specified in Sub-rule (10)(i), that is, irregularity,

mistake or fraud, with a further limitation imposed by the proviso, ""substantial injury by reason of such irregularity, mistake or fraud "". The very fact

that the proviso to Sub-rule (10)(iii) confers upon the Deputy Registrar a power to set aside the sale, whether or not an application has been made

and whether or not the ground specified in the application has been made out, would appear to indicate that the Deputy Registrar's power to

refuse to confirm the sale and to set it aside are not limited by the conditions prescribed in Sub-rule (10)(i). As I said, all that the proviso to Sub-

rule (10)(iii) requires is that before the Deputy Registrar exercises his otherwise unlimited powers to set aside the sale, he must record his reasons

in writing. Of course, the reasons recorded in writing must be relevant reasons, relevant to the transaction of sale; and it cannot be said that

inadequacy of price fetched at the sale would not be a relevant consideration when the Deputy Registrar exercises the powers vested in him by the

proviso to Sub-rule (10)(iii).

5. Therefore, if the Deputy Registrar had jurisdiction to set aside the sale on the ground of inadequacy of price, despite the fact that no application

to set aside the sale had been preferred under the provisions of Sub-rule (10)(i), then the revisional authority exercising the powers vested in it by

Section 57 of the Act could certainly go into the question of the legality, regularity or propriety of the order of the Deputy Registrar. In fact Sub-

rule (10)(v)(a) specifically refers to an order under the provisions of Sub-rule (10) becoming final only subject to the provisions of Section 57, and

Clause (vi) prescribes a period of limitation for an application u/s 57 to the revisional authority. In this case the application made to the revisional

authority was within the period of limitation prescribed by Sub-rule (10)(vi).

6. Inadequacy of price was a relevant consideration which the Deputy Registrar could have taken into account, and it was certainly a relevant

consideration for the revisional authority exercising the powers vested in it by Section 57. Since obviously the Deputy Registrar did not take into

account the adequacy of the price when he confirmed the sale, it was open to the revisional authority to set aside as improper the order of the

Deputy Registrar on the ground, that the Deputy Registrar had failed to take into account a relevant factor in exercising the powers conferred on

him by Sub-rule (10)(iii) and the proviso thereto.

7. The Additional Joint Registrar had jurisdiction u/s 57 of the Act to set aside the sale held on 9th November, 1951, despite its confirmation by

the Deputy Registrar on 15th January, 1952. Neither in the assumption of jurisdiction nor in the exercise thereof was there any irregularity. This

petition is dismissed with costs of the second Respondent. Counsel's fee Rs. 100.