

(1956) 10 MAD CK 0023

In the Madras High Court

Case No : Civil Revision Petition No. 1011 of 1956

P.K. Mannan Ezhuthachen

APPELLANT

Vs

V.K. Madhavan Nair and Another

RESPONDENT

Date of Decision : 05-10-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 94, Order 40 Rule 1

Citation : AIR 1957 Mad 763

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Advocate : K. Kuttikrishna Menon and V. Balakrishna Eradi, for the Appellant;
V.P. Gopalan Nambiar, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, J.—This is a Revision directed against the order made by the learned District Munsif of Alatur in O. S. No. 402 of 1938.

2. The facts are: In this suit a Receiver had been appointed for the management of the Puzhakkal Edom estate and the present Receiver is Sri V. K. Madhavan Nair. This Receiver under orders of Court held an auction sale of the right to cut and remove trees standing in 1200 acres of Edom forest. The confirmation of the sale was to be by the district Munsif of Alatur.

3. A sale was held after due publicity and obtaining the Government's permission, by the Receiver in the Court compound on 28-3-1958. Seven persons took part in the auction. There was obviously a ring. The highest bidder was one Mannao Ezhuthachim of Chittalancherry. The final bid offered by him was for Rs. 16,041. Subject to confirmation by Court, the Receiver received from the bidder 1/4th of the bid amount. He reported the matter to the Court for confirmation as the balance had to be received only after obtaining the permission of the Collector for granting the karar.

4. The" members of the Edam through their vakils filed counters that the price

for which the right was sold was inadequate and the sale should not be confirmed;

5. The learned District Munsif also came to the conclusion that the highest bid was an inadequate price and called the matter on 3-4-1956. In Court a number of people had gathered and made offers, The highest of these offers was by the respondent which was for Rs. 27,500.

6. The learned District Munsif found the difference of Rs. 11,459/- proof positive that the former sale had fetched an inadequate price and that the latter sale held by himself in Court was most advantageous for the members of the Edam and confirmed the sale. The defeated bidder Ezhuthachan has preferred this revision petition.

7. The point for determination is whether I can interfere with the sale held by the learned District Munsif, in revision.

8. The object and purpose of appointment of a Receiver may generally be stated to be the preservation of the subject-matter of the litigation pending judicial determination of the rights of the parties thereto. The Receiver is appointed for the benefit of all concerned; he is the representative of the Court and of the parties interested in the litigation, wherein he is appointed. The appointment of a Receiver is the act of the Court and made in the interests of justice. A receiver is an officer or representative of the Court subject to its orders. A sale by the Receiver is a sale held on behalf of all parties interested in the litigation subject to supervision over the acts of the person appointed by the Court: *Satyanarayan Banerji and Another Vs. Kalyani Prosad Singh Deo Bahadur and Others*, *Jagat Tarini Dasi v. Naba-gopal Chuki*, ILR 34 Cal 305 at p. 318 (B); *Gopaldas v. Phulchand*, 50 CWN 229; AIR 1946 Cal 357 (C); *Orr v. Muthia Chettu* ILR 17 Mad 501 (D); *Administrator General of Bengal v. Prem Lall*, 22 Ind App 203 (E); *Dwijendra Narain Roy Vs. Joges Chandra De and Others*, .

9. In this case the sale held by this Receiver was on behalf of the Court and of the parties interested. Such a sale can either be confirmed by the Court or need not be accepted by the Court. The procedure prescribed for execution sale under Order 21, C. P. C., is not applicable to such sale. It is true that the Court will not normally withhold its confirmation for the sale held by the Receiver unless such a sale is found to have caused injury to the estate. The principle of caveat emptor applies in such cases. The point is concluded by authority : see *A. Subbaraya Mudaliar Vs. K. Sundararajan, (Joint Receiver) and Others*, .

10. This is also the case with sales held by Official Receiver in insolvency proceedings notwithstanding the fact that by virtue of Section 5 of the Provincial Insolvency Act, the procedure laid down in the CPC is applicable to insolvency proceedings. The distinction between the Receiver's sale and execution sale held under Order 21, C. P. C., is that the former is practically a private sale by a person appointed by Court on behalf of all the parties interested in the litigation and the latter is an involuntary Court sale by the Court itself with the help of its

officers: Mul Chand Vs. Murari Lal and Others, , AIR 1942 424 (Oudh) .

11. It cannot be said that the withholding of the confirmation of the sale by the Court is liable to be interfered with. The highest bid secured by the Receiver was for Rs. 16,041. It was obvious that it was a result of a ring (sic) by this Ezhuthachan. On the Court refusing to confirm the sale and holding it in Court on an adjourned date, several bidders have come forward and the highest bid was Rs. 27,500. There was nothing to prevent this Ezhutchanan also bidding and going above the bid offered by the respondent. The difference in the bids of the petitioner and the respondent shows that the learned District Munsif was right in withholding the confirmation as pressed by all the members of the Edom. The procedure adopted by him also appears to be above reproach.

12. Therefore, looked at from any point of view, there are no grounds to interfere with this auction sale and this revision is dismissed with costs.