
(1924) 12 BOM CK 0030
In the Bombay High Court

Ramagirji Neelakantagirji

APPELLANT

Vs

AnnavaJJhala Venkatachallam

RESPONDENT

Date of Decision : 12-12-1924

Acts Referred:

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

Citation : (1925) 27 BOMLR 806

Hon'ble Judges : Sumner, J;Lawrence Jenkins, J;John Edge, J

Bench : Full Bench

Judgement

John Edge, J.—This is an appeal from a decree, dated October 26, 1917, of the High Court at Madras which reversed an order, dated January 31, 1916, of" the District Judge of Nellore, dismissing a petition which had been made by the respondent. In order to understand what was the decree of the High Court against which this appeal has been brought, it will be necessary to refer as briefly as possible to the position of the parties to the appeal and to the circumstances under which the decree of the High Court was made, The present appellant and the present respondent will hereinafter be referred to respectively as the appellant and the respondent.

2. The respondent having obtained a money decree against the Zamindar of Kalahasti for a large sum of money, in execution of his decree, brought to sale on August 25, 1914, the rights and interests of the judgment-debtor in certain villages of Pammoor Taluq in the district of Nellore. Those villages had been, on August 4, 1908, convoyed by the Zamindar for six lakhs of rupees to a person at Hyderabad, who by an agreement in writing of the same date had agreed with the Zamindar to reconvey the villages to him if the sum of six lakhs of rupees was repaid by August 31. 1914. That transaction constituted a mortgage by conditional sale. The property mortgaged was attached by an order of the Court, executing the decree, and the rights and interests of the judgment-debtor were by that Court ordered to be sold in execution of that decree. The Court in compliance with rule 66 of Order XXI of the Code of Civil Procedure, 1908,

caused a proclamation of the intended sale to be duly made. In the proclamation the judgment-debtor's rights and interests in the villages were stated as :-

The right of obtaining a reconveyance under the reconveyance agreement, dated 4th August, 1908, executed and given to the Defendant by Raja Bahadur Narasiagirji (lynmagirji, residing at Hyderabad, and all the other rights and interests possessed by the defendant, in these villages.

3. The deed of sale and the agreement to reconvey of August 4, 1908, were also mentioned in the proclamation. The agreement to reconvey was No. 3 in the list of documents affecting the property to be sold, and in the column of remarks it was stated that "under deed No. 3 the defendant has right to have a reconveyance of the said property." The proclamation gave other particulars, and in their lordships' opinion complied with rule 66 of Order XXI.

4. The auction sale was held on August 25, 1914, and the appellant was declared to be the purchaser; his bid was Rs. 6,90,000 and he, after he had been declared the purchaser, duly paid to the officer conducting the sale, Rs. 1,72,500, as the deposit required by the CPC 1908, being twenty-five per centum of the purchase money. He, however, made default in payment within the prescribed period of the balance of the purchase money. The Court declined to grant to him an extension of time to pay the balance and when the prescribed period for payment of the balance had expired the Court executing the decree ordered the property to be resold. The Court ordered that the deposit should not,...be forfeited to the Government, and it, less poundage and other charges, remained in Court.

5. The appellant had, by the proclamation, notice of the rights and interests of the judgment-debtor which were to be sold, and he, or any competent lawyer whom he chose to advise him, could have examined the sale-deed and agreement to reconvey of August 4, 1908, and he must be taken to have known the effect of those documents or to have intentionally or negligently omitted to examine them. Doubtless he examined those documents, but whether he did or not is immaterial as he had, by the proclamation, notice of them.

6. The property was, after the prescribed period, resold by public auction on or about February 22, 1915, after a proclamation that it would be sold had been duly made. In the proclamation for the resale the particulars of the property to be sold were correctly stated, the deed of sale and the agreement to reconvey of August 4, 1908, were mentioned as documents 2 and 3, with the following comments as to them :-

Sale deed executed by the Defendant in favour of Raja Bahadur Narasin-girji Gyanagirji for Rs. 6,00,000,

Counter reconveyance agreement executed in favour of this defendant by the aforesaid Raja Bahadur Narasingirji Gyanagirji. (This defendant has the right to get possession on a fresh sale deed being executed, of all these villages, on repayment of six lakhs of rupees within the end of August 1914, in accordance

with the two documents aforesaid).

(1) When in accordance with the conditions of documents Nos. 2 and 3, the defendant endeavoured to tender six lakhs of rupees within the date fixed therein, Raja Bahadur Narasingirji Gyanagirji Guru evaded the tender with a fraudulent intent and went away; for this reason, as well as or the reason that the transaction contained in those documents amounts to a mortgage from their nature, the said Narasingirji Gyanagirji Guru has the right to recover only the said six lakhs of rupees, and he has no other right in the villages of this Pamoor Taluk. Therefore this property has to be sold subject to the said right as per the said documents.

7. The proclamation for the resale contained other particulars, and in their lordships' opinion complied with the orders of the Code of Civil Procedure, 1908. At the resale the rights and interests of the judgment debtor in the property were sold for Rs. 1,01,000 to one Janakirainayya, who was an agent of the decree-holder.

8. In November, 1914, the appellant applied to the Court which had executed the decree to order a refund to him of the deposit which had been made by him on August 25, 1914. On April 24, 1915, the respondent, alleging that on the resale a deficiency of Rs. 5,89,000 had occurred for which the appellant was liable, applied by petition to the Court which had executed the decree that it should "issue orders for recovery and payment of about Rs. 1,25,000, the amount due to him as the decree-holder in this execution sale, and also the costs of the petition, by attaching the said deposit amount of about Rs. 1,60,000." After deducting poundage and other charges, the balance of the deposit in Court appears to have been about Rs. 1,60,000. The application was clearly confined to the deposit and did not apply to the general deficiency which was the result of the resale. To that petition the appellant replied by a counter-petition on July 12, 1915, in which he denied that he was liable for the deficiency in price realised at the sale (resale) of the properties which was held on February 22, 1915, and stated that he "had filed two petitions and an affidavit showing cause against the forfeiture of the deposit made by him on August 25, 1914, and claiming refund of the amount so deposited."

9. On January 31, 1916, the application of the respondent of April 24, 1915, was considered by the District Judge of Nellore, and he holding that "the descriptions in the two proclamations are materially and substantially different, and the character of the property as it stood and as it was described in the first proclamation was literally and juridically different from its character as described in the second proclamation," made an order that the respondent was not entitled to the amount deposited in the Court and dismissed the application. From that order the respondent appealed to the High Court, and his agent filed an affidavit in the High Court in which he stated :-

9. In the circumstances of the case, it is absolutely necessary in the interests of

justice and to safeguard the interests of the appellant that this Honourable (Court should direct that the sum now in deposit in the District Court of Nellore or such part thereof as may be necessary to satisfy the balance still due to this appellant under his decree, be retained in Court till the disposal of this appeal or be allowed to be drawn out by the respondent on proper security.

10. The appeal to the High Court came for hearing before two Judges of the Court who differed, with the result that the appeal was dismissed. From that dismissal the respondent appealed under the Letters Patent, and his appeal was heard by the Chief Justice and two other Judges, with the result that the appeal was allowed, and the High Court, on October 26, 1917, made the decree which is now appealed from to His Majesty in Council. By that decree of October 26, 1917, the appeal was allowed with certain costs, and the District Judge of Nellore was ordered to restore the petition of April 24, 1915, to its original number in the Register and to dispose of it according to law with regard to the deposit which had been paid by the appellant. In their lordships' opinion that was the right decree to make.

11. Their lordships will humbly advise His Majesty that this appeal should be dismissed with costs.