

(1935) 01 MAD CK 0041
In the Madras High Court

Ry. Pratapasimha Raja Saheb and Another	APPELLANT
Vs	
T.Rm.T.S.P.Pl. Palaniappa Chettiar and Others	RESPONDENT

Date of Decision : 29-01-1935

Acts Referred:

Citation : AIR 1935 Mad 607 : 157 Ind. Cas. 982

Hon'ble Judges : Cornish, J

Bench : Division Bench

Judgement

Cornish, J.—The appellant, the judgment-debtor, represented by the Official Receiver of West Tanjore, unsuccessfully applied under Order 21, Rule 90 to have a sale of property set aside alleging material irregularities in the publishing and the conducting of the sale. In appeal two grounds have been urged before us by his learned advocate for impeaching the sale. First, it is contended that there was material irregularity in the conduct of the sale of a property sold as lot 5, the allegation being that the Court wrongfully rejected the offer of one of the bidders at the sale before the sale had been closed. The second ground of objection is that there was an irregularity in the publication in that, although the decree-holder, judgment-debtor and encumbrancer, had agreed to the property being sold free of encumbrances, and an order by consent had been made by the Insolvency Court to that effect, the proclamation announcing that the sale would be subject to encumbrances was allowed to stand uncorrected. We think that there is no substance in the first ground of objection, but that the appellant should succeed upon the second. We accept the facts stated by the learned District Judge with regard to what happened at the sale. From this it appears that the sale was conducted by the Nazir on the direction of the Court. The sale began on 24th November. At the close of that day's proceedings the highest bid received was Rs. 9,100 and as the Nazir reported that bidders were still bidding and there was no possibility of the sale being finished before 5 p m., the Court ordered the sale to continue to the 25th. The sale was continued next day until 5 p.m., the last bid recorded by the Nazir being a bid for Rs. 15,000. The Nazir then took the bid list and sale warrant to the Judge. The learned Judge,

describing the event says:

A number of other people presumably bidders and parties came into Court at the same time and one of the bidders said that he wanted to offer a higher bid.

2. The bidder referred to has stated in evidence that after the Nazir had closed the bids - and it appears that he waited half an hour or so after the highest bid of Rs. 15,000 had been made - he told¹ the Nazir that he would make a bid of Rs. 15,000. He admits that he did not tell the Judge that he had offered Rs. 15,000 to the Nazir, but he told the Judge that he was prepared to go on bidding up to Rs. 20,000. The Judge refused to allow fresh bids to be made. He says that the practice in his Court is that the bidding is closed by the Nazir and that no bids are afterwards waited for or received by the Judge. The only question is whether this practice is irregular. In our opinion it is not. ? It has been argued that until the highest bid had been accepted by the Court it was equally open to the highest bidder to withdraw his offer and to another bidder to make a, high offer. We do not dispute the soundness of the first proposition, but we cannot accept the second. The case reported in *Jaibahadur Jha v. Matukahari Jha* 1923 Pat 525, has been cited where it was said that the Court before closing the sale should inquire from the persons present whether there is any advance on the highest bid given to the Nazir. If this is the practice of the Court it would be proper to follow it. But it is not the practice in West Tanjore, and there was nothing irregular in the Judge declining to introduce a practice which appears to be open to the objection that it gives no finality to the bidding before the Nazir. We must accordingly hold that there was no irregularity in the conduct of the sale on the part of the learned Judge.

3. We now turn to the second point. While the execution was proceeding the judgment-debtor was adjudicated insolvent. The sale proclamation stated that the properties were to be sold subject to encumbrances. Application was made to the Insolvency Court by the insolvent for an injunction restraining one Ramanathan Chettiar, an encumbrancer, from executing his decree pending the determination by the Insolvency Court of the validity of the encumbrance. A consent order was made on this application that the properties should be sold free of the encumbrance, and the Court directed the Central Nazir to inform the intending purchasers that the sale was free of all charges. On the very day that this order was made the insolvent applied to the executing Court on the strength of the Insolvency Court's order to adjourn the sale and to order fresh proclamation. The petition was refused. The order of the execution Court seems to show that it ignored or was ignorant of the order made by the Insolvency Court, for it; says that "the property cannot be put up free of these encumbrances without consent of the encumbrancers." However that may be, the fact is that the decree holder, who is respondent to this appeal, consented to the sale of three lots in this appeal being free of his encumbrance, and he cannot now be allowed to say, what his learned advocate attempted to urge on his behalf, that his consent was limited to the arena of the Insolvency Court. It is a material

irregularity to mention in the proclamation non-existent encumbrances; and, it is an equally material irregularity when it has been agreed between the parties that a sale shall be free of encumbrances that a statement to the contrary in the sale proclamation should be allowed to [stand without any correction either in the proclamation or verbally made of the sale. We feel no doubt that the omission to inform intending purchasers that the sale was to be free of encumbrances must have affected their bids, .to the substantial injury of the judgment debtor whose properties were being Sold. It stands to reason that bidders will not bid to the same amount when the property is sold subject to encumbrances as when it is sold free of them. On this ground we allow the appeal with costs. The appeal, C.M.A. 22 of 1932, is not pressed as the grounds in C.M.A. 21do not cover this appeal and is dismissed with costs out of the estate.