
(1938) 07 MAD CK 0007
In the Madras High Court

Ry. Rajaram Raja Saheb and Others	APPELLANT
Vs	
T.R. Bhawani Sanker Joshi and Others	RESPONDENT

Date of Decision : 27-07-1938

Acts Referred:

Citation : (1938) 2 MLJ 940

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—This is a large batch of appeals concerned with, the execution of the decree against defendants 3 to 6 in C.S. No. 10 of 1926, the sons of the senior prince of Tanjore. There were eight sales of property in execution of this decree and 16 petitions to set aside those sales under Order 21, Rule 90. The judgment-debtors themselves filed eight of these petitions and the others were filed by an attaching decree-holder. The learned District Judge of Tanjore has dismissed all these petitions and these are appeals against his order.

2. When the petitions came on for hearing, no evidence was taken as it was represented on behalf of the auction purchasers that the petitions ought to be dismissed on the allegations contained in the pleadings and on the admitted facts in the case. The learned District Judge appears to have accepted that point of view and therefore heard the petition upon arguments only and without taking any evidence. He has however dismissed the petitions on various grounds, the first of which was that neither the judgment-debtors, nor the attaching decree-holders were entitled to file the applications under Order 21, Rule 90 at all. The learned Judge refers to the words of that rule, that it is only the decree-holder or any person entitled to share in a rateable distribution of assets or whose interests are affected by the sale who can apply to the Court to set it aside, and he went on to find that the judgment-debtors and the attaching decree-holder were not persons interested in the result of the sale because in addition to the mortgage upon which the suit was brought in which this execution has taken place, there were further mortgages amounting to seven or eight lakhs of

rupees. It was therefore in the view of the learned District Judge impossible that any money would be available for any other person than those mortgagees. Therefore even if a higher amount might be fetched by the resale, none of that amount could possibly reach the pockets of the present appellants and therefore their interests could not be said to be affected by the sale. We are unable to accept this reasoning. It appears to us too obvious to require any discussion that a judgment-debtor and an attaching decree-holder are persons whose interests are affected by the sale and it is clear further that it is only after evidence has been taken and any thorough investigation made by the Court into the position of the judgment-debtors' estate that the Court can ever come to the conclusion that the judgment-debtors or any attaching decree-holder can receive no financial benefit whatever from the result of their applications. We think that if the learned District Judge had been able to establish on the evidence that there could be no substantial injury afforded to the petitioners by the low amount fetched at the sale on the ground that even if a proper amount had been fetched no money would have been available for them, then his order might have been justified under the terms of Order 21, Rule 90. But it is quite clear that the present appellants were persons whose interests *prima facie* were affected by the sale. We therefore disagree with the learned District Judge in regard to that particular reason for dismissing the applications.

3. The learned Judge then goes on to discuss the other questions raised by the petitioners and has come to the conclusion in his judgment that none of those contentions are valid. It has been strenuously argued before us that the learned Judge ought to have confined his order to the maintainability of the petitions alone and that in the absence of evidence he would not be justified in giving any findings upon the other points raised by the petitioners. This as an academical argument is one against which we say nothing, but upon examination of the contentions themselves we feel bound to say that we consider the learned District Judge was perfectly justified in dismissing the applications. There are three main contentions raised. The first is that the upset price, owing to the fraud practiced upon the Court by the decree-holder, was fixed at a ridiculously low figure in regard to all the items that were put up for sale. We are unable to see how this matter is a material irregularity which can cause any substantial injury to the appellants. It seems to us obvious that the lower the upset price on valuable land is put, the greater is the inducement for intending bidders to come and bid. The real injury suffered by the appellants if they ever suffered any injury, is obviously due to the failure of any bidders to come and bid against the decree-holder or auction purchasers, and as we have said we are unable to see how the fixing of an upset price can have possibly affected the intention of such bidders.

4. It is then argued that the learned District Judge in settling the proclamation of sale has adopted a method which has resulted in a substantial loss to the appellants. He should, it is contended, have ordered the sale to be held in much smaller lots than he actually ordered, and that if he had done so, many smaller

bidders who were unable to make any bid for large items of property would have attended the auction and increased the price realised by the sale. This is no doubt a very plausible argument, but we find from the records that this was raised only in these petitions and at no time during the conduct of the execution petition. The proper time for raising this contention before the Court was in the proceedings that took place before the terms of proclamation were settled. There is nothing to show that at that time or indeed at any time before the sale was held any such contentions were raised, and in the absence of any such contention it is impossible to say that the decisions of the lower Court to sell the property in the manner in which it has sold it can possibly amount to any material irregularity.

5. There is finally the assertion that there has been no proclamation or publication of the sale in the villages concerned and no opportunity whatever for the land owners in these villages to be aware of the fact, that the sale was going to be held or of the date on which it was to be held. This is an assertion very easily made, and contrary of course to the actual entries appearing in the records of the case. We are of opinion that it would have been advisable to have remanded this case for the taking of evidence if there had been any assertion by the appellants of any specific omission on the part of the Court to carry out its duties in the matter of the publication of the proclamation. But we are unable to find any such assertion. The assertion that there has been no publication, no proclamation and no means for bidders to become aware of the sale is a mere matter of form which is commonly-resorted to by persons in the position of the appellants and it would, we think, serve no useful purpose to allow the appellants any opportunity, after five years have elapsed since the sales took place, of bringing in oral evidence to contradict the facts which appear from the records. In this case particularly we see no reason to distrust the accuracy of the official records regarding the publication of the sale as the existence of this litigation and the imminence of the sale in execution must have been a matter with which nearly everyone in the Tanjore District was familiar.

6. The result is that although the learned District Judge has put forward one reason which we cannot support for dismissing these applications he has given other reasons with which we are in agreement. These appeals accordingly must fail and are dismissed. The appellants in each of these appeals must pay costs. In all of the appeals except C.M.A. Nos. 32, 33 and 161, the appellants must pay costs to the first respondent, and we fix vakil's fee at Rs. 40 in each appeal. In Appeals Nos. 33 and 161 the appellants must pay the costs of the second respondent in each appeal. In Appeal No. 32 the appellants must pay the costs of the second and third respondents. One set.