
(1955) 08 MAD CK 0023
In the Madras High Court

Seth Mohandas Vasudev

APPELLANT

Vs

M.R. Ramamoorthy

RESPONDENT

Date of Decision : 26-08-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90, 51

Citation : (1956) 69 LW 542 : (1956) 1 MLJ 493

Hon'ble Judges : Panchapakesa Ayyar, J;Panchapakesa Aiyar, J

Bench : Division Bench

Judgement

Panchapakesa Ayyar, J.—This is a petition filed by one Seth Mohandas Vasudev for revising and setting aside the order of the Subordinate Judge of Madurai, dated 27th January, 1954, in E.A.No. 246 of 1952, in E.A.No. 419 of 1951, in E.P.No. 311 of 1950, in O.S. No. 139 of 1949. The facts of the case were briefly these: E.A.No. 246 of 1952 was an application filed u/s 51, Civil Procedure Code, by the respondent Ramamurthi, an attaching decree-holder who had filed a petition under Order 21, Rule 90, Civil Procedure Code, for setting aside the sale, praying that the lower Court should not accept the joint memo submitted into the Court by him and Vasudev on nth February, 1952, for granting a sale-certificate, in respect of the properties of which Vasudev was the successful bidder in the name of Ramamurthi, on condition that he paid Vasudev Rs. 6,000 within three weeks. When the application was made, the lower Court probably thought that the prayer regarding the grant of sale-certificate in the name of Ramamurthi could be granted, and, therefore, adjourned the application to 6th March, 1952, for complying with the condition. Thereafter on 5th March, 1952, Ramamurthi paid Vasudev Rs. 6,000 but he put in E.A. No. 246 of 1952 on 1st April, 1952, requesting the Court not to act on the joint memo, and not to grant the sale-certificate in his favour, as it would be illegal. The lower Court, relying on Order 21, Rule 94, Civil Procedure Code, and ruling of the Allahabad High Court in Makhan Lal Kela and Another Vs. Baldeo Prasad and Others, , and an unreported decision of Burn, J., in S.A. No. 438 of 1937 held that, as Ramamurthi was nowhere on the scene at the time of the bidding and as it was admitted that

Vasudev had not bid on behalf of Ramamurthi but had only transferred his rights under the bid to Ramamurthi subsequent to the bid and knocking down in favour of Vasudev himself, it would be illegal for the Court to issue a sale-certificate in favour of the transferee, Ramamurthi. In that view, the learned Judge allowed E.A. No. 246 of 1952, rejected the joint memo and directed that the amount of Rs. 6,000 admittedly paid by Ramamurthi to Vasudev after the lower Court's order of adjournment for complying with the condition of the joint memo, and in pursuance of such order, to be refunded to Ramamurthi, and directed all the parties to bear their own costs.

2. Learned Counsel for the petitioner Vasudev has raised three main contentions before me. The first is that the lower Court was wrong in holding that the sale-certificate could not be issued in the name of a person who was not the actual bidder in whose name the sale was knocked down, and, for this, he relied on a ruling of a bench of this Court consisting of Govinda Menon and Krishnaswami Nayudu, JJ., in *Srinivasalu Naidu v. Nataraja Goundan* (1955) 2 M.L.J. 232, as also on the ruling of a bench of the Allahabad High Court in *Angane v. Asghar Khan* 1952 A.L.J.106. I have looked into the rulings in those two cases, and I am satisfied they will not help the petitioner at all. In *Srinivasalu Naidu v. Nataraja Goundan* (1955) 2 M.L.J. 232, the actual bidder, Balakrishna Iyer, was, at the time of bidding itself and before the knocking down in his favour, found to have bid at the auction on behalf of his wife, Rajammal. In other words, Rajammal was the actual bidder, and the bidding was done by her husband Balakrishna Iyer on her behalf and as her agent. There was, therefore, no irregularity or illegality in directing the sale-certificate to be issued in favour of Rajammal at the request of her husband who represented to the Court that he was bidding only on behalf of his wife, Rajammal, which representation was found to be true. In this country women do not usually go to Courts to bid at auctions, and generally send their husbands, brothers, son or others, to bid on their behalf. No Court can ignore this fact and refuse to issue a sale-certificate in the name of the actual person who bids through another and hands over to him the auction bid amount for deposit into Court, so that ruling cannot at all help this petitioner. The Allahabad ruling in *Angane v. Asghar Khan* 1952 A.L.J. 106, will not also help the petitioner. What happened in that case was that two persons bid at a sale, and one of them got it knocked down in his favour, and, at the time of paying the balance of the bid amount, both of them jointly wanted the sale-certificate to be issued in their joint names. The sale-certificate was accordingly issued. It was held that, at the most there was only an irregularity, and there was no illegality. But the point is that, in this case, the Court did not confirm the sale and issue the sale-certificate in the name of Ramamurthi when alone there would be any question of considering whether there was irregularity or illegality. If the Court had directed the sale-certificate to be issued, it may, in some cases, be only an irregularity, but no Court is bound to commit an irregularity at the request of any party, and, the lower Court rightly refused to commit any irregularity or illegality, and rejected the petition for issuing a sale-certificate in favour of the transferee,

Ramamurthi. A ruling of a single Judge of the Bombay High Court in Ganapati Manja Hegade Vs. Subraya Rayappa Shetti, , was finally relied on by Mr. Ramanatha Iyer, learned Counsel, for the petitioner. But the facts of that case were not quite similar to those in the present case. In any event, I am not prepared to agree with that ruling, of a single Judge of the Bombay High Court, and I prefer to follow the ruling of Burn, J., in S.A. No. 438 of 1937 and the principle underlying the ruling of Govinda Menon and Krishnaswami Nayudu, JJ., in Srinivasalu Naidu v. Nataraja Goundan (1952) 2 M.L.J. 232, and the clear wording of Order 21, Rule 94, CPC and hold that the learned Subordinate Judge was perfectly justified in refusing to commit any irregularity or illegality, and in refusing to issue the sale-certificate in favour of Ramamurthi who was not the latent or patent bidder but was only a subsequent transferee from the successful bidder. Such a subsequent transferee must take a proper sale deed, after paying proper stamp duty, and should not indulge in such tactics and expect the Court to commit an irregularity and illegality for his sake. So too, the other side to such a contract (Vasudev) cannot be allowed to deprive the Government of the stamp duty due to it by such tactics.

3. The second contention of Mr. Ramanatha Iyer was that the lower Court should not have directed the Rs. 6,000, paid by Ramamurthi to Vasudev, to be refunded especially when there was no specific prayer by Ramamurthi to that effect, and also because of the terms of the joint memo I cannot agree. It is not a case of Ramamurthi's paying Rs. 6,000 under any contract or agreement entered into outside the Court and without invoking the assistance of the Court or seeking its directions. The joint memo was filed into Court obviously thinking that there was no irregularity or illegality involved. The Subordinate Judge also seemed to have fallen into this error at first and adjourned the matter to 6th March, 1952 in order to enable the condition of the joint memo, namely the payment of Rs 6,000 to be complied with. As impliedly directed by the Court, Rs. 6,000 was paid by Ramamurthi to Vesudev Of course, not a pie would have been paid by Ramamurthi had he thought that the joint memo would be dismissed by the Court as involving an irregularity or illegality. When the subsequent Subordinate Judge found that the prayer in the joint memo would involve an irregularity, he dismissed the petition, and, as observed before, quite rightly. When he did so, he had of course, to see that the Rs. 6,000, paid in pursuance of the terms of the joint memo and the Court's order of adjournment to enable the conditions to be complied with, was refunded. It was most unreasonable on the part of Vasudev to claim to retain that sum. The joint memo having been rejected in to all parts of it, including the no recourse claim collapsed. The consequence was that the right thing for the Court to do, after dismissing the joint memo, was to direct refund of the sum of Rs. 6,000 paid in consequence of the Courts adjourning the joint memo for Ramamurthi's complying with the conditions of the joint memo, and paying the Rs. 6,000. No specific prayer for the refund of the amount by Ramamurthi was required. It was the duty of the Court, when it had adjourned the proceedings to enable Ramamurthi to comply with the conditions of the joint

memo, and to pay Rs. 6,000 to Vasudev, to direct the refund of that amount paid impliedly under its orders when it rejected the prayer in the joint memo regarding the grant of the sale-certificate in Ramamurthi's name.

4. The last contention of the learned Counsel for the petitioner, Mr. Ramanatha Iyer, was that, in any event, Ramamurthi was as much a party to this confusion as Vasudev. That was why, he was directed to bear his own costs in the Court below, and will also be directed by me to bear his costs in this Civil Revision Petition. No estoppel will operate here. In the end, therefore this Civil Revision Petition deserves to be and is hereby dismissed but without costs.