

(1963) 07 GUJ CK 0009
In the Gujarat High Court
Case No : First Appeal No. 142 of 1960

Shah Yeshwant Maganlal	Vs	APPELLANT
Trustees of Trust Shah Maganlal Khushaldas and Others		RESPONDENT

Date of Decision : 25-07-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 66, Order 21 Rule 66(2), Order 21 Rule 73, Order 21 Rule 90

Citation : AIR 1964 Guj 126

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Advocate : K.T. Pathak, for the Appellant; R.M. Shah and N.C. Shah, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Raju, J.—The learned counsel for the appellant has given an application to convert this first appeal into an appeal from order. The learned counsel for the respondents have no objection, and hence this appeal is treated as an appeal from order.

2. The appeal is against the order of the lower court rejecting an application to set aside the Court sale held in Darkhast No. 156/50 in jurisdiction Suit No. 230 47 to recover mortgage money. The contentions of the judgment-debtor contained in that application were all rejected by the lower Court, and they are re-argued in this appeal. The first is that the property was purchased by a person who had acted as a Panch at the time of the valuation at the property. It is, therefore, contended that under Order 21, Rule 73, C. P. Code, the sale is vitiated. Order 21, Rule 73, C. P. Code reads as follows:--

"No officer of other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold".

3. A person who acts as Panch at the time of the valuation of property for the purpose of including the estimation of the value of the property in a proclamation, cannot be regarded as an officer or a person having any duty to perform in connection with the sale. He acted as a Panch because he happened to be selected as a Panch. If he had not been selected as a Panch he would not have acted as a panch. He had no duty to perform in connection with the sale. There is no duty on the Court to make a Panchnama as to the valuation of the property. The contention is, therefore, rejected,

4. The next contention is that after the original decree was passed, an application was given by the judgment-debtor u/s 24 of the Bombay Money Lenders Act for payment of decretal amount by instalments, and accordingly the Court which passed the decree allowed the decretal amount to be paid by instalments. Section 24 of the Bombay Money Lenders Act reads as follows :

"Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Court may at any time on application of a judgment-debtor after notice to the decree-holder, direct that the amount of any decree passed against him, whether before or after the date on which this Act comes into force, in respect of a loan shall be paid in such number of instalments and subject to such conditions, and payable on such dates as, having regard to the circumstances of the judgment-debtor and the amount, of the decree, it considers fit."

It is, therefore, contended that the decree should have been amended, and that unless the decree is amended, it cannot be executed after the decretal amount is ordered to be paid in instalments. Reliance is placed on AIR 1943 340 (Nagpur) . But in the Nagpur case, instalments were not granted. Any observations that were made in the Nagpur case have therefore to be read along with the fact that the instalments were not granted in that case. whatever observations have been made in that case cannot be applicable to a case where instalments are granted. Section 24 of the Money Lenders Act does not talk of an amendment of a decree before it can be executed. There is, therefore, no merit in the contention that the decree as such should be amended. It is true that the decree should be read with the order passed u/s 24 of the Money Lenders Act But, admittedly in this case there has been a default in the fulfilment of the terms of the order regarding instalments and what is being executed is the original decree as read along with the subsequent order for instalments, what is being executed is not the original decree but, the order for instalments. There is therefore no merit in this contention.

5. The last contention is that the property is worth Rs. 15,000/- and that in the proclamation the value is stated as about Rs. 25,000/-. It is, therefore, contended that the property has been inadequately valued and may consequently there has been an irregularity in the conduct of the sale, which vitiates the sale. The learned counsel for the appellant has placed reliance on *Sitabai Rambhau Marathe Vs. Gangadhar Dhanram Marwadi*, , and in particular the following observations :

"Order 21, Rule 66, Civil P. C. makes it obligatory on the part of the Court to issue a proclamation. Sub-section (2) Clause (e), provides that:

(2) Such proclamation shall be drawn up after hence to the decree-holder and the judgment-Debtor and shall state the time and place of sale and specify as fairly and accurately as possible.

(e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property."

6. The learned Judges of the Bombay High Court referred to the following observations of their Lordships on the Privy Council in Saadatmand Khan v. Phul Kuar, 25 Ind App 146 (PC) :

"Whatever material fact is stated in the proclamation (and the value of the property is a very material fact) must be considered as one of those things "which the Court considers material for a purchaser to know, and it is enacted in terms (though express enactment is hardly necessary for such an object) that those things shall be stated as fairly and accurately as possible". The learned Judges of the Bombay High Court then observed as follows:

"Now it is clear, on the authorities, that, in order to state the value of the property, an inquiry is necessary; and if an inquiry into the value of the property is necessary, the Court is bound to hold the inquiry. The Court is not at liberty to take any imaginary figure, or to state the value of the property at any figure which it thinks to be proper. If the value is understated in the proclamation, are the understatement is such as is tabulated to mislead bidders and to prevent them from offering an acquire price, and the sale results in a price altogether inadequate, the sale must be set aside on the ground of material irregularity in publishing the sale within the meaning or Order 21, Rule 90, Civil P.C. This, then, being the effect of the decisions, the question is, whether the present case comes within them."

7. In all humility and with great aspect to the learned judges of the Bombay High Court and their Lordships on the Privy Council, it is difficult to say trial the estimate of the value of property is a material fact. The estimate of the value of the property depends on the person, who estimates its value and that may differ from person to person. It is therefore difficult to consider an estimate of the value of the property as a material fact, it is true that opinions with regard to the value of property may differ. But here we are not dealing with the estimation a opinion regarding the value of property of an individual person. What order 21, Rule 66, C.P. Cods deals with is every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property. The CPC regards the nature and value of the property as a matter to be judged by the purchaser. The CPC talks of material things which such a person should know, the CPC does not contemplate the value of property as a material fact. The value of the property is something to be judged by a purchaser and in order to judge the value of the property, the Court has got to state the time and

place of the sale of the property, the area of the property, its situation, its assessment and the nature of in cumbrance etc. These are illustrations of the material things contemplated in Order 21, Rule 66, C. P. Code. Order 21, Rule 66, C.P. Code does not contemplate the value of the property as a material thing. To take the contrary view would make Order 21 Rule 66 C. P. code read thus: "the Court must state the value of the property in order to enable a purchaser to judge the value of the property." It is, therefore, clear that Order 21, Rule 66, C. P. Code does not require the Court to state the value of the property. In fact, there is no such provision, in Order 21, Rule 65 C. P. Code that the Court should state the value of the property. Order 21, Rule 66, C. P, Code does not require the Court to give its opinion about the value of the property or to state the opinion of panchas regarding the value of the property. It is necessary for the Courts to see that the proclamation contains the particulars as provided in Order 21, Rule 66, C. P. Code and to understand the scope of the clause "material facts for a purchaser to know in order to judge of the nature and value of the property".

8. For the reasons given above, in all humility and with great respect, I am of the opinion that the value or the property or the opinion regarding the value of the property either of the Court or of Panchas is not a material thing to be stated in the proclamation for the sale of property.

With great respect, I find it impossible to agree with the reasoning of the Bombay High Court given in Sitabai Rambhau Marathe Vs. Gangadhar Dhanram Marwadi, .

9. It is, therefore, difficult to hold that by mentioning an estimate of the value of the property as made by the Panchas in the proclamation for sale, the Court committed an irregularity in conducting the sale. In any case, it is difficult to hold that the opinion or estimation, of the value of the property is grossly inadequate in view of the reasoning contained in para 26 of the judgment of the lower Court. I, therefore, reject this contention.

10. The last contention urged is that the mention or Survey No. 2124/4 in the decree and the proclamation is wrong. That number was stated because it was included in the decree. If there is any error in the decree, the executing Court is not responsible. This contention is therefore-rejected.

11. The appeal is dismissed. NO order as to costs.