

(1968) 06 KAR CK 0003

In the Karnataka High Court

Case No : Civil Revision Petition No. 570 of 1967

Shivadas Subrao and Co. and Another

APPELLANT

Vs

V.D. Divekar and Another

RESPONDENT

Date of Decision : 05-06-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 94, 146
Registration Act, 1908 — Section 17 (1) (b), 17 (2) (vi)

Citation : AIR 1969 Kar 73 : (1968) 2 MysLJ 111

Hon'ble Judges : B.M. Kalagate, J

Bench : Single Bench

Judgement

1. The question that arises for consideration in this revision petition is when a sale in execution has become absolute, whether the court can grant a certificate under Order XXI Rule 94 of the Code of Civil Procedure, to the representative of the deceased purchaser? The facts leading to this question may briefly be stated as follows:

Shivadas Subrao & Company, a registered firm consisted of two partners, R. C. Parekh, since deceased and Shivdas Subrao Matibetkar, Opponent No.1 V. D. Divekar, was a debtor to the firm. The firm instituted a suit against him and obtained a decree for a sum of Rupees 2,798-10-0 and in execution of that decree, bought his house bearing CTS No. 445/2B in the City Survey Ward No. 1 of Hubli City for sale. R. G. Parekh the deceased partner purchased the house on 2-12-1952 on behalf of the firm. The Judgment-debtor applied to have the sale set aside; but that application was dismissed and the sale became absolute on 9-12-1958. In the meanwhile on 26-12-1954 R. G. Parekh died. On 13-11-1961, Shivdas Subrao, for himself and on behalf of the firm made an application under Order XXI, R. 94 C.P.C. praying for the issue of a sale certificate in the name of the decree-holders, the firm himself and Malati Bai (Opponent No. 2) wife of deceased partner R. G. Parekh and if such a certificate cannot be granted, then it should be granted in the name of the firm and himself being a surviving partner.

2. It is necessary to mention a few more facts in this context. Shivdas Subrao instituted Civil Suit No.44 of 1962 against Malati Bai and others for an injunction restraining them from disturbing his possession and enjoyment of the property block No. 36 described as Mundgol property which was one of the properties belonging to the firm. It also appears from the record that opponent No. 2 Malati Bai had filed Civil Suit No. 89/64. (obviously, the year of the suit must be wrong) in respect of Mundgol property against Shivdas Subrao. The parties arrived at a compromise in Civil Suit No. 44/1962 and a compromise decree was made on 18-7-1963 which is marked as Exhibit 30 in the case. It was inter alia stated in the said compromise decree that the plaintiff Shivdas Subrao and the defendant, namely opponent No.2 Malati Bai had compromised about Mundgol property and that the plaintiff Shivdas Subrao had given up his claim in respect of the present suit property, namely, CTS No. 445/2B in City Survey Ward No. 1 of Hubli City, and Malati Bai stated to have become the absolute owner thereof and that she alone was entitled to continue this proceeding. It was also stated that Malati Bai was directed to withdraw Civil Suit No. 89/64. It also appears from the record that in respect of the partnership business between Shivdas Subrao and Malati Bai's husband R. G. Parekh, nothing was due to either parties. Thus it would appear from the terms of the compromise decree that the parties had once for all settled their disputes in relation to the partnership property.

3. To the application made by Shivdas Subrao under O. XXI, R. 94 C.P.C. praying for the issue of a sale certificate, objections were filed on behalf of both the opponents, namely, V. D. Divekar whose property was brought to sale and Malati Bai, widow of the deceased partner R. G. Parekh. One of the contentions raised by Malati Bai, opponent No. 2. was that the sale certificate should be issued in her name alone as Shivdas Subrao had agreed under the compromise decree in C. S. 44/62 that the diary proceedings under the provisions of O. 21, Rule 94, CPC should be continued by her alone in view of the fact that Shivdas Subrao had given up his right in respect of the suit property.

4. In view of the terms in the compromise decree, the trial court took the view that Shivdas Subrao was not entitled to continue the diary proceedings and ask for a sale certificate in the name of the firm himself and Malati Bai widow of the deceased partner R. G. Parekh. The court held that Malati Bai alone was entitled to the issue of a sale certificate in her favour, that the plea of Shivdas Subrao that Malati Bai was not entitled to have the sale certificate in her name was barred by the principles of res judicata and estoppel. The court, therefore, directed that the sale certificate be issued in favour of Malati Bai, opponent No. 2. It is the correctness of this order that is challenged in this revision petition by Mr. K. Vittal Rao, learned counsel for the petitioners.

5. It was contended by Mr. Vittal Rao that since the property in dispute had been purchased by one of the partners of the firm on behalf of the firm, it becomes the property of the firm, and therefore, the sale certificate should be issued in the name of the firm and its partners under Rule 94 of Order XXI of the Code of

Civil Procedure. He contended that the Court below was, therefore, wrong in directing the issue of the sale certificate to Malati Bai and states that the said order is liable to be set aside.

6. I shall now proceed to examine the submissions made by Mr. Vittal Rao, learned counsel for the petitioner.

7. The relevant provision relating to the issue of a sale certificate is rule 94 of Order XXI of the CPC which reads as follows:--

94. Certificate to purchaser--

Where sale of immovable property has become absolute the court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear the date, the day on which the sale became absolute.

Mr. Vittal Rao contends that the provisions of Order 21, Rule 94, are mandatory and that the court is under a statutory obligation to grant certificate to the purchaser of the property.

8. What Rule 94 requires is that the court has to grant a certificate specifying the property sold and the name of the person who at the time of the sale is declared to be the purchaser. The Rule does not specify to whom the certificate is to be issued. It also does not say that the court must issue the certificate to any particular person. In other words, there is no prohibition to issue the certificate to a person other than the purchaser.

9. However, Mr. Vittal Rao, in support of his contention, strongly relied on the decision in *Makhan Lal Kela and Another Vs. Baldeo Prasad and Others*, . The court, there, on the facts, held that having regard to the provisions of Order 21, Rule 94, the certificate should be issued only in the name of the auction-purchaser or if he dies in the name of his legal representative; but that the court is incompetent to recognise any transfer or arrangements made by the auction purchaser with a third person. The decision, to a certain extent, supports Mr. Vittal Rao's submission. But, when the provisions of Rule 94 are carefully analysed, one would not find any support for this statement. The rule does not direct the court to issue a sale certificate to a particular person. All that is required under the Rule is that the court has to specify the property and the person who is declared to be the purchaser. The rule also does not specifically state that the certificate should be issued in the name of the legal representative of the deceased purchaser. But, when the High Court states that the certificate could be issued in the name of the legal representative in the event of the death of the purchaser, perhaps, I imagine, the court had in its mind the provisions of Section 146 of the Code of Civil Procedure.

10. The above decision came up for consideration by the High Court of Madras in *A.V. Sreenivasalu Naidu Vs. V.K. Nataraja Goundan and Another*, . The question in that case was whether the sale certificate issued in the name of the auction

purchaser was a valid certificate. One Balakrishna Iyer purchased the property. He stated that he purchased it on behalf of his wife Rajammal. The contention urged was that since the actual bidder was Balakrishna Iyer and not his wife, and, since no power of attorney or vakalath has been filed by Balakrishna Iyer in his own capacity and not as his wife's agent, and, therefore, the sale certificate should be issued in the name of Balakrishna Iyer. The High Court negatived these contentions and held that Balakrishna Iyer was really the agent of his wife, Rajammal, and, therefore, the issue of the certificate in her favour was legal. Their Lordships, during the course of the Judgment, referred to the decision in Makhan Lal Kela and Another Vs. Baldeo Prasad and Others, and also to the decision of the High Court of Bombay in Ganapati Manja Hegade Vs. Subraya Rayappa Shetti, , where it was held that when Order 21, Rule 94, C.P.C. does not state that the person who at the time of the sale is declared to be the purchaser should alone be granted the sale certificate, it can be issued to a representative of the purchaser in accordance with the provisions of S. 146, C.P.C., it also stated that there is nothing whatever in the rule to prevent an assignee from the auction-purchaser applying for the issue of the certificate nor to prevent the court granting it to him.

The High Court of Madras on a consideration of the two decisions said that the more acceptable view was that of Broomfield J. in Ganapati Manja Hegade Vs. Subraya Rayappa Shetti, . Their Lordships further pointed out that the view taken in Makhan Lal Kela and Another Vs. Baldeo Prasad and Others, had not been accepted by the very same court in its later decision in Pokhpal Singh and Others Vs. Kanhaiya Lal and Others, , where the High Court, after setting out the facts, considered the contention of the learned counsel for the appellants that the court was bound by the provisions of R. 94 of O. 21 read with R. 84 to issue the certificate in the name of the person declared to be the purchaser at the time of sale. The High Court did not accept that contention and pointed out that it may be that the order of the sales officer was irregular but as Kanhaiyalal is the person in whose name a certificate has been issued his right to maintain the present application cannot be questioned.

11. In the case in Re: Vinayak Narayan ILR (1890) Bom 120, the High Court of Bombay considered the provisions of Section 316, C.P.C. of the year 1882 which correspond to R. 94 of O. 21 C.P.C. and held that when a sale in execution has become absolute, the Court can, u/s 316, C.P.C., grant the sale certificate to the representative of a deceased purchaser. Referring to Section 316, C.P.C., Jenkins C. J. observed during the course of the judgment--

".... the section itself creates no difficulty; it is, so far as we can see, callous as to whether the purchaser is alive or dead; it wants him neither as applicant nor recipient....."

Reading, then, the section in its strictest sense, we find in it nothing to forbid or to prevent the grant of certificate under the circumstances of this case....."

As I have pointed out earlier, in *Ganapati Manja Hegade Vs. Subraya Rayappa Shetti*, Broomfield, J. after considering the provisions of O. 21, R. 94 CPC took the view that there was nothing whatever to prevent an assignee from the auction purchaser applying for the sale certificate, nor to prevent the court granting it to him.

12. I may here also refer to a subsequent decision of the High Court of Madras in *Seth Mohandas Vasudev Vs. M.R. Ramamoorthy*, where the learned Judge, while considering the scope of Order 21, Rule 94 CPC considered the decision of the High Court of Allahabad in *Makhan Lal Kela and Another Vs. Baldeo Prasad and Others*, and the earlier decision of the said court in *A.V. Sreenivasalu Naidu Vs. V.K. Nataraja Goundan and Another*, and observed that it may be that in certain cases where the Court has issued the sale certificate in the name of a transferee, it may be only an irregularity and not an illegality but that no court is bound to commit an irregularity at the request of the party, even by consent. His Lordship in that case did not agree with the view taken by Broomfield J. in *Ganapati Manja Hegade Vs. Subraya Rayappa Shetti*, and held that the sale certificate cannot be issued to a subsequent transferee from the auction-purchaser.

13. In my view, the decisions in *A.V. Sreenivasalu Naidu Vs. V.K. Nataraja Goundan and Another*, and in *Pokhpal Singh and Others Vs. Kanhaiya Lal and Others*, are clearly in accord with the provisions of R. 94 where there is nothing to prevent the court from granting a certificate to a legal representative of the auction-purchaser or an assignee from him, however, the view taken in these decisions, is, with respect more preferable being less technical, than the view taken by the decision in *Makhan Lal Kela and Another Vs. Baldeo Prasad and Others*, . I, therefore, with respect, agree with the view taken in these decisions in preference to the view taken in *Makhan Lal Kela and Another Vs. Baldeo Prasad and Others*, . I therefore hold that it is competent for a court under the provisions of Rule 94 of Order XXI of the CPC to issue a certificate to the legal representative of the deceased partner of the firm--in this case to Malati Bai, the widow of the deceased partner of the firm R. G. Parekh.

14. The next question to be considered is whether Shivdas Subrao who was the second partner of the firm is also entitled to have the certificate in his name. Normally, if there was nothing else, he along with Malati Bai would have been able to get the certificate. But in view of the compromise decree (Exhibit 30) made in C. S. 44/1962 wherein all the disputes relating to the firm's property between him and Malati Bai, widow of the deceased partner R. G. Parekh were settled and Shivdas Subrao had given up his right in respect of the suit property and agreed that Malati Bai should continue and the proceedings started by him under Rule 94 of Order 21 it is not open to Shivdas to raise the plea that the sale certificate should not be issued to Malati Bai but should be issued to him. He, under the circumstances, must be held to estopped from raising any such plea which is also barred by the principles of *res judicata*.

15. It was next urged by Mr. Vittal Rao for the petitioner that Exhibit 30 which is

the compromise decree is inadmissible in evidence since it relates to the properties other than the suit property which is of the value more than rupees one hundred and hence, it is required to be registered u/s 17(1)(b) of the Registration Act and since it is not so registered, the court cannot give effect to it. The court below has taken the view--and in my opinion very rightly--that in the compromise decree in Shivdas's suit, he and the widow of the deceased partner Malti Bai had settled once for all the disputes relating to the partnership property, that Malati Bai had agreed to withdraw her suit which she had filed in relation to the very property of the firm and Shivdas had agreed in his suit to give up his rights in respect of the present suit property. Under such circumstances it must be held that all the properties of the firm, including the suit property were by consent, treated to be the properties in Shivdas's suit in which a compromise decree was made and therefore, such a decree does not require to be registered as it falls u/s 17(2)(vi) of the Indian Registration Act. In some what similar circumstances, the High Court of Patna in Ramdas Sah and Another Vs. Jagarnath Prasad and Others, has held that such a decree is not required to be registered since it clearly falls under S. 17(2)(vi) of the Indian Registration Act. Therefore this plea of the learned counsel for the petitioners has to be rejected.

16. In the result, for the reasons stated above, I confirm the order made by the court below and dismiss this revision petition with costs.

17. Petition dismissed.