(1998) 07 KAR CK 0129

In the Karnataka High Court

Case No : Civil Revision Petition No. 1799 of 1994 connected with Civil Revision Petition No. 499 of 1995

Sunil Gurunath Hunswadkar APPELLANT

Vs

Madhukar Govindarao Hunswadkar and Another RESPONDENT

Date of Decision : 17-07-1998

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 64, Order 21 Rule 90

Citation : (1999) 3 CivCC 316 : (1999) 5 KarLJ 307

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri Chandrashekarbabu, for the Appellant; Sri R. Gururajan and Sri R.G. Hegde, for the Respondent

Judgement

1. Civil Revision Petition No. 499 of 1995 arises from the judgment and order dated 22-9-1994 passed in M.A. No. 33 of 1993 by Civil Judge, Sirsi, Uttar Kannada, dismissing the appeal and confirming the order dated 16-8-1993 passed by the Munsiff, Haliyal, in Civil Miscellaneous No. 3 of 1989 setting aside the sale held in Execution Case No. 9 of 1975 after having recorded a finding that the sale was vitiated by illegality and material irregularity in the conduct and publication of sale and that irregularity has been to such an extent that it had tendency to cause substantial injury to the owner of the property. The Trial Court as well as the Appellate Court examined the sale proclamation Ex. P. 8 and found many irregularities and illegalities in the sale proclamation and the deficiencies which had really affected the conduct of sale. The learned Court below indicated the irregularity and illegalities in the sale proclamation in its observations in paragraphs 12 to 15 and held that the irregularities and illegalities are to the effect that in the sale proclamation, name of the owner of the property to the auction is not shown. The properties sold have not been properly described. The street or the area in which the properties in question are situated is not mentioned in the sale proclamation. The boundaries of the properties in question are not mentioned in Ex. P. 8. The Court below has opined that it has caused a

hurdle in the way of purchasers reaching the place. The Court has further mentioned that there is no mention of the existence of the well in the said properties though there existed a well in the property. It has further mentioned that valuation of the property as given by the decree-holder and as stated by the judgment-debtor as per CPC (Amendment) Act, 1976 has to be mentioned. The said two columns are not in Ex. P. 8 and though decree-holder has valued the property at Rs. 12,000/-, but that valuation is not mentioned in Ex. P. 8. The valuation given by the judgment-debtor is also not mentioned in Ex. P. 8. It is also not mentioned in Ex. P. 8 what is Municipal Tax and particulars of the litigation pending in respect of the properties. Further, the Court has found irregularities in the publication of sale. That Ex. P. 10 does not disclose the time of sale i.e., at what time the sale published was to be held. The Court below held that it is on the basis of the evidence found that as per Ex. P. 3 and Ex. P. 4, value of the properties would be more than Rs. 45,000/-, but it has only fetched Rs. 6,100/-. It opined that because of the material irregularities in publication and conduct of the sale as referred to in the judgment, the sale was liable to be set aside.

2. A question was put to the learned Counsel for the revisionist whether the Court has performed its job under Order 21, Rule 64. such portion of attached property is put to sale, consideration of which is sufficient to meet claim in execution petition perties'' worth, it might have come to the conclusion that sale of the entire property was not essential. The Court does not appear to have applied its mind to the provisions of Order 21, Rule 64 which casts an important duty on the Court conducting the sale, first, to examine whether the sale of entire property or a portion of property is necessary to satisfy the decree. Any way value of the property may be more than Rs. 45,000/- and the claimant valued it to be more than Rs. 1,00,000/-. Order 21, Rule 64 casts a duty as above to determine it before proceeding with the sale and if the Court has not acted in accordance with the requirement of Order 21, Rule 64, then also sale can be said to be illegal and null and void because Court has got jurisdiction to direct the sale of that portion of property which would be necessary to satisfy the decree and to deter- mine to what extent property has to be sold and not to put entire property in sale. There is a catena of cases on this subject. I may refer to only some of the cases, namely, Takkaseela Pedda Subba Reddi Vs. Pujari Padmavathamma and Others, . In that judgment, their Lordships observed as under.--(at page 1791)

"Under this provision the Executing Court derives jurisdiction to sell properties attached only to the point at which the decree is fully satisfied. The words ''necessary to satisfy the decree'' clearly indicate that no sale can be allowed beyond the decretal amount mentioned in the sale proclamation, In other words, where the sale fetches a price equal to or higher than the amount mentioned in the sale proclamation and is sufficient to satisfy the decree, no further sale should be held and the Court should stop at that stage. ..... The fact that the judgment-debtor did not raise an objection on this ground before the Executing

Court is not sufficient to put him out of Court because this was a matter which went to the very root of the jurisdiction of the Executing Court to sell the properties and the non-compliance with the provisions of Order 21, Rule 64 of the Code was sufficient to vitiate the same".

This decision has been followed with approval in the case of Ambati Narasayya Vs. M. Subba Rao and another, , where it has been held that a sale held without examining this aspect and not in conformity with this requirement would be illegal and without jurisdiction. This decision in Ambati''s case, supra, was further followed with approval in another case in Lal Chand Vs. VIIIth Addl. District Judge and others, .

3. In this view of the matter, in my opinion, the Court below did not commit any error in setting aside the sale and did not commit any jurisdictional error when it also found illegality and irregularity in the publication and conduct of the sale. So far as limitation question is concerned, there is no substance in the contentions. Here the facts are that the sale was conducted on 2-1-1989 and the application under Order 21, Rule 90 was made on 16-2-1989. The limitation for filing such application was 60 days from the date of sale. As such the application under Order 21, Rule 90 is within time. Thus considered, there is no jurisdictional error in the order passed by the two Courts below. Civil Revision No. 499 of 1995 is hereby dismissed.

Learned Counsel pointed out as Revision No. 499 of 1995 is dismissed, he fairly submitted that, another Revision No. 1799 of 1994 has become infructuous. Therefore, both the revisions i.e., Civil Revision Petition No. 499 of 1995 as well as Civil Revision Petition No. 1799 of 1994 are hereby dismissed. Costs are made easy.

