(1977) 06 KL CK 0028

In the High Court Of Kerala

Case No : Ex. First Appeal No. 2 of 1976

Ukkru Kutty APPELLANT

Vs

The Canara Bank, Trichur RESPONDENT

Date of Decision : 21-06-1977

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 85

Citation : AIR 1978 Ker 32 : (1977) 2 ILR (Ker) 614

Hon'ble Judges : V. Balakrishna Eradi, J;T. Kochu Thommen, J

Bench : Division Bench

Advocate : P. Kochupappu Achan and V. Rama Shenoi, for the Appellant;

Final Decision : Dismissed

Judgement

Balakrishna Eradi, J.—The appellant before us was the 3rd defendant in O.S. No. 93 of 1952 which was a suit instituted by the Poornathrayeesavilasom Bank for recovery of an amount of Rs. 69,000 due from the defendants under a mortgage executed by them in favour of the Bank. The suit was decreed in favour of the plaintiff-Bank. The assets of the Poornathrayeesavilasom Bank having been taken over by the Canara Bank Ltd. the Canara Bank as attorney for collection filed E.P. No. 52 of 1963 in the District Court, Trichur for execution of the decree by sale of the plaint schedule properties. In that execution petition a compromise was entered into between the decree-holder and the judgment-debtors and a joint petition -- M.P. No. 400 of 1968 -- was filed incorporating the terms of the said agreement. Under that compromise the decree-holder-Bank agreed to forgo a substantial portion of the decree amount and for the balance amount of Rs. 39,000 it was agreed between the parties that the decree schedule properties may be purchased by the decree-holder-Bank at a sale to be conducted by the court. It was further agreed that the sale was to be treated as effective and absolute only in the event of failure on the part of the judgment-debtors to pay up the amount of Rs. 39,000 with interest at 4% per annum within three years from the date of sale. The said compromise was recorded by the executing court and pursuant thereto the decree schedule properties were brought to sale and purchased by the decree-holder on 21-8-1968. Under the agreement aforementioned the judgment-debtors had time till 21-8-1971 to pay up the decree debt as to clear the liability due under the decree as reduced by consent of parties. The judgment-debtors failed to honour their commitment to discharge the liability within the said period of three years. The sale could however not be confirmed for some time thereafter because the judgment-debtors filed a petition under the Kerala Agriculturists'' Debt Relief Act, 1970 and obtained a stay of all proceedings. That stay was vacated by the executing court after hearing both sides on 9-4-1975. Thereafter on 21-7-1975 the respondent-Bank filed E.A. No. 5 of 1975 in the executing court praying for permission to furnish stamp papers for drawing up the sale certificate. That petition was allowed by the executing court but it would appear that before doing so no notice had been given to the judgment-debtors. Subsequently the sale was confirmed by the executing court on 21-7-1975 itself.

2. The 3rd judgment-debtor who is the appellant before us filed E.A. No 9 of 1975 in the executing court seeking a declaration that the court sale held on 21-8-1968 stood automatically vacated on account of the failure of the decree-holder-auction purchaser -- to produce stamp papers within the period of 15 days prescribed by Rule 85 of Order XXI of the Civil P.C. The District Court, Trichur wherein the execution was till then pending transferred the said E.A. for disposal to the Subordinate Judge''s Court, Trichur where it was renumbered as E.A. No. 947 of 1975 of that court. The learned Subordinate Judge after an elaborate consideration of the various points urged on both sides rejected the contentions of the judgment-debtors and dismissed E.A. No. 947 of 1975. It is against the said order passed by the court below that the 3rd judgment-debtor has come up to this court with this appeal.

3. We see no merit in this appeal. The sale held on 21-8-1968 was not one conducted strictly in accordance with the provisions of Order XXI, C.P.C. It was a step taken by the court in enforcement of the terms of the compromise entered into between the parties which had been recorded by the court as per its order in M.P. No. 400 of 1968. Under the provisions of Order XXI, Rule 92, C.P.C. an execution sale becomes absolute when within the prescribed period no application is made under Rule 39, Rule 90 or Rule 91 or in case where such an application is filed when the same is rejected. Order XXI contemplates only sales by public auction to the highest bidder. It does not envisage a sale wherein the decree-holder alone is entitled to participate nor is it within the contemplation of the said provision that the sale conducted by the court should become effective only after three years on the happening of a contingency stipulated by the parties. It is therefore not possible to regard the sale of the plaint schedule properties conducted on 21-8-1968 as one held by the court strictly in accordance with the provisions of Order XXI, C.P.C. The court has merely assisted the parties in implementing the terms of the compromise arrived at between them and recorded by it by permitting its machinery to be utilised for

the purpose of conducting a sale of the properties to the decree-holder. Further, it is manifest that when the parties agreed that the sale was to become effective only after the expiry of the stipulated period of three years and the said agreement was recorded by the court both the parties as well as the court had proceeded on the basis that the provisions of Order XXI, Rule 85 will not apply to the said sale because it is wholly unreasonable to think that the decree-holder-Bank was expected to expend a sum of very nearly Rs. 4,000 on the purchase and production of stamp papers for the sale certificate the drawing up of which might ultimately turn out to be wholly unnecessary in the event of the decree debt being paid by the judgment-debtors within the period of three years. We are, therefore, clearly of opinion that the lower court was right in holding that the provisions of Order XXI, Rule 85 have no application to the sale held in the present case and that the contention put forward by the judgment-debtor that the sale must be treated as having become automatically cancelled by reason of the default of the decree-holder to produce the stamp papers within 15 days of the date of the sale is devoid of substance.

4. The appeal therefore fails and it is dismissed. The appellant will pay the costs of the respondent.

