

(2000) 04 SC CK 0108

In the Supreme Court Of India

Case No : Civil Appeal No. 2519 of 1989

Umakant Mishra (Dead) through LR's and Others	APPELLANT
Vs	
Dinanath Prasad Shah (Dead) through LR's. and Another	RESPONDENT

Date of Decision : 19-04-2000

Acts Referred:

Citation : (2000) 4 JT 265 : (2000) 9 SCC 318 : (2001) 121 STC 1

Hon'ble Judges : M. B. Shah, J;A. P. Misra, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

M.B. SHAH, J.-This appeal is filed against the judgment and order dated 20-6-1987 passed by the High Court of Patna rejecting Civil Revision No. 1078 of 1984 holding that the executing court has no right to review the valuation fixed by the trial Judge. The said revision application was filed by the appellant judgment-debtor against the order dated 31-3-1984 passed by the IVth Additional Subordinate Judge, East Champaran, Motihari in Miscellaneous Appeal No. 17/5/7 of 1982, whereby the Additional District Judge set aside the order dated 19-2-1982, passed by the Munsif in Execution Case No. 51 of 1978.

2. To appreciate the contentions raised by the parties, it would be necessary to set out a few facts. The appellant is the judgment-debtor and the parties are governed by the provisions of the Bihar Money Lenders Act, 1974 (hereinafter referred to as "the Act"). Section 18 of the said Act specifically provides that when an application is made for the execution of a decree passed in respect of loan or interest on loan advanced by the sale of the judgment-debtor's property, the court executing the decree shall, notwithstanding anything to the contrary contained in any other law, hear the parties to the decree and estimate the value of such property and that portion of such property which would be sufficient to satisfy the decree. Section 19 of the Act further provides that the proclamation of the intended sale of the property in execution of the decree is required to include mainly so much of the property of the judgment-debtor which can satisfy the

decree and is also required to state the value of the portion of the property to be sold as determined under Section 18 of the Act. Further mandate of the section is "such property or portion of the property, as the case may be, shall not be sold at a price lower than the price specified in the said proclamation".

3. In the present case, it is an admitted fact that judgment-debtor filed an application on 30-9-1980, before the executing court stating that valuation of the property fixed by the court was not proper and was fixed without giving any opportunity of hearing to the judgment-debtor. At the time of hearing of the said application, the judgment-creditor agreed that opportunity of hearing was not given to the applicant and he has not raised any objection for the contentions raised by the judgment-debtor that the process was not served before fixing the valuation of the land. Therefore, the executing court raised the issue "whether the valuation of the lands given in the schedule of the execution proceeding fixed by the Court after ex parte hearing is correct and if not, what should be the proper valuation of the lands given in the execution talika". After hearing the parties, by order dated 8-5-1981 the Court set aside the ex parte order dated 28-8-1980 fixing the valuation of the property as required under Section 18. The Court set aside the fixation of the valuation @ Rs 316 per katha and refixed the same @ Rs 1000 per katha.

4. No appeal was filed against that order.

5. Thereafter, the decree-holder filed an application dated 19-5-1981 under Order 21 Rule 92 CPC seeking preparation and delivery of sale certificate. This application was dismissed by the executing court vide order dated 19-2-1982, whereby the court arrived at the conclusion that the sale was held as per order dated 13-10-1980 with a condition that it was subject to Order 21 Rule 59(b) of the Civil Procedure Code. For this purpose, the trial court specifically mentioned that on 30-9-1980, the judgment-debtor appeared before the executing court and filed a petition under Section 47 of the Civil Procedure Code and that application was admitted after hearing both the parties on 9-10-1980. Thereafter, the judgment-debtor filed further application for staying the execution proceedings and as the aforesaid application was moved on 13-10-1980, the day on which the sale was to be held, auction-sale was not postponed but was permitted with a specific condition that it would be subject to the result of the application filed by the judgment-debtor for refixation of the valuation of the land. The Court, therefore, observed that the sale was not to be confirmed till the disposal of the miscellaneous case filed by the judgment-debtor. Hence, the executing court did not confirm the sale by order dated 19-2-1982.

6. Against that order, the judgment-creditor preferred revision application before the High Court which was dismissed. The Court made the following observations:

"By the impugned order fixation of the old valuation is recalled and the property is revalued. As a necessary corollary the sale would be deemed to have been set

aside and the order will be under Order 21 Rule 92 of the Civil Procedure Code. In my view the statement recorded is correct. The impugned order is appealable under Order 43 Rule 1(j) of the Civil Procedure Code. The learned counsel is permitted to withdraw this application and to file an appeal before appropriate authority with an application for condonation of delay."

7. Thereafter, against the order dated 19-2-1982, the judgment-creditor preferred an appeal before the District Court. The court erroneously considered the provisions of Order 21 Rule 89 of the Civil Procedure Code and arrived at the conclusion that the sale was required to be confirmed and the executing court has no jurisdiction to review its earlier order fixing the valuation of the land. Against that order, revision application filed by the judgment-debtor was rejected by the High Court by passing the impugned order solely on the ground that the executing court has no right to review the question of valuation fixed by the trial Judge.

8. It is apparent from the judgment and order passed by the High Court that there is total non-application of mind to the facts of the case as stated above. The valuation of the land was required to be fixed as per the provisions of Section 18 of the Act. Before fixing the valuation of the land the judgment-debtor was required to be heard. The order dated 8-5-1981 makes it abundantly clear that valuation of the land was fixed without giving any opportunity of hearing to the judgment-debtor and no process was served upon him before fixing the same. It was not disputed by the judgment-creditor that the fixation of the valuation of the land was ex parte and without serving process. Section 18 of the Act itself requires that the executing court shall hear the parties to the decree and estimate value of such property and on the basis of such valuation the court is required to determine how much portion of the property is required to be sold for satisfying the decree. Not only this, Section 19 requires that proclamation of the intended sale of property is required to include only so much of the property of the judgment-debtor which the court considers would be sufficient to satisfy the decree. The valuation of the property intended to be sold and that it could not be sold at a price lower than the price stated in the proclamation is also required to be stated in the said proclamation. Hence, before auctioning the property of the judgment-debtor, the mandatory provisions of Sections 18 and 19 are required to be followed. As they were not followed, the court first set aside the fixation of the valuation and thereafter rejected the application filed by the judgment-creditor for confirming the sale. This material aspect was not brought to the notice of the Additional District Judge and the High Court. It is also to be noted that in the revision application which was filed against the order dated 19-2-1982 there is specific observation made by the High Court that "by the impugned order fixation of the old valuation is recalled and the property is revalued and as a necessary corollary the sale would be deemed to have been set aside". The attention of the High Court was not drawn to this. In any case, the refixation of valuation of the land by the executing court cannot be said to be in any way illegal or erroneous. Once there is a refixation of the land, the Court

was required to follow the procedure prescribed under Section 19 before sale of the judgment-debtor's property. Hence, orders passed by the Additional District Judge and the High Court are erroneous on the face of the record and for want of non-consideration of material facts.

9. In the result, this appeal is allowed with costs. The judgment and order dated 29-6-1987 passed by the High Court in Civil Revision No. 1078 of 1984 and the judgment and order dated 31-3-1984 passed by the IVth Additional Subordinate Judge in Miscellaneous Appeal No. 17/5/7 of 1982 are quashed and set aside. The order dated 19-2-1982 passed by the trial court in Execution Case No. 51 of 1978 stands confirmed.

10. Ordered accordingly.