

A

HIRABAI

v.

HANUMANTH KRISHNAJI BHIDE AND ORS.

AUGUST 19, 1996

B

[K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

Code of Civil Procedure, 1908 : Section 47.

Order 21—Rules 54, 66 and 90.

C

Money decree—Execution of—Proclamation of sale made by the Executing Court—Sale of agricultural land—Purchase by 5th respondent—Challenge to sale—Rejection by Executing Court—Dismissal of appeal by High Court—Appeal—Dismissal of.

D

Sale conducted in furtherance of execution of decree—Notice served on judgment debtor under Rule 66—Failure of judgment debtor to give valuation of property—Court relying upon valuation given by decree-holder and setting the terms of proclamation—Held there was no illegality in proclamation of the sale made by Executing Court.

E

Judgment debtor's challenge to sale—Allegation of material irregularity and fraud in sale—No evidence produced to prove allegation—Held material conditions required under Order 21 Rule 90 were not proved—Held application for setting aside sale was rightly rejected by High Court.

F

Decree—Execution—Sale of property—Setting aside of—Pursuant to Courts observation judgment-debtor consenting to pay 15% interest and auction purchase price—His failure to deposit the amount—High Court observing that judgment—Debtor intended to prolong the finalisation of sale—Held observation of High Court was justified—Held no interference was warranted in the case.

G

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
No. 15196 of 1996.

From the Judgment and Order dated 17.4.96 of the Karnataka High
H Court in M.F.A. No. 146 of 1996.

Ms. Rajni pd. and T.C. Sharma for the Petitioner.

A

The following Order of the Court was delivered :

This special leave petition arises against the judgment and order of the High Court of Karnataka dated April 17, 1996 in MFA No. 146/96. The admitted position is that the father of the respondents had a money decree in O.S.A. No. 132/89. The Civil Judge vide decree dated January 12, 1994 granted a sum of Rs. 2,50,000 and costs with future interest at the rate of 6% on all the defendants including the petitioner. All were jointly and severally liable. Consequently, execution came to be filed on April 21, 1994 to recover a sum of Rs. 3,33,860. Though three items of the property belonging to the petitioner were listed for execution and attached under Order 21 Rule 54, CPC only one of items, namely 8 acres and odd of agricultural land was brought to sale. In fact the property sold on August 26, 1995 was purchased by 5th respondent for Rs. 6,40,000. The petitioner filed an application under Order 21 Rule 90, CPC read with Section 47 challenging the sale. It is contended primarily that proclamation of the sale under order 21 Rule 66, CPC did not contain valuation of the property and, therefore, the sale conducted in furtherance thereof was not valid in law. It is also contended that the sale was vitiated by material irregularity and fraud in conducting the sale. The executing Court rejected the contentions and dismissed the petition. The appeal came to be filed in the High Court. Pursuant to an observation made by the learned Judge, opportunity was given to the petitioner to pay 15% interest on the auction purchase price of Rs. 6,40,000 and odd. The auction purchaser had agreed for releasing the property from sale. Though opportunity was given to the petitioner to deposit the amount the petitioner failed to avail of the opportunity nor did she deposit it. The High Court by the impugned order dismissed the appeal. Thus, this special leave petition.

B

C

D

E

F

It is contended that the proclamation does not contain the valuation and, therefore, the sale is bad in law. The High Court has pointed out that though notice was served on the petitioner under Order 21 Rule 66, CPC the petitioner has failed to give the valuation of their own. The Court relied upon valuation given by the decree-holder and settled the terms of the sale proclamation. The property was sold for much more than the decretal amount of Rs. 3,00,000 and odd; therefore, there is no illegality in the proclamation of the sale made by the executing Court.

G

H

A The High Court also pointed out that the petitioners could not prove that there was any material irregularity or fraud in conducting the sale. The High Court noted that :

B "A perusal of the order sheet maintained by the executing court shows that the appellant filed an application under Order 21 Rule 90 CPC and in the said application the Court adjourned the case for filing objections to the said I.A. On 30.9.1995 the respondent filed objection to the IA. Thereafter the matter was adjourned for evidence. On 20.10.1995 at the request of the advocate for the appellant the case was adjourned for evidence and hearing. On 31.10.1995 the advocate appearing for the appellant submitted that his objections may be taken as his arguments. Accordingly, the Court passed the final order on the application filed under Order 21 Rule 90 CPC. The above said facts clearly disclose that though opportunity was given to the appellant to give evidence to prove their fraud or irregularity he has not availed of that opportunity and proved the fraud or irregularity as alleged in his application. Therefore, there is no reason to set aside the sale on the ground of any irregularity or fraud in publishing or conducting the sale.

E On 8.4.1996 the Court orally suggested to the counsel for the appellant to pay the amount due under the decree along with the solatium at 15% on the price paid by the auction purchaser for which the auction purchaser has no objection to set aside the sale provided he has been paid the amount as suggested by the Court.

F For this suggestion the counsel for the appellant agreed to pay the amount as suggested provided some time is given to him. Accordingly, the case was adjourned to 18.4.1996 with an understanding that the appellant shall pay the amount with solatium. On 16.4.1996 the advocate submitted that on account of the communication gap between him and his client he was not in a position to say whether his client is willing to deposit the amount as directed to the Court.

G This submission in my view is only to avoid payment and drag on the proceedings. Though the indulgence was shown by this court to the appellant he has not made use of the said situation to save the property. Hence, I find no reasons to interfere with the order passed by the trial court.

H

Accordingly, the appeal is dismissed with costs of Rs. 1,000." A

A reading thereof would clearly indicate that opportunity was given to the petitioner to establish whether the sale was vitiated by any material irregularity of fraud in publishing conducting the proclamation of sale by the decree-holder. Except repeating the averment and raising a contention in the written arguments, no evidence was adduced to prove them. Under those circumstances, the material conditions required under Order 21 Rule 90, CPC are not proved. It is contended for the petitioners that they are prepared to pay the amount if an opportunity is given to them. The High Court in fact gave the opportunity to pay the amount with interest at the rate of 15% on the sale amount but the petitioners have not availed of the opportunity. The High Court has observed that the petitioners intended to prolong the finalisation of the sale. We think that the observation made by the High Court is justified on the facts. We do not think that it is a case warranting interference by further extension of time. B C

The special leave petition is accordingly dismissed. D

T.N.A.

Petition dismissed.