

A

S.S. DAYANANDA

v.

K.S. NAGESH RAO AND ORS.

FEBRUARY 19, 1997

B

[K. RAMASWAMY AND S. SAGHIR AHMAD, JJ.]

*Code of Civil Procedure, 1908 :*

C

*Or. XXI, Rules 64, 90—Sale in execution of a decree—Application for setting aside the sale on ground of non-compliance of mandatory requirement—Held, since the High Court has found that procedural compliance of Or. XXI, R. 64 was not adhered to which is a mandatory requirement, and the sale consideration of the properties was in excess of the execution, High Court is justified in confirming the order of appellate court setting aside the sale.*

D

*Desh Bandhu Gupta v. N.L. Anand & Rajinder Singh, [1991] 1 SCC 131, relied on.*

CIVIL APPELLATE JURISDICTION : Special Leave Petition No. 4557 of 1997.

E

From the Judgment and Order dated 16.7.96 of the Karnataka High Court in C.R.P. No. 5643 of 1990.

Shanta Kr. V. Mahale for P. Mahale for the Petitioner.

F

The following Order of the Court was delivered :

Delay condoned.

G

This special leave petition arises from the judgment and order dated July 16, 1996 passed by the learned Single Judge of the Karnataka High Court in C.R.P. No. 5643 of 1990.

H

The respondent suffered a decree in a sum of Rs. 3,825.85 for recovery of which his property was brought to sale on December 18, 1978 and the petitioner purchased the same for a sum of Rs. 67, 000. An application was filed by the respondent under Order XXI, Rule 90 of the Code of Civil Procedure (CPC) impugning the legality of the sale con-

ducted. The executing Court dismissed the application by order dated August 16, 1990. On appeal, the appellate Court set aside the order of the executing Court and allowed the petition declaring that the sale was illegal. On revision, the High Court by the impugned order has confirmed the same. The finding recorded by the appellate Court and the High Court is that non-compliance of the procedure required under Order XXI, Rule 64, CPC had vitiated the sale. A B

It is contended for the petitioner that the executing Court had found that the adequacy of consideration is not a ground for setting aside the sale but the appellate Court and the High Court have not gone into that aspect of the matter. The appellant having purchased the property valued in the proclamation at Rs. 85,000, the sale for Rs. 67,000 was adequate and, therefore, the sale could not be set aside. We find no force in the contention. It is seen that the High Court has noted that the procedural compliance of Order XXI, Rule 64, CPC was not *adhered* to which is a mandatory requirement as held by this Court in *Desh Bandhu Gupta v. N.L. Anand & Rajinder Singh*, [1991] 1 SCC 131. Equally the sale consideration of the property was in excess of the execution. Under these circumstances, the High Court is justified in confirming the order of the appellate Court setting aside the sale. C D

The Special Leave Petition is accordingly dismissed. E

R.P.

Petition dismissed.