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JANATHA TEXTILES & ORS.

v.

TAX RECOVERY OFFICER & ANR.

(Civil Appeal No.6539 of 2003)

MAY 16, 2008

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[ASHOK BHAN AND DALVEER BHANDARI, JJ.]

Income Tax:

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Auction sale of attached property for recovery of debt – Registered partnership firm – In arrears of tax – For recovery of outstanding dues, agricultural land owned by partners attached and sold in public auction – Sale challenged on various grounds – Rights of bona fide purchaser for value – Held: In a third party auction, purchaser’s interest in the auctioned property continues to be protected notwithstanding that the underlying decree is subsequently set aside or otherwise – Clear distinction between a stranger who is a bona fide purchaser of the property at an auction sale and a decree holder purchaser at a Court auction – Strangers to the decree are afforded protection by Court because they are not connected with the decree.

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Appellant No.1 is a registered firm with four partners. The firm and its partners were in arrears of tax. For recovery of the outstanding dues, agricultural land owned by the partners of Appellant No.1 firm were attached and sold in public auction. The sale was confirmed in favour of Respondent No.2 who offered the highest price. Appellant challenged the sale by filing writ petition before the High Court. The judgment passed by the High Court is challenged in the present appeal.

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The Appellants contended that even though they had filed objections at various stages of the notice issued for the auction sale, but Respondent-department without dis-

posing of the said objections proceeded with the sale and, therefore, on that ground the sale conducted by Respondent-department was illegal and unsustainable. The Appellants further contended that with reference to the relevant assessment year, the application for waiver of interest was pending before the authorities and the stay application filed before the Commissioner was also not disposed of, and, hence on that count also, the sale conducted by Respondent-department was illegal and unsustainable. The Appellants contended that the High Court had failed to notice that the nature of the land in the auction notice was wrongly mentioned as dry lands when in fact the said lands were mango orchards and hence the auction ought to be vitiated on this ground. The Appellants challenged the sale also on the ground that though they received the notice of demand as defaulters in their individual capacity and also as partners of the firm, but Respondent-department had failed to give notice of demand to them *qua their* share in the partnership firm.

Respondent No.2, on the other hand, contended that the said lands were agricultural dry lands and there were no mango gardens as alleged by the appellants though there were few mango trees scattered all over the land. He stated that it was totally incorrect to suggest that the auction sale did not fetch the actual market value of the property. Respondent No.2 further contended that he was a bona fide purchaser of the property for value and he had purchased the said property in a valid auction and he could not be disturbed according to the settled legal position.

Dismissing the appeal, the Court

HELD:1.1. In a third party auction, purchaser's interest in the auctioned property continues to be protected notwithstanding that the underlying decree is subsequently set aside or otherwise. [Para 18] [1155-C]

A 1.2. There is a clear distinction between a stranger
who is a bona fide purchaser of the property at an auc-
tion sale and a decree holder purchaser at a Court auc-
tion. The strangers to the decree are afforded protection
by the Court because they are not connected with the
B decree. Unless the protection is extended to them, the
Court sales would not fetch market value or fair price of
the property. [Para 26] [1158-E-F]

Janak Raj v. Gurdial Singh & Anr. (1967) 2 SCR 77;
Gurjoginder Singh v. Jaswant Kaur (Smt.) & Another (1994) 2
C **SCC 368**; *Padanathil Ruqmini Amma v. P. K. Abdulla (1996)*
7 SCC 668 and *Ashwin S. Mehta & Anr. v. Custodian & Oth-*
ers (2006) 2 SCC 385 – relied on.

Nawab Zain-Ul-Abdin Khan v. Muhammad Asghar Ali
D *Khan & Ors. (1887) 15 I.A. 12* – referred to.

2. In the present case, the view taken by the High
Court in the impugned judgment is eminently just and fair.
No interference is therefore called for. [Para 27] [1158 G]

E CIVILAPPELLATE JURISDICTION : Civil Appeal No. 6539
of 2003

From the final Judgment and Order dated 6.9.2001 of the
High Court of Judicature of Andhra Pradesh at Hyderabad in
Writ Petition No. 22038 of 1996

F Ramji Srinivasan, Lalit Chauhan, Sumit Goel and
Somanadri Goud (for M/s. Parekh & Co.) for the Appellants.

B. Datta, ASG., Rajiv Dutta, Shabu Sreedharan (for B.V.
Balaram Das) Misha and Niha Bhasin (for M/s. Suresh A. Shroff
G & Co.) for the Respondents.

The Judgment of the Court was delivered by

H **DALVEER BHANDARI, J.** 1. This appeal is directed
against the judgment of the Division Bench of the High Court of
Andhra Pradesh at Hyderabad passed in writ petition No.22038

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of 1996 on 6.9.2001.

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2. The short question which arises for consideration in this appeal is whether the Income Tax Department is justified in auctioning the attached property for recovery of debt?

3. Brief facts which are necessary to dispose of this appeal are as under:

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The appellant M/s Janatha Textiles is a registered firm with four partners viz. Radhey Shyam Modi, Pawan Kumar Modi, Padmadevi Modi and Indira Chirmar. The firm and its partners were in arrears of tax for the assessment years 1985-86, 1986-87, 1987-88, 1989-90. All the demands pertaining to assessment years 1986-87 to 1989-90 have been stayed by various Income Tax Authorities and these demands were never enforced for collection. The demand pertaining to assessment year 1985-86 was alone enforced.

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4. The agricultural lands owned by the partners of the appellant firm at Bodametlapalem had been attached and sold in public auction on 5.8.1996 after following the entire procedure laid down under second schedule to the Income Tax Act, 1961 (hereinafter referred to as "the 1961 Act"). Nine people participated in the public auction held on 5.8.1996. The sale was confirmed in favour of L. Krishna Prasad who offered the highest price. No procedural irregularity or illegality in public auction process was even alleged by the appellants.

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5. A demand of Rs.7,84,072/- for the assessment year 1985-86 was initially raised against the appellant firm. By virtue of grant of partial relief in the appeal, the demand was reduced to Rs.4,65,174/- and as against the said amount, the appellant firm paid only Rs.4,34,927/- leaving a balance of Rs.30,247/-. In addition to this, there was demand of Rs.5,65,538/- raised by virtue of levy of penalty imposed under section 271(1)(c) of the 1961 Act for the said assessment year. The levy was confirmed in appeal by the Commissioner of Income Tax (Appeals). Further demands were also raised for a sum of Rs.2,82,160/-,

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A Rs.3,42,518/- and Rs.2,86,075/- at the hands of individual assessment of appellant nos.2, 3, and 4 respectively. In the assessment year 1985-86, partial relief was granted and ultimately quantified the amount due from the appellant firm and its partners. After adjusting the amounts paid, the amount due as on the date of auction for the assessment year 1985-86 stood at Rs.4,99,133/-. In addition to these arrears, an amount of Rs.7,56,017 fell due by way of interest. Thus, a total amount of Rs.12,55,150/- was due from the appellants for the assessment year 1985-86 towards tax, interest and penalty.

C 6. It may be pertinent to mention that the demands relating to assessment years 1986-87 to 1989-90 have never been enforced because of the various stay orders by the different Income Tax authorities.

D 7. Even after issuance of sale proclamation, the respondent-department issued communication in SR No.2/94 dated 15.7.1996 informing the appellants that a sum of Rs.5,68,913/- was due as on that date towards tax, interest and penalty under the 1961 Act. The said amount, however, does not include interest payable under section 220(2) of the 1961 Act. The appellant firm acknowledged receipt of the letter on 17.7.1996 and had not contradicted the quantum of tax and interest as mentioned in the said letter. It was made clear that the demand for the assessment year 1985-86 alone was being enforced. Therefore, it was absolutely no warrant for the appellant to mix up the said demands relating to the assessment year 1985-86 in this appeal. According to the records of the Income Tax Department, the net amount of tax, interest and penalty due for the assessment year 1985-86 as on the date of auction stood at Rs.12,55,150/- and hence the respondent-department was fully justified in auctioning the property of the appellants to recover its outstanding dues.

H 8. Learned counsel for the appellants contended that even though they had filed objections at various stages of the notice issued for the auction sale, but the respondent-department with-

out disposing of the said objections proceeded with the sale and, therefore, even on that ground the sale conducted by the respondent-department was illegal and unsustainable. The appellants further submitted that with reference to the assessment year 1985-86, the application for waiver of interest was pending before the authorities and further the stay application filed before the Commissioner was not disposed of. Even on that count also the sale conducted by the respondent-department on 5.8.1996 was illegal and unsustainable. A
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9. It was categorically mentioned on behalf of the respondent-department that the sale proceedings were initiated continued only with reference to arrears relating to the assessment year 1985-86. C

10. The appellants contended that the High Court has failed to notice that the nature of the lands in the auction notice was wrongly mentioned as dry lands. In fact the said lands were a mango orchard and building structure and of much higher value. The auction ought to be vitiated on this ground alone. D

11. Learned counsel for the appellants also submitted that the appellants have received the notice of demand as defaulters in their individual capacity and also as the partners of the firm, however, the respondent-department has failed to give notice of demand to the appellants qua their share in the partnership firm. They did not receive the notices indicating their respective shares. The appellants have raised hyper technical ground. Admittedly, no prejudice of any kind has been caused to the appellants when notices were received individually by each partner of the firm both in their individual capacity and in the capacity as a partner of the firm. This argument of the appellants is devoid of any merit and is accordingly rejected. E
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12. Learned counsel for the respondent-department submitted that it is not the case of the assessee appellants that they do not owe the amount to the respondent-department towards tax for the assessment year 1985-86. The appellants also failed to make out the case that the proper procedure which H

A has been laid down has not been followed by the respondent-department in recovering its outstanding amount. It was asserted on behalf of the respondent-department that the amount fetched in the public auction was more than reasonable.

B 13. The reserve price and the amounts fetched in the auction are mentioned hereunder:

Name	Reserve price fixed by the assessing officer (with the prior approval of Dy. Commissioner)	Sale Value
Pawan Kumar	89,800	1,67,800
Radheshyam Modi	96,000	1,84,400
Padmadevi Modi	40,000	76,600

C 14. The appellants had never complained about fixing of the reserve price before holding of auction, though they were intimated of the same through sale proclamation.

E 15. In pursuance to the notice issued by this court, respondent-department filed the counter affidavit. Respondent no. 2 also filed a separate counter affidavit. Respondent no. 2 in the counter affidavit stated that it is totally incorrect to suggest that the auction sale did not fetch the actual market value of the property. Respondent no.2 also mentioned in the counter affidavit that the said lands are agricultural dry lands and there are no mango gardens as alleged by the appellants. There are however few mango trees scattered all over the land.

G 16. Respondent-department in the counter affidavit stated that the appellant firm had alternate efficacious remedy by way of filing a petition under rules 60 and 61 of the Second Schedule to the 1961 Act. The appellant ought to have availed of the statutory remedy for ventilating its grievances instead of filing a petition before the High Court.

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17. There is another very significant aspect of this case, which pertains to the rights of the bona fide purchaser for value. It was asserted that respondent no. 2 is a bona fide purchaser of the property for value. It was further stated that he had purchased the said property in a valid auction and he cannot be disturbed according to the settled legal position.

18. It is an established principle of law that in a third party auction purchaser's interest in the auctioned property continues to be protected notwithstanding that the underlying decree is subsequently set aside or otherwise. This principle has been stated and re-affirmed in a number of judicial pronouncements by the Privy Council and this court. Reliance has been placed on the following decisions.

19. The Privy Council in *Nawab Zain-Ul-Abdin Khan v. Muhammad Asghar Ali Khan & others* (1887) 15 I.A. 12 for the first time crystallized the law on this point, wherein a three Judge Bench held as follows:

"A great distinction has been made between the case of bona fide purchasers who are not parties to a decree at a sale under execution and the decree-holders themselves. In Bacon's Abridgment, it is laid down, citing old authorities, that "If a man recovers damages, and hath execution by fieri facias, and upon the fieri facias the sheriff sells to a stranger a term for years, and after the judgment is reversed, the party shall be restored only to the money for which the term was sold, and not to the term itself, because the sheriff had sold it by the command of the writ of fieri facias." So in this case, those bona fide purchasers who were no parties to the decree which was then valid and in force, had nothing to do further than to look to the decree and to the order of sale."

20. In the case of *Janak Raj vs. Gurdial Singh & Another* (1967) 2 SCR 77, the Division Bench comprising Justice Wanchoo and Justice Mitter held that in the facts of the said case the appellant auction-purchaser was entitled to a confir-

A mation of the sale notwithstanding the fact that after the holding of the sale, the decree was set aside. It was observed:

B “The policy of the Legislature seems to be that unless a stranger auction-purchaser is protected against the vicissitudes of the fortunes of the suit, sales in execution of the interest of the borrower and the creditor alike if sales were allowed to be impugned merely because the decree was ultimately set aside or modified.”

C 21. In the case of *Gurjoginder Singh v. Jaswant Kaur (Smt.) & Another* (1994) 2 SCC 368, this court relying on the judgment rendered by the Privy Council held that the status of a bona fide purchaser in an auction sale in execution of a decree to which he was not a party stood on a distinct and different footing from that of a person who was inducted as a tenant by a decree-holder-landlord. It was held as follows:

E “A stranger auction purchaser does not derive his title from either the decree-holder or the judgment-debtor and therefore restitution may not be granted against him but a tenant who obtains possession from the decree-holder landlord cannot avail of the same right as his possession as a tenant is derived from the landlord.”

F 22. In the case of *Padanathil Ruqmini Amma v. P. K. Abdulla* (1996) 7 SCC 668, this court in para 11 observed as under:

G “11. In the present case, as the *ex parte* decree was set aside, the judgment-debtor was entitled to seek restitution of the property which had been sold in court auction in execution of the *ex parte* decree. There is no doubt that when the decree-holder himself is the auction-purchaser in a court auction sale held in execution of a decree which is subsequently set aside, restitution of the property can be ordered in favour of the judgment-debtor. The decree-holder auction-purchaser is bound to return the property. It is equally well settled that if at a court auction sale in

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execution of a decree, the properties are purchased by a bona fide purchaser who is a stranger to the court proceedings, the sale in his favour is protected and he cannot be asked to reconstitute the property to the judgment-debtor if the decree is set aside. The ratio behind this distinction between a sale to a decree-holder and a sale to a stranger is that the court, as a matter of policy, will protect honest outsider purchasers at sales held in the execution of its decrees, although the sales may be subsequently set aside, when such purchasers are not parties to the suit. But for such protection, the properties which are sold in court auctions would not fetch a proper price and the decree-holder himself would suffer. The same consideration does not apply when the decree-holder is himself the purchaser and the decree in his favour is set aside. He is a party to the litigation and is very much aware of the vicissitudes of litigation and needs no protection."

23. In Para 16, the court further elaborated the distinction between the decree-holder auction purchaser and a stranger who is a bona fide purchaser in auction. Para 16 reads as under:

"16. The distinction between a stranger who purchases at an auction sale and an assignee from a decree-holder purchaser at an auction sale is quite clear. Persons who purchase at a court auction who are strangers to the decree are afforded protection by the court because they are not in any way connected with the decree. Unless they are assured of title; the court auction would not fetch a good price and would be detrimental to the decree-holder. The policy, therefore, is to protect such purchasers. This policy cannot extend to those outsiders who do not purchase at a court auction. When outsiders purchase from a decree-holder who is an auction-purchaser clearly their title is dependent upon the title of decree-holder auction-purchaser. It is a defeasible title liable to be defeated if the decree is set aside. A person who takes an assignment of the property from such a purchaser is expected to be

A aware of the defeasibility of the title of his assignor. He has
not purchased the property through the court at all. There is,
therefore, no question of the court extending any protection
to him. The doctrine of a bona fide purchaser for value also
cannot extend to such an outsider who derives his title
B through a decree-holder auction-purchaser. He is aware or
is expected to be aware of the nature of the title derived by
his seller who is a decree-holder auction-purchaser.”

24. In the case of *Ashwin S. Mehta & Another v. Custodian & Others* (2006) 2 SCC 385, this court whilst relying upon
C the aforementioned two judgments stated the principle in the
following words:

“In any event, ordinarily, a bona fide purchaser for value in
an auction sale is treated differently than a decree holder
D purchasing such properties. In the former event, even if
such a decree is set aside, the interest of the bona fide
purchaser in an auction sale is saved.”

25. We have heard the learned counsel for the parties at
length and have perused the material documents on record.

E 26. Law makes a clear distinction between a stranger who
is a bona fide purchaser of the property at an auction sale and
a decree holder purchaser at a court auction. The strangers to
the decree are afforded protection by the court because they
are not connected with the decree. Unless the protection is ex-
F tended to them the court sales would not fetch market value or
fair price of the property.

27. In our opinion, the view taken by the High Court in the
impugned judgment is eminently just and fair. No interference
G is therefore called for.

28. The appeal being devoid of any merit is accordingly
dismissed. In the facts and circumstances of the case, we di-
rect the parties to bear their own costs.

H B.B.B.

Appeal dismissed