

Sabulal and Others Vs. Kunnamma and Others

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Court : Karnataka

Decided On : Sep-27-1999

Reported in : ILR1999KAR4664; 2000(6)KarLJ397

Judge : Kumar Rajaratnam, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 21, Rules 64, 72, 84, 85, 89 and 90

Appeal No. : Civil Revision Petition No. 662 of 1995

Appellant : Sabulal and Others

Respondent : Kunnamma and Others

Advocate for Def. : Sri Lakshmipathy Reddy and ;Sri R.A. Devanand, Adv.

Advocate for Pet/Ap. : Sri K.V. Lakshminarasimhan, Adv.

Judgement :
ORDER

Kumar Rajaratnam, J.

1. This is a judgment-debtor's revision petition. The judgment-debtor-Sabulal has filed this revision petition against the order dated 2-1-1995, passed by the Principal Civil Judge, Bangalore Rural District, Bangalore in M.A. No. 61 of 1993

(Annexure-D) dismissing the appeal filed by the petitioner-Sabulal against the order passed by the Munsiff, Anekal dated 30-3-1993 (Annexure-C). During the pendency of this revision, the petitioner-Sabulal died and his legal heirs have come on record as petitioners 1 to 7.

2. The facts of this case, very briefly, are as follows:

The respondents 1 to 6 had filed a suit in S.C. No. 1269 of 1985 against the petitioner for recovery of Rs. 5,141.20 paise. The said suit was decreed by the Trial Court. The respondents 1 to 6 had filed Ex. P. No. 5 of 1986 before the Munsiff Court, Anekal.

3. It is submitted that while settlement negotiations were going on in the execution proceedings, the Trial Court attached the immovable property of Sabulal (deceased petitioner) and auctioned the property. Later, the auction purchaser (respondent 8 in this petition) had filed a memo on 19-1-1991 as per Annexure-B withdrawing his 'claim on the property.

4. Thereafter the decree-holders had filed a memo stating about the receipt of the amount from the petitioner-Sabulal on different dates. It is further submitted that the petitioner-Sabulal and his brother Sattar Sab had filed I.A. No. 15 to set aside the alleged auction sale dated 9-1-1991. That application was dismissed by the Trial Court on the ground that Sattar Sab was not a party in the suit and Sabulal was the only absolute owner and in possession of the suit property.

5. Aggrieved by that order the petitioner-Sabulal filed an appeal in M.A. No. 51 of 1993 before the Lower Appellate Court, Bangalore. Sattar Sab the brother of the petitioner-Sabulal had also filed an appeal in M.A. No. 62 of 1993 before the Lower Appellate Court. The Appellate Court stayed the execution proceedings and directed the petitioner to deposit the balance decretal amount before the Trial Court. Accordingly, the petitioner had deposited Rs. 6,585/- on 8-6-1993 as per the R.O. No. 341518. The learned Principal Civil Judge dismissed the appeal as per Annexure-D.

6. Aggrieved by the impugned orders the petitioner has preferred this revision petition.
7. In this case the respondents 1 to 6 filed Ex. P. No. 5 of 1996 for the recovery of a sum of Rs. 6,022.50 paise against the judgment-debtors. The judgment-debtor 1's property bearing Survey No. 288/1 measuring 2 acres 33 guntas situated in Haragadde Village, Jigani Hobli, Anekal Taluk was attached to be sold in auction in Ex. P. No. 5 of 1986. The verified statement of the decree-holders itself mentions that the property was worth more than one lakh rupees. Unfortunately, sale proclamation was issued bringing the entire property for sale.
8. On 8-1-1991, respondent 8 was the highest bidder for a total bid amount of Rs. 35,000/-. The 8th respondent deposited 1/4th amount of Rs. 8,750/- as required under Order 21, Rule 84 of the CPC. On 19-1-1991, curiously 8th respondent filed a memo withdrawing his claim and requesting the Court to refund the amount which was deposited in Court in Ex. P. No. 5 of 1986. On 2-1-1992 the 8th respondent (auction purchaser) went back on the memo and wanted to seek permission to deposit the balance amount and for confirmation of the sale in his favour. This was done after a lapse of more than 11 months. On 2-1-1992, the Court permitted the 8th respondent to deposit the balance amount of Rs. 26,250/-. On 3-1-1992 the balance amount was deposited.
9. On 5-2-1992, the petitioner (Sabulal)-judgment-debtor filed an application in I.A. No. 14 under Order 21, Rules 89 and 90 read with Section 151 of the CPC for setting aside the sale on the ground of several irregularities in the conduct of the sale. The decree-holders did not resist the application filed by the petitioner. It was the auction purchaser-respondent 8, who resisted the application. The application filed by the petitioner in I.A. No. 14 under Order 21, Rules 89 and 90 was dismissed with cryptic order that no evidence recorded. Heard the I.As and dismissed on the ground that no material has been placed before the Court as to how and in what manner irregularities have been committed in publishing and conducting the sale.
10. The appeal preferred by the petitioner was also dismissed in M.A. No. 61 of 1993 holding that there is nothing on record to show that the auction sale suffered

from any irregularity.

11. Learned Counsel for the petitioners Mr. K.V. Lakshminarasimhan submitted that the Court had no jurisdiction to extend time prescribed under Order 21, Rule 85 of the CPC. In other words it was submitted that if the auction purchaser does not deposit 3/4th of the balance amount required within the statutory period, the auction itself will become a non est and the entire sale proceedings in a nullity. Order 21, Rule 85 of the CPC reads as follows:--

'Time for payment in full of purchase money. The full amount of purchase money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property:

Provided, that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under Rule 72'.

12. A reading of this section indicates that the full amount shall be paid by the purchaser into Court on or before the 15th day of the sale. The sale took place on 8-1-1991 and the balance amount was paid on 2-1-1992 nearly one year after the sale. This Court in K. Harnatha Rao v Smt. Parvathamma and Others, has held that non-payment of the balance amount within fifteen days renders the sale proceedings a nullity. On this ground alone the impugned orders are liable to be set aside.

13. Another curious aspect of this case is that the auction purchaser-respondent 8 filed a memo withdrawing his claim and requested the Court to refund the amount. When the auction purchaser himself was not interested in purchasing the property, it is not known how he was permitted to pay the balance amount by the Court nearly one year after the sale.

14. Another aspect of this case is that the decree-holders themselves stated that the property is worth more than rupees one lakh and yet the property was sold for Rs. 35,000/-. As held by the Supreme Court in Ambati Narasayya v M. Subba Rao, there is a duty cast on the executing Court to determine whether it is possible to divide the agricultural property and bring only that portion of the property for

sale which would meet the decretal amount. This was not done in this case. On this ground also the impugned orders are liable to be set aside.

15. In these circumstances, the impugned orders as well as the auction sale dated 8-1-1991 are set aside.

The petitioners are directed to deposit any interest amount that may be due to the decree-holders from 8-6-1993 till the deposit is made in the Trial Court.

In the extraordinary facts and circumstances of the case and taking into account that the auction purchaser had sought refund of the amount within seven days from the auction sale, the execution Court is directed to refund the amount deposited by the auction purchaser.

The petitioners are directed to deposit the amount due as interest on the decretal amount within four weeks from the date of receipt of this order.

The CRP is allowed accordingly. No costs.

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