

Suresh Kumar Bhandari Vs. Ramesh Kumar Bhandari and anr.

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Court : Andhra Pradesh

Decided On : Aug-09-2002

Reported in : 2003(3)ALT240

Judge : V. Eswaraiah, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rule 90

Appeal No. : C.R.P. No. 4903 of 2001

Appellant : Suresh Kumar Bhandari

Respondent : Ramesh Kumar Bhandari and anr.

Advocate for Def. : Kishore Rao, Adv. for Respondent No. 1 and ;C. Jayashree Sarathy, Adv. for Respondent No. 2

Advocate for Pet/Ap. : M.V.S. Suresh Kumar, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

V. Eswaraiah, J.

1. This Civil Revision Petition is filed against the order dated 04-10-2001 made in C.M.A. No. 235/2001 on the file of the learned II Additional Chief Judge, City Civil

Court, Hyderabad.

2. The 2nd respondent herein is the appellant in C.M.A. No. 235/2001. The petitioner herein is the defendant in O.S. No. 3799/1989 on the file of the V Junior Civil Judge, City Civil Court, Hyderabad. The 1st respondent herein is the plaintiff in the said suit. The 2nd respondent is the auction purchaser of the suit schedule property. The petitioner herein filed I.A.No. 369/2001 to set aside the sale conducted on 08-12-1999 in the name of the 2nd respondent and the said I.A. was allowed by setting aside the sale conducted on 8-12-1999 by order dated 10-07-2001 on the ground of inadequacy of price fetched due to irregularities and fraud in conducting the sale by the learned V Junior Civil Judge, Hyderabad. Aggrieved by the same, the auction purchaser - 2nd respondent herein filed C.M.A. No. 235/2001 and the learned II Additional Chief Judge allowed the same and dismissed I.A.No. 369/2001. Against the said order, the defendant in the suit filed this Civil Revision Petition.

3. Brief facts of the case are as follows:--The 1st respondent and the petitioner herein are the brothers. The 1st respondent filed O.S.No. 3799/1989 for partition of his half share in the suit schedule property bearing No. 15-7-318 and 15-7-319 situated at Begum Bazar, Hyderabad was decreed. The 1st respondent filed I.A.No. 652/1988 for passing a final decree. In the said application an Advocate Commissioner was appointed to sell the suit schedule property. The Advocate Commissioner issued sale proclamation and the first publication was made on 10-12-1998, 2nd publication was made on 08-07-1999, the 3rd publication was made on 02-09-1999 and the 4th publication was made on 25-10-1999. The auction was conducted by the Advocate Commissioner on 08-12-1999 wherein the 2nd respondent herein was declared as the highest bidder. Prior to 08-12-1999, the auction was conducted on 10-11-1999 pursuant to the sale proclamation and paper publication dated 25-10-1999. Four bidders participated by depositing Earnest Money Deposit amount of Rs. 1,00,000/- each and one Mr. Bhagwan Attal was declared as the highest bidder and his bid was Rs. 6,00,000/- but he has not deposited the 1/4th of the amount as per the auction notice and therefore, as the highest bidder failed to produce the demand draft for 1/4th amount within the given time, the bid was cancelled and adjourned to future date for public auction on 08-

12-1999. The signature of the petitioner herein and his counsel and also the signature of the 1st respondent herein was also obtained in the said proceedings. Thus, the plaintiff and the defendant i.e., the petitioner and the 1st respondent were aware about the adjournment of the auction proceedings for conducting the auction in respect of the sale of the said house. However, the Advocate Commissioner issued notice dated 26-11-1999 to the counsel for the petitioner and the respondent duly fixing the date of auction on 08-12-1999 at 11-00 a.m. Accordingly, the auction was conducted. In the auction that was conducted five bidders participated including the petitioner and the 1st respondent, the 1st respondent deposited a sum of Rs. 1,00,000/- as a condition precedent to participate in the auction but the petitioner herein requested time to deposit a sum of Rs. 1,00,000/- and three others also deposited Rs. 1,00,000/- each, the auction was conducted in the presence of the petitioner and the 1st respondent and the other 3 bidders. Final bid of one of the bidders Mr. Srinarayana Das was Rs. 10,06,000/- and the final bid on behalf of Smt. Nani Devi was Rs. 10,25,000/-. It is recorded in the auction proceedings by the Advocate Commissioner that Smt. Nani Devi represented by the 1st respondent herein and she is the highest bidder in the public auction conducted on 08-12-1999 at the sale price of Rs. 10,25,000/- and the highest bidder was directed to produce the pay order by way of banker cheque of Rs. 2,60,000/- in favour of the VII Junior Civil Judge, Hyderabad towards 1/4th amount of the bid value and to deposit the balance 3/4th amount into court on or before 16-12-1999. The Earnest Money Deposit amount deposited by all the bidders was returned. It is stated that Smt. Nanidevi represented by the 1st respondent/plaintiff received EMD on her behalf and somebody signed as Smt. Nani Devi. It is further recorded by the Advocate Commissioner that the 1st respondent (plaintiff) and his wife representing Smt Nani Devi - the highest bidder produced account payee pay order No. 125202 dated 08-12-1999 of the State Bank of Hyderabad for Rs. 2,60,000/- towards 1/4th amount of the bid value of Rs. 10,25,000/- and the said proceedings were signed by the 1st respondent and the petitioner herein left the premises after the public auction was over. The proceedings dated 13-12-1999 of the Advocate Commissioner discloses that the 1st respondent and his wife came with two other gentlemen along with Smt. Nani Devi, her husband (Sri Ram Vallabh Bhati) and Smt. Nani Devi aged about 44

years, occ: Household R/o. 3-5-145/E16, King Koti, Hyderabad and she affixed her LTI on the said proceedings on 13-12-1999 in the presence of the 1st respondent and two others. It is further stated that earlier signature against the name of Smt. Nani Devi was that of Smt. Saroja, advocate practising in Maharashtra who is sister-in-law of the 1st respondent herein.

4. Thereafter the Advocate Commissioner filed a report on 16-12-1999 stating that there is impersonation of the auction purchaser and the entire auction is vitiated. Though a memo was filed, the learned judge posted the matter on 22-12-1999 for depositing the balance of the sale consideration. It is stated that the petitioner herein filed a memo not to confirm the sale in view of the memo filled, by the Advocate Commissioner on 16-12-1999. In spite of the said memo, the matter was posted to 28-12-1999 for confirmation of sale and, in the meanwhile, the petitioner filed C.R.P.No. 424/2000 which was disposed of on 20-04-2000 directing the trial court to consider the objection of the petitioner and pass appropriate orders. Then the petitioner filed I.A.No. 53/2000 to set aside the sale held on 08-12-1999. The sale was confirmed by order dated 03-05-2000. Aggrieved by the same, the petitioner filed C.R.P.No. 1990/2000 and the same was allowed by setting aside the order dated 03-05-2000 and remanded the matter for hearing both I.A. Nos. 652/1995 and 53/2000 and dispose of the same within a period of one month. The learned VII Junior Civil Judge, Hyderabad dismissed I.A.No. 53/2000. Then the petitioner filed C.M.A. No. 142/2000 on the file of the III Additional Chief Judge, City Civil Court, Hyderabad and the said C.M.A. was allowed by order dated 03-07-2000 remitting the matter to the trial Court. The petitioner filed transfer C.M.P. No. 42/2000 to transfer I.A.No. 53/2000 and I.A.No. 652/1996 to another court and accordingly transfer C.M.P. was allowed and the matter was transferred to V Junior Civil Judge, City Civil Court, Hyderabad and I.A.No. 53/2000 was renumbered as I.A.No. 396/2001. I.A.No. 369/2001 was allowed by the learned V Junior Civil Judge, City Civil Court, Hyderabad against which the 2nd respondent filed C.M.A. and the same was allowed dismissing I.A. No. 652/1995 against which this Civil Revision Petition is filed.

5. The learned counsel for the petitioner - defendant submits that the trial court rightly allowed I.A.No. 369/2001 categorically recording the finding that the 1st

respondent who participated in the auction had offered for Rs. 11,00,000 the highest bid of the 2nd respondent allowed @ Rs. 10,25,000/- and some body impersonated the 2nd respondent and thus there was a fraud, and therefore, the auction proceedings have been rightly set aside. But the lower appellate court without any justification whatsoever allowed the C.M.A. filed by the 2nd respondent confirming the auction in her favour.

6. The question that arises for consideration in this civil revision petition as to whether there is any fraud played by the 2nd respondent and whether there is any evidence to show that the highest bid is inadequate sale consideration.

7. For the disposal of I.A.No. 369/2001, the trial court examined the petitioner herein as P.W.1. Advocate Commissioner was examined as P.W.3. The 1st respondent herein is examined as R.W.1 on behalf of the 2nd respondent herein and Smt. Saroja was examined as R.W.2. It is stated by Smt. Saroja that the 1st respondent herein is her brother-in-law and her elder sister is the wife of the 1st respondent. She was present at the time of the auction conducted on 08-12-1999 and she participated in the auction on behalf of Smt. Nani Devi. Smt. Nani Devi gave her Rs. 1,00,000/- towards EMD and she has deposited the same with the Advocate Commissioner. The Advocate Commissioner accepted the highest bid offer on behalf of Smt. Nani Devi. 1/4th of the bid amount was paid by way of pay order and it was handed over to the Advocate Commissioner and the same was recorded and the EMD amount was returned and she mentioned the name of Smt. Nani Devi as she was authorized to represent Smt. Nani Devi. She mentioned the name of Smt. Nani Devi against the return/receipt of the deposit amount. She also made certain allegations against the Advocate Commissioner the way in which the interpolations made by him in the auction proceedings. But that may not be necessary for the purpose of disposal of this revision petition. The 1st respondent herein also stated in his deposition that the Advocate Commissioner accepted the highest bid offer given on behalf of Smt. Nani Devi and Rs. 1,00,000/- was deposited through him by Smt. Nani Devi. The Advocate Commissioner gave back Rs. 1,00,000/- to him belonging to Smt. Nani Devi and received the pay account payee pay order of Rs. 2,60,000/- towards 1/4th of the bid amount. On 13-12-1999, Smt. Nani Devi herself went to the Advocate Commissioner along with

others and signed the proceedings. Smt. Nani Devi deposited the balance amount into the court on 16-12-1999 within the stipulated time and thus Smt. Nani Devi became the auction purchaser as she deposited the total sale consideration of Rs. 10,25,000/-. Though he has stated in his cross-examination that he has made a bid to purchase the house for Rs. 11,00,000/- and it is not stated on what date he has given the offer and admittedly he has not deposited the amount of Rs. 1,00,000/- for his participation in the auction, and therefore, the statement in the cross-examination that he has made bid to purchase the said house for Rs. 11,00,000/- is without any evidence on record to show that he has made such an offer. Though the petitioner stated several things in his deposition but the same is without any proof whatsoever. The petitioner herein had participated in the auction but he did not offer any amount, as he has not deposited the amount of Rs. 1,00,000/- to enable him to participate in the auction.

8. It is the case of the 2nd respondent that she authorized Smt. Saroja to participate on her behalf but the 1st respondent claimed himself that he has participated in the auction on behalf of Smt. Nani Devi and the Advocate Commissioner also recorded in his proceedings that the 1st respondent participated on behalf of Smt. Nani Devi. Whether the 1st respondent participated or Smt. Saroja participated in the auction proceedings on behalf of Smt. Nani Devi; the proceedings of the Advocate Commissioner declaring that Smt. Nani Devi is the highest bidder can be vitiated by reason of non-production of authorization letter from Smt. Nani Devi either by the 1st respondent or by Smt. Saroja. Appendix-E Form No. 29 of Civil Procedure Code is a proforma of proclamation of sale, which states that at the sale general public are invited to bid either personally or duly authorized agent. Admittedly, there is no written authorization authorizing either Smt. Saroja or the 1st respondent to participate on behalf of Smt. Nani Devi. The fact remains the Advocate Commissioner accepted the highest bid on behalf of Smt. Nani Devi and also received 1/4th amount on her behalf. Thereafter within the prescribed time Smt. Nani Devi has deposited the entire sale consideration.

9. Whether Smt. Nani Devi played any fraud in the said auction proceedings is a question to be considered. Smt. Nani Devi did not participate in the auction proceedings but the Advocate Commissioner accepted the highest bid of Smt.

Nani Devi said to have been offered through the 1st respondent. Smt. Saroja stated that in fact she has offered the highest bid on behalf of Smt. Nani Devi. The fact that 1/4th bid amount has been accepted on behalf of Smt. Nani Devi, it cannot be said that the highest bid has not been accepted on behalf of Smt. Nani Devi. I have perused the auction notice, which was published on 25-10-1999 proposing to conduct the auction of the said property on 10-11-1999. The auction notice does not impose such a condition that the bidders shall have to give authorization to their agent to participate in the auction. Even if there is such a condition, the Advocate Commissioner should have refused to accept the highest bid on behalf of Smt. Nani Devi without her written authorization authorizing either the 1st respondent or Smt. Saroja. The petitioner herein should have also objected. No one objected for accepting the bid on behalf of Smt. Nani Devi. The highest bid offered on behalf of Smt. Nani Devi was accepted and 1/4th amount on her behalf was deposited and thereafter she also signed the auction proceedings and deposited the entire sale consideration. As already stated, previously auctions were conducted thrice and the last highest bid on the previous occasion was only Rs. 6,00,000/- on 29-09-1999 and on 08-12-1999, four bidders participated and the second highest bid was Rs. 10,06,000/-. Therefore, it cannot be said that the highest bid of Smt. Nani Devi is inadequate sale consideration. However, mere inadequacy of the price is not a ground for setting aside the sale as held by the Apex Court in *Rajender Singh v. Ramdhar Singh*, : [2001]3SCR736 , *Kadiyala Rama Rao v. Gutala Kahna Rao*, (2000) 3 SCC 87 at Para 14 and also by this Court in *S.V. Ramakrishna v. R. Subbamma*, : 2001(5)ALT657 . The Apex Court in *S.A. Sundararajan v. A.P.V. Rajendran*, : [1981]2SCR600 held that by mere irregularities under Order 21 Rule 90 in sale proclamation, the sale cannot be set aside. This Court also in *V.V. Narayan Chetty v. N. Dhanamma*, : AIR 1984 AP159 held that if the proclamation does not give valuation of the judgment debtor (value of the property), the sale is not vitiated. The Apex Court in *Kayjay Industries v. Asnew Drums*, : [1974]3SCR678 held that the material irregularities in conducting the sale i.e., inadequacy of the price is not sufficient to set aside the sale.

10. However, the learned counsel appearing for the petitioner relying on the Appendix-E Form No. 29 of C.P.C. and the judgment of the Apex Court in *Desh Bandhu Gupta v. N.L. Anand and Rajinder Singh*, : (1994)1SCC131 submitted that

in the absence of any authorization, the sale in favour of the highest bidder cannot be accepted. In the said case, the auction purchaser was the husband on his behalf and also on behalf of his wife and the Supreme Court held that no authorization is required to be obtained from the wife to participate on her behalf by the husband, and therefore, held that there is no irregularity in conducting the sale.

11. No doubt, Form No. 29 of Appendix-E stipulates that the person either can participate himself or by his duly authorized agent. In the sale proclamation there is no such a condition for participating by a duly authorized agent. No doubt, it is an irregularity in accepting the bid of Smt. Nani Devi - 2nd respondent herein without her written authorization authorizing either the 1st respondent or Smt. Saroja but the fact remains that her bid was accepted offered on her behalf and 1/4th amount was also received. In fact she also signed the proceedings subsequently. In the absence of any objection by the petitioner or by any of the auction purchasers, it cannot be said that some body impersonated on her behalf. The Advocate Commissioner himself recorded in the auction proceedings that the highest bid on her behalf offered by the 1st respondent is accepted. She came forward before the court and also deposited the entire sale consideration. When the sale was set aside by the trial court, she filed the appeal and the learned II Additional Chief Judge, City Civil Court Hyderabad considering the rival contentions of the respective parties observing certain interpolations made by the Advocate Commissioner rightly allowed the appeal of the 2nd respondent. The lower appellate authority rightly held that small irregularities committed by the Advocate Commissioner in accepting the bid on behalf of the 2nd respondent is not a serious one which goes to the root of the matter and it cannot be said that the highest bid accepted on behalf of the 2nd respondent is inadequate and also it cannot be said that the 2nd respondent played fraud on the court, and therefore, held the sale cannot be set aside.

12. No doubt, the petitioner filed affidavit on 29-07-2002 expressing his willingness to purchase the said property for a sum of Rs. 10,50,000/- and prepared to deposit half of the said amount of Rs. 5,25,000/- towards share of his brother if a reasonable time is granted by this Court. Admittedly, the auction was conducted

on 08-12-1999 and the 2nd respondent deposited the entire amount of Rs. 10,25,000/-. The offer made by the petitioner herein offering Rs. 25,000/- more after 2 1/2 years of the auctions, which shows that the sale held on 08-12-1999, has fetched good amount for the said property. The auction purchaser shall not be penalized for any irregularity said to have been occurred as she did not play any fraud on the court. Whether the bid was offered on her behalf either by the 1st respondent or by Smt. Saroja, it is immaterial to hold that there was a fraud played which led in accepting the bid of the 2nd respondent. The trial court without any justification observed that the price fetched in the auction is inadequate because of irregularity of fraud in conducting the sale held on 08-12-1999. In fact, no fraud has been played by the auction purchaser - 2nd respondent herein and the bid offered on her behalf is the most reasonable which reflects the market value of the said property, and therefore, no prejudice is caused to the petitioner.

13. I, therefore, do not see any reason to interfere with the order under revision in confirming the sale in favour of the 2nd respondent and accordingly the revision petition is dismissed. There shall be no order as to costs.

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