

In Re: Kuppunni

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Court : Chennai

Decided On : Apr-10-1953

Reported in : AIR1954Mad79; (1953)2MLJ411

Judge : Ramaswami, J.

Acts : [Provincial Insolvency Act, 1920](#) - Sections 59 and 68

Appeal No. : Civil Revn. Petn. No. 523 of 1953

Appellant : In Re: Kuppunni

Advocate for Pet/Ap. : C.S. Swaminathan, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Ramaswami, J.

1. This is a civil revision petition which is sought to be filed against the order made by the learned District Judge of South Malabar in C. M. A. No. 18 of. 1952.

2. The facts are: The Official Receiver of Palghat held a sale of the insolvent's properties in I. P. No. 2 of 1943. The undivided. 1/4th share in 21 items of landed property, subject to a possessory mortgage for Rs. 450, was sold to the revision

petitioner before us, Kuppunni for Rs. 1420. The petitioning-creditor filed an application under Section 68, Provincial Insolvency Act to set aside the sale alleging that she had no notice of the sale and that the properties were worth more than the amount which they had fetched at the sale and that she was willing to purchase the properties for Rs. 2000. This petitioning-creditor also deposited the amount of Rs. 2000.

The learned Subordinate Judge of Palghat set aside the sale and ordered a fresh sale with the following condition, viz., that if at a fresh sale a bid over Rs. 2000 was not got the property might be sold to the petitioning-creditor for Rs. 2000 by private treaty. The auction purchaser preferred an appeal contending that there was no fraud, illegality or irregularity in the conduct of the sale by the Official Receiver and that the sale was not liable to be set aside. The learned District Judge dismissed the appeal on the ground that there was no proper notice of the sale to the petitioning-creditor and secondly, that the price fetched in the Official Receiver's sale was such that it merited interference at the hands of the learned Subordinate Judge and deserved no interference at his hands. Hence this civil revision petition.

3. There are no merits in this revision petition at all because as a fact it has been shown that there was no proper notice of the sale to the petitioning-creditor and by reason of which the auction purchaser has very nearly succeeded in knocking off the properties for a low price. Secondly, the refinements sought to be imported into a sale by the Official Receiver drawn from sale held by a civil Court under the provisions of Order 21, Civil P. C. cannot be allowed to be imported. The Official Receiver may sell the property by public auction or by private treaty: -- 'Woonwalla & Co. v. N. C. Macleod', 30 Bom 515 (A); -- 'Entazuddin Sheikh v. Rsmkrishna Banik', AIR 1920 Cal 935 (B). The provisions of the Code of Civil Procedure relating to sales in execution are not applicable to sales by Official Receiver; sale by an Official Receiver is not a 'proceeding' within the meaning of Section 5, Provincial Insolvency Act. It is a sale by the owner and not by the Court: 'AIR 1920 Cal 935 (B)'; --'Moolchand v. MurarilaP, : AIR1914 All212 (C); -- 'Chedalal v. Lachman Prasad', AIR 1917 All 74 (D) and -- 'Narasimhayya v. Veeraraghavulu', AIR 1918 Mad 702 (E).

The Official Receiver has full power to deal with the property that is vested in him in his official capacity but his acts are, subject to the control of the Court, for the receiver is an officer of the Court. Section 68 empowers the insolvent when aggrieved by an act of the receiver to move the Court and on being so moved, the Court will examine the proceedings and decide whether the act of the Official Receiver should be upheld or not 'No doubt the Court will not readily, set aside the sale held by the Official Receiver unless in the circumstances of the case the Court is satisfied that it would not be fair and just that the sale should stand.' No doubt, if fraud or collusion is proved in connection with the sale, that would be a ground upon which the Court could set aside the sale. Or again, if there was material irregularity in the conduct of the sale the Court probably in that case also would be disposed to set aside the sale.

But the Court is not fettered in its discretion to set aside the sale in any case in which it thinks that the sale was neither fair nor a just one: -- 'Venkatachalam v. Merugesan', AIR 1931 Rang 122 (F). The Court's power to set aside a sale is not confined to cases where there has been some 'mala fides' on the part of the receiver or purchaser but also to cases where the action of the receiver is irregular or has prejudiced the general interests of the creditors: -- 'Ramabadrachetti v. Ramaswami Chetti', AIR 1923 Mad 350 (G). In fact the very case relied upon by the learned advocate for the petitioner -- 'Ramaswami Reddiar v. Official Receiver, South Arcot', AIR 1941 Mad 827 (H) is only in line with these decisions cited above. In this case the learned Judge beyond deprecating the practice of inviting bids from creditors after holding a public auction pointed out as follows :

'The Official Receiver of the assets of an insolvent held a sale of a certain property of the insolvent and the highest bid was that of the appellant in whose favour the property was knocked down. In accordance with the practice of the Official Receiver, he said that the sale in the appellant's favour would be subject to such further bids as might be offered by creditors. Subsequently there was an offer by the respondent to the Official Receiver which was only Rs. 7 higher than the appellant's purchase price. Not being fully aware of the various bids that had been made and the circulars he had issued, the Official Receiver confirmed the sale in the appellant's favour and executed a sale deed.

The respondent thereupon moved the District Court in the matter under Section 68 of the Provincial Insolvency Act and prayed that the sale in appellant's favour should be set aside and that the sale should be confirmed in his favour. That Court held the sale to be irregular in that the Official Receiver had made it clear that he had no intention to confirm the sale to the appellant if there were higher bidders among the creditors. Held, that in the circumstances the confirmation of the sale in the appellant's favour was not irregular, there being no contractual obligation on the part of the Official Receiver either to the respondent or to any one else to accept their offers. Held further, that there was no sufficient ground for setting aside the sale in favour of the appellant after the property had been legally conveyed to him by means of a sale deed.'

4. Therefore, beyond showing that the Official Receiver is under no contractual obligations either to accept the highest bid or to any one else to accept their offers and which characteristic distinguishes it from court sales, this decision is of no help to the petitioner in this case, because the sale has been shown to be irregular in the first instance and secondly, it has been shown not to be fair and just and thirdly- it has been shown that the price offered to be paid by the respondent in this petition was nearly 50 per cent more than the price offered by the petitioner and which difference is to the great advantage of the general body of creditors of the insolvent.

5. The order of the learned District Judge merits no interference and this revision petition is dismissed.

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