

Henry Merieu Vs. Official Receiver

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Court : Chennai

Decided On : Mar-27-1935

Reported in : AIR1935Mad907; 159Ind.Cas.244

Appellant : Henry Merieu

Respondent : Official Receiver

Judgement :

Pandrang Row, J.

1. This is an appeal from the order of the District Judge of Madura, dated 19th July 1932, on an application by the Official Receiver of Madura. The application purported to be made under Sections 4, 5 and 51, Provincial Insolvency Act, and Sections 47 and 151, Civil P.C., and the principal prayer therein was that the respondent who is the decree-holder purchaser in execution of the decree obtained by him in O.S. No. 820 of 1923 on the file of the High Court should be directed to pay to the petitioner, that is, the Official Receiver, the sale amount of Rs. 20,520 with interest thereon from the date of sale, namely 14th July 1930.

2. The respondent is a merchant residing in France and he purchased the property of the judgment-debtor after obtaining permission from the Court to bid and also to set-off the purchase price against the amount due to him under the decree. There can be no doubt that it was because he was given permission to set-off along with the permission to bid that he actually bid at the sale and purchased the properties.

Unfortunately the actual sale took place at about 4 p.m. on 14th July 1930, while a little earlier in the day at about 11 a.m. a petition had been filed in another Court in Madura, namely, the Subordinate Judge's Court, to adjudicate the judgment-debtor as an insolvent, and that petition for adjudication was subsequently allowed and the judgment-debtor was adjudicated insolvent. The result of the adjudication under Section 28(7) was that it took effect from the date of the presentation of the petition itself. In other words, at the time when the sale actually took place the judgment-debtor whose property was being sold had already become an insolvent and adjudicated as such in the eye of the law.

3. The sale was held without notice of course to the Official Receiver in whom the property of the insolvent was vested by the order of adjudication with effect from the date of the sale. A sale of this kind ought to have been deemed to be a nullity in view of the decision of the Privy Council in *Raghunath Das v. Sundar Das Khetri* 1914 P.C. 129, which was followed in the subsequent decision reported in *Anantarama Ayyar v. Kuttimalu Kovilamma* 1917 Mad. 924. The learned District Judge however confirmed the sale on 15th March 1932, i.e., over 18 months after the sale, and recorded part satisfaction of the decree in spite of the decree-holder's attempt to resile from the sale. The respondent's main contentions were that the sale to him was expressly subject to the condition that he was to have the right to set-off the purchase price against the decree amount, that the confirmation of the sale was also subject to the same condition as could be seen by the Court's order recording part satisfaction of the decree, and that the Official Receiver was therefore not entitled to demand that the previous order of the Court allowing a set-off and recognizing it should be set aside or to require that the respondent should deposit the purchase-money into Court for payment to the Official Receiver. The learned District Judge was of opinion that the permission given by the Court to set-off was subject to the general provisions of the law, one of which is Section 51, Provincial Insolvency Act. He was further of opinion that

There is no apparent injustice (though there may be much practical inconvenience) in requiring a purchaser to pay the price which he has himself offered for property, merely because he has not been able to adjust the price as he had every reason, to expect.

4. He accordingly held in spite of the previous orders that the respondent should pay to the Official Receiver the purchase money, namely Rs. 20,520, with interest thereon at six per cent. In this appeal, by the respondent two main contentions have been put forward namely, (1) that the sale itself is a nullity and therefore the purchaser should not be called upon to pay the purchase money either into Court or to the Official Receiver, and (2) that if the sale cannot be regarded as a nullity the order allowing set-off and recording part satisfaction of the decree must remain unchanged and the respondent cannot be asked to pay the purchase money into Court or to the Official Receiver. I have already indicated my view as regards the first question, namely, that the sale must be regarded as a nullity. At the time the sale took place the judgment-debtor had lost his title to the property as the property must be deemed to have vested in the Official Receiver. There was moreover no notice of the sale to the Official Receiver.

5. As regards the second question it seems to me that the Court should not have permitted itself at the instance of the Official Receiver to go back upon its previous orders allowing set-off and recording part satisfaction of the decree. If those orders were wrong, they ought to have been appealed against and so long as they were not appealed against, they were final, and the Official Receiver was not entitled to move the same Court which passed those orders to cancel or ignore them to the detriment of the respondent. It is obvious that the respondent bid for the property only because he was permitted to set-off the purchase money against the decree amount. Otherwise he would not have bid at all. It is not right that the Court should hold him to his bid and at the same-time resile from its own permission to set-off the purchase money. In the matter of sales held by it the Court has to observe at least the ordinary standards of honesty; simply because the Court cannot be sued the Court cannot and should not do anything in the matter of sales which savours of chicanery : or injustice. Greater unfairness than what has been ordered to be done there can hardly be; a decree-holder who bid for the judgment-debtor's property on the distinct understanding and with the Court's express permission to set-off the purchase money against the decree amount is now asked to pay the purchase money in cash ignoring the permission to set off. This, I am certain, is a course of conduct which no Court would regard as defensible in the case of a private person, for no private person would be allowed to hold the other party to

his part of the bargain while he himself claims to resile from his part of the bargain; and I do not see any reason why the Court should permit itself to do what would not be defensible in the case of a private person.

6. I am of opinion that apart from legal considerations common honesty requires that the respondent should not be compelled by the Court, in the light of what has happened, to pay to the petitioner such a large sum as Rs. 20,000 odd with interest in cash in spite of the set-off that was allowed by the Court and the satisfaction of the decree recorded by the Court. The formal orders of the Court cannot be ignored and treated as waste paper in this fashion by the very Court which passed them, and it does not make any difference merely because it is invited to do so by an Official Receiver who purports to act for the general benefit of the creditors. The creditors' benefit cannot be an excuse for such a thing : *ausis talibus istis non jura subserviunt*. The appeal should in my opinion be allowed on both the grounds. The order of the Court below is set aside and the appellant will get his costs in this Court and in the Court below from the Official Receiver to be paid out of the estate.