

Natchimuthu Gounder Vs. Thamayanthi

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Court : Chennai

Decided On : Aug-22-1990

Reported in : (1991)345MLJ1

Appellant : Natchimuthu Gounder

Respondent : Thamayanthi

Judgement :

ORDER

Srinivasan, J.

1. There is absolutely no merit in this revision petition which is directed against an order reducing the upset price fixed for the properties which are brought to sale in execution of the decree. Learned Counsel for the petitioner contends that fixation of upset price cannot be done at the whims and fancies of the Court and the Court must do it only on proper evidence. Learned Counsel places reliance on the judgment in Ekimalai Naicker v. Kishtambal Ammal 1987 T.L.N.J. 220 and draws my attention to the following passage:

As observed above, when the Court fixes the upset price, that fixation is only for facilitating the conduct of the sale and to safeguard the interests of the judgment-debtor by fixing a reserve price. The object of fixing the upset price is to fix the lowest sum for which the property which is being auctioned will be sold or in other words, it is the sum from which the bidding may start. The upset price, therefore,

has some relation to the price which the property intended to be sold in the auction is expected to fetch. When the Court fixed the upset price, it cannot do so merely on the ipse dixit of either the judgment-debtor or the decree-holder. What should be the amount to be fixed as the upset price must, therefore, be determined after an objective consideration of all the relevant facts to which the Court must apply its mind, so as to safeguard the interests of the judgment debtor. It is true that for fixing the upset price, no elaborate enquiry may be required to be made, but the upset price cannot also be any figure having no relation whatsoever to the minimum price which the property intended to be sold is expected to fetch at the auction sale. In a case where there is not sufficient material on record to arrive at a figure of the upset price, there is enough power for the Court to make a summary enquiry. Indeed, there is an express provision in Order 21, Rule 66, C.P.C., which enables the Court to summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto for the purpose of ascertaining the matters to be specified in the sale proclamation. The Court must, therefore, have before it the necessary material with regard to the nature of the property, whether the property is agricultural property, the use to which the property was being put, whether the cultivation is dry cultivation or wet cultivation and such other factors which ultimately go to determine the value of the property. In the instant case, there is nothing on the face of the order made by the learned District Munsif, which indicates as to the basis of what circumstances he has determined Rs. 10,000 as the upset price. It is obvious that he had accepted the ipso dixit of the decree holder. As already pointed out, the decree holder, himself had estimated the price of the property at Rs. 15,000. To say the least, the order made by the learned District Munsif is wholly arbitrary in nature and deserves to be set aside.

2. The ruling in that case has no bearing on the facts of the present case. In this case, upset price was fixed already by the Court and that order was not challenged by the petitioner herein. The present order that is challenged is one reducing the upset price already fixed, because no bidder came to bid at the auction. The executing Court is possessed of the records to show that there was no bidder at the auction, for the upset price fixed earlier. Hence, the Court below is

fully justified in reducing the upset price. It has not reduced the upset price as prayed for by the decree-holder but has fixed the same in the proper way. Hence, the revision petition has to fail and it is dismissed. No costs.

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