

PETITIONER:
PUTTI KONDALA RAO & ORS.

Vs.

RESPONDENT:
VELLAMANCHILI SITARATTAMMA & ANR.

DATE OF JUDGMENT 12/12/1975

BENCH:
RAY, A.N. (CJ)
BENCH:
RAY, A.N. (CJ)
BEG, M. HAMEEDULLAH
SARKARIA, RANJIT SINGH
SHINGAL, P.N.

CITATION:
1976 AIR 737 1976 SCR (2) 998
1976 SCC (1) 712

ACT:
Code of Civil Procedure-Order XXI, r. 90-Allegations of substantial injury-If can be implied from facts and circumstances alleged.

HEADNOTE:

In an application under O.XXI, r. 90, Civil Procedure Code, the appellants (judgment-debtors) alleged that the sale of their property pursuant to an order of attachment was illegal for material irregularities. The trial Court held that where there was an irregularity in the procedure for sale, the remedy would be to apply to set aside the sale on proof of substantial injury and that there was no fraud in the sale, as alleged by the appellants. On appeal, the first appellate Court held that the auction-purchaser was the husband of the decree-holder and that there was gross under-valuation of the property and so set aside the sale. On further appeal, the High Court held that the application of the appellants was defective and not maintainable and the Court had no power to set aside the sale unless facts were alleged and proved by the applicant to the satisfaction of the Court that he had sustained substantial injury by reason of such irregularity.

Dismissing the appeal,

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HELD: (1) The judgment of the trial Court should be restored. The trial Court was correct in its conclusion and reasons that the property sold was subject to mortgages and charges and was sold at the correct price, taking into consideration the price of the properties in the neighbourhood and other evidence on record. [1000 E, 1001 G]

(2) The judgment of the trial Court was wrongly reversed by the first appellate court. Substantial justice had been done to the parties. [1001-C]

(3) The High Court was not unjustified in holding that the application for setting aside the sale was bald and that there was no proper allegation of substantial injury to the appellants. Sometimes, however, there may not be express allegations of substantial injury and the same may appear to be implicit from all facts and circumstances alleged. In the

present case, the allegations in the petition could be read to imply substantial injury to the appellants. The trial Court as well as the first appellate court heard the parties and decided the case on the footing that there were allegations of substantial injury to the appellants. [1001 E-F]

Luxmidevi v. Sethani Mukand Kanwar & Ors., [1965] 1 S.C.R. 726, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 643 of 1975.

Appeal by Special Leave from the Judgment and order dated the 24-3-1973 of the Andhra Pradesh High Court in C.R.P. No. 1015/72.

M.K. Ramamurthi and B. Parthasarathi for the appellants.

B.V. Subrahmanyam and A. Subba Rao for the Respondents.

The Judgment of the Court was delivered by

RAY, C.J. This appeal is by special leave from the judgment dated 24 March, 1973 of the High Court of Andhra Pradesh.

999

The High Court held that the application of the appellants, the judgment debtors is defective and not maintainable and the Court has no power to set aside the sale unless facts are alleged by the applicant and proved by him to the satisfaction of the court that the applicant has sustained substantial injury by reason of such irregularity.

The respondents are the decree-holders. Pursuant to the decree there was an order for attachment and sale of the house property of the appellants. The sale took place on 7 June, 1960.

The appellants filed an application on 7 July, 1960 under Order XXI Rule 90 of the Code of Civil Procedure to set aside the sale. On 18 November, 1966 the application was dismissed by the Munsif. On 22 April, 1972 the Subordinate Judge allowed the appeal filed by the judgment debtors and set aside the sale. The High Court pursuant to the revision petition presented by the auction purchaser set aside the order of the Subordinate Court on the ground that the application of the appellants under Order XXI was defective and not maintainable.

The application was in seven paragraphs. The first two paragraphs contained the description of the petitioners and the respondents. In the third paragraph the judgment debtors alleged that the properties were purchased by the husband of the decree holder. In the fourth paragraph the judgment debtors alleged that the sale notices were deliberately suppressed from the knowledge of the judgment debtors. It is also alleged that the properties were undervalued and were sold in favour of the husband who was the nominee of the decree-holder. In paragraph 5 it was alleged that the correct assessments had not been shown. In paragraph 6 of the petition it is alleged that the sale is illegal for material irregularities and for suppression of all notices to the petitioners as the respondents 1 and 2 colluded together and practised fraud upon the petitioners. In paragraph 7 the judgment debtors prayed for setting aside the sale.

The Munsif by his order dated 18 November, 1966 noticed the contentions which arose for consideration. Those were as follows. First, whether the judgment debtors had no knowledge of the attachment or subsequent sale proceedings.

Second, whether the decree holder practised fraud upon the judgment debtors. Third, whether the sale was illegal. Fourth, whether the judgment debtors sustained any substantial injury.

The sale was to be held on 6 June, 1960. That was a public holiday on account of Bakrid. There was a gazette notification to that effect. Because the date of sale was a public holiday, the sale was held on the next day 7 June, 1960. The Munsif held that when the sale is held on a date different from that notified without an order of adjournment and a further proclamation of sale it would amount only to an irregularity and the remedy would be to apply to set aside the sale on proof of substantial injury. The Munsif held that there was no circumstance to make the sale illegal or invalid.

The Munsif further held that the attachment was effective from 17 December, 1959. One of the judgment debtors who was the eldest

brother was present at the time of attachment. The youngest brother alleged that he was not pulling on well with the family members because he married a girl of another caste. The Munsif held that to be an after-thought because there was no evidence of any discord between the brothers. The Munsif held that the judgment debtors were living together in the house attached and that they had knowledge of the attachment.

With regard to the sale notice the Munsif held that the judgment debtors had knowledge of the attachment and sale and also held that no fraud was practised.

With regard to the question of substantial injury the Munsif held that the allegation in the petition that the property was worth more than Rs. 25,000 and that the decree holder got the same undervalued was to be rejected. The Munsif came to the conclusion that the adjacent property and the evidence and material circumstances would show that the house could not be valued at more than Rs. 25,000. The original sale deed Ex.B-11 of the adjoining house showed that it was sold for Rs. 12,000. That was a daba house with a tiled one at the back. The property which was sold was slightly larger in area than that one. But the Munsif held that the situation of the house of the neighbourhood properties all indicated that there was no under-valuation.

The property was subject to four mortgages. The three mortgages were for the sums of Rs. 1000/- Rs. 3500/- and Rs. 1800/- and the fourth mortgage was for Rs. 400/- aggregating Rs. 6700/-. The sale was held subject to those four mortgages. Interest was at 12 per cent. Interest on the principal amount would be more than Rs. 1000/- on the date of the sale. The amount of Rs. 6125/- which was the auction price was subject to the mortgages. Further there was a maintenance charge in favour of one Kamakshamma for a sum of Rs. 60/- per year. In this background the Munsif held that the sale was valid.

Before the Subordinate Judge two points for consideration in the appeal were whether there was material irregularity or fraud in the publication and conduct of the sale and whether they sustained substantial loss or injury.

The Subordinate Judge held that the sale on 7 June, 1960 without an order of adjournment was an irregularity. The price shown in the sale proclamation was Rs. 6000/-. The decree holder valued the property at Rs. 16,000/-. The Amin valued the property at Rs. 20,000/- free from all encumbrances. The Subordinate Judge held that the property was subject to the charge and the sale was subject to

mortgages. The Subordinate Judge came to the conclusion that the auction purchaser was the husband of the decree-holder and there was gross under-valuation of the property and set aside the sale.

The decision of this Court in *Laxmidevi v. Sethani Mukand Kanwar & Ors.*(1) held that it depends upon several relevant facts whether the judgment debtor has suffered a substantial injury at a judicial sale.

1001

The features brought out on the materials in this case are that there was proper service and the sale was held on 7 June, 1960 because the previous day was a public holiday. The judgment debtors did not give their valuation. The property sold was subject to mortgages and charge. The decree holders have been kept out of the fruit of the decree for about 17 years. The attempt on the part of the judgment debtors to set aside the sale was an afterthought as was found by the Munsif. The Subordinate Judge was impressed with the suggestion that the property was under-valued. The Subordinate Judge was wrong there. The Munsif was correct in his conclusion and reasons that the property sold was subject to mortgages and charges and was sold at the correct price taking into consideration the price in the neighbourhood and other evidence on record.

The High Court found that there was no allegation of substantial injury in the petition. It appears from the record that the Trial Court and the first Appellate Court addressed themselves at length on the question of substantial injury. Parties were heard. They made their submissions. The conclusions of the Trial Court and the Appellate Court are there.

Counsel for the appellant submitted that if we set aside the judgment of the High Court, the matter would have to be remanded for hearing on other points. It will serve no useful purpose to send the matter to the High Court on other questions. There has been substantial justice done to the parties. The judgment of the Trial Court was wrongly reversed by the first Appellate Court.

The High Court was not unjustified on the materials to hold that the application for setting aside the sale was bald and there was no proper allegation of substantial injury to the judgment debtors. Some times, however, there may not be express allegations of substantial injury and the same may appear to be implicit from all facts and circumstances alleged. In the present case, the Trial Court as well as the first Appellate Court heard the parties and decided the case on the footing that there were allegations of substantial injury to the judgment debtors.

For these reasons we proceed on the basis that the allegations in the petition could be read to imply substantial injury to the judgment debtors. It is not necessary to remand the matter to the High Court because we are of opinion that the judgment of the Trial Court is correct and should be restored. We, therefore, dismiss the appeal. The appellants will pay costs to the respondents.

P.B.R. Appeal dismissed.

1002