

CASE NO.:
Appeal (civil) 2062 of 2000

PETITIONER:
Balakrishnan

RESPONDENT:
Malaiyandi Konar

DATE OF JUDGMENT: 17/02/2006

BENCH:
ARIJIT PASAYAT & R.V. RAVEENDRAN

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Madras High Court holding that the auction sale held in an execution proceeding and confirmation thereof was illegal. The matter was remitted to the Executing Court with a direction to consider the objection in terms of Section 47 of the Code of Civil Procedure, 1908 (in short the 'Code') and to consider whether there was any need for sale of the property in view of the deposit made by the judgment debtor-respondent herein. The appellant who is the decree holder purchased the property in the Court auction sale. The proceedings relate to O.S.No.385/1977 on the file of District Munsif, Kulithalai.

The background facts need to be noted in brief.

The suit was filed by the appellant on the basis of a promissory note executed by the respondent in favour of the appellant. The suit was decreed. In the proceeding for execution of the decree in his favour (E.P.No.725/1981 on the file of District Munsif, Kulithalai later renumbered as E.P.45/1983 on the file of District Munsif, Manapparai) the appellant purchased the judgment debtor's property on 8.7.1981 in Court auction after obtaining permission of the Court for a sum of Rs.7,510/-. The sale was confirmed on 22.8.1983.

Respondent filed EA 17/83 to set aside the sale on the ground that he is entitled to the benefits under Tamil Nadu Debt Relief Act, 1980 (in short the 'Debt Relief Act'). On 30.4.1983 application filed by the respondent was dismissed on the ground that the respondent has not made out a case for getting benefit under the Debt Relief Act. It was also held that apart from the property covered by the auction sale, he had got income from other properties. Respondent filed Civil Revision Petition No.3963 1983 before the Madras High Court against the order of dismissal of EA 17/83. By order dated 10.9.1987 the High Court dismissed the Civil Revision Petition upholding the findings of the Executing Court.

EP 80/93 was filed by the appellant on 13.8.1993 under Order XXI Rule 95 of the Code for delivery of possession.

Respondent filed counter affidavit inter alia taking the stand that the Execution Petition was liable to be dismissed, as it was filed beyond the limitation period of one year prescribed under Article 134 of the Limitation Act, 1963 (in short the 'Limitation Act'). The trial Court overruled the objections and ordered delivery. Respondent thereafter filed Civil Revision Petition No.2328/1994 before the High Court which was allowed on 13.7.1998 by the impugned judgment.

During the hearing of the case, the High Court in order to shorten litigation gave option to the judgment debtor to deposit decretal amount with interest. In fact the respondent deposited Rs.35,000/-. Though at the time of hearing, learned counsel appearing for the present appellant accepted that the offer of judgment debtor (respondent herein) was a reasonable one, he informed the Court that his client was not agreeable to receive any amount and wanted the property. The High Court on examining the scope and ambit of Order XXI Rule 64 of the Code held that the Executing Court while directing the sale had not kept in view the correct parameters of the requirements enjoined by the said provision, in particular to decide first whether it is necessary to bring the entire attached property to sale. Accordingly, the following directions were given:

"In view of the abovesaid principle, I am of the view that the Executing Court without application of mind has directed the sale of the property of nearly 5 acres for a paltry sum of Rs.4,000/- and odd. Now the petitioner has shown his bona fide by depositing the amount of Rs.35,000/- and I am of the view that the parties can be given an opportunity to establish the same. It is open to the petitioner to convince the lower Court as to which portion of the property is sufficient to satisfy the decree amount and the lower Court is directed to consider the matter afresh, in the light of the decisions of the Supreme Court as well as the judgment of this Court referred above, dispose of the claim of the parties in accordance with law. Since the Executing Court has not acted in accordance with the above said principles of the Supreme Court, I am of the view that the sale itself is liable to be set aside even though no application has been filed by the petitioner. However, the objection filed by the petitioner is directed to be treated as a petition under Section 47 CPC. Hence, the matter is remitted back to the Executing Court with direction to dispose of the objection petition afresh. The Executing Court can also consider the need for the sale of property in view of the deposit made by the petitioner."

Learned counsel for the appellant in support of the appeal submitted that the High Court has lost sight of the fact that the sale was confirmed on 22.8.1983. The earlier petition filed in the execution proceedings was rejected and the High Court also did not interfere. That matter had attained finality. The subsequent execution proceeding for delivery was filed. The objection filed by respondent related to the applicability of Article 134 of the Limitation Act and the High Court could not have examined the matter in the background of Order XXI Rule 64 of the Code. It is further submitted that even

conceding for the sake of arguments that Article 134 of the Limitation Act had application, the delay in filing the application is clearly attributable to the respondent himself. He had filed the objection and after its dismissal by the trial Court had moved the High Court.

In response, learned counsel for the respondent submitted that Article 134 of the Limitation Act clearly applies to the facts of the case. Though the High Court did not advert to that provision yet for doing substantial justice the Court had indicated the parameters of Order XXI Rule 64 of the Code. Property measuring about 5 acres was sold for a paltry sum of Rs. four thousand. The judgment debtor had deposited Rs.35,000/- which was sufficient to satisfy the decretal amount and the interest that would have earned had the payment been made at the initial stage.

Order XXI Rule 64 reads as follows:

"Power to order property attached to be sold and proceeds to be paid to person entitled- Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof, as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same."

The provision contains some significant words. They are "necessary to satisfy the decree". Use of the said expression clearly indicates the legislative intent that no sale can be allowed beyond the decretal amount mentioned in the sale proclamation. (See *Takkaseela Pedda Subba Reddi v Pujari Padmavathamma* (AIR 1977 SC 1789). In all execution proceedings, Court has to first decide whether it is necessary to bring the entire property to sale or such portion thereof as may seem necessary to satisfy the decree. If the property is large and the decree to be satisfied is small the Court must bring only such portion of the property the proceeds of which would be sufficient to satisfy the claim of the decree holder. It is immaterial whether the property is one or several. Even if the property is one, if a separate portion could be sold without violating any provision of law only such portion of the property should be sold. This is not just a discretion but an obligation imposed on the Court. The sale held without examining this aspect and not in conformity with this mandatory requirement would be illegal and without jurisdiction. (See: *Ambati Narasayya v. M. Subba Rao and Anr.* 1989 Suppl. (2) SCC 693). The duty cast upon the Court to sale only such portion or portion thereof as is necessary to satisfy the decree is a mandate of the legislature which cannot be ignored. Similar, view has been expressed in *S. Mariyappa (Dead) by LRs. And Ors. v. Siddappa and Anr.* (2005 (10) SCC 235).

In *S.S. Dayananda v. K.S. Nagesh Rao and Ors.* (1997 (4) SCC 451) it was held that the procedural compliance of Order XXI Rule 64 of the Code is a mandatory requirement. This was also the view expressed in *Desh Bandhu Gupta v. N.L. Anand and Rajinder Singh* (1994 (1) SCC 131).

Therefore, on the background facts noted by the High Court the auction sale did not meet the requirements of law. But at the same time it appears that the question regarding

the legality of the sale had attained finality because of the confirmation of sale on 22.8.1983. Though it is contended by learned counsel for the respondent that the order dated 10.9.1987 passed by the High Court rejecting CRP 3963/1983 filed by the judgment debtor seeking relief, was relatable to the Debt Relief Act, that did not have the effect of reviving the question relating to violation of Order XXI Rule 64 of the Code.

The residual question is the effect of Article 134 of the Limitation Act, as appearing in the Schedule to the Limitation Act relatable to, Sections 2(j) and 3 providing for periods of limitation. Article 134 reads as follows:

Description of application
Period of limitation
Time from which period begins to run

134. For delivery of possession by a purchaser of immovable property at a sale in execution of a decree.

One year

When the sale becomes absolute.

The limitation for the purpose of Article 134 starts from the date of confirmation of sale. (See Ganpat Singh (dead) by Lrs. v. Kailash Shankar and Ors. 1987 (3) SCC 146). In Pattam Khader Khan v. Pattem Sardar Khan and Anr. (1996 (5) SCC 48) this court held that it is not from the date when sale certificate is issued that the limitation starts running. The sale becomes absolute on confirmation under Order XXI Rule 92 of the Code effectively passing title. It cannot be said to attain finality only when sale certificate is issued under Order XXI Rule 94. There can be variety of factors conceivable for which delay can be caused in issuing a sale certificate. The period of one year limitation now prescribed under Article 134 of the Limitation Act in substitution of a three year period prescribed under Article 180 of the Indian Limitation Act, 1908 is reflective of the legislative policy of finalizing proceedings in execution as quickly as possible by providing a quick forum to the auction purchaser to ask for the delivery of possession of the property purchased within that period from the date of the sale becoming absolute rather than from the date of issuance of the sale certificate. On his failure to avail such a quick remedy the law relegates him to the remedy of a regular suit for possession based on title, subject again to limitation.

Though it was submitted by learned counsel for the appellant that the respondent was responsible for the delay caused as he had filed the Civil Revision before the High Court, the plea is clearly untenable. The Civil Revision Petition was dismissed on 10.09.1987.

Above being the position, we are not inclined to interfere in the matter. Though the question of applicability of Order

XXI Rule 64 of the Code should not have been considered by the High Court in view of the dismissal of earlier Civil Revision Petition, even otherwise no relief could have been granted to the appellant in view of Article 134 of the Limitation Act. Substantive justice can be done to the parties if the order passed by the High Court remitting the matter is maintained. But the question that has to be considered will not be the validity of the sale, but the maintainability of the application for delivery of the property.

The appeal is accordingly dismissed. No costs.

JUDIS