

CASE NO.:
Appeal (civil) 576 of 2005

PETITIONER:
Sai Enterprises

RESPONDENT:
Bhimreddy Laxmaiah & Anr

DATE OF JUDGMENT: 16/03/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T

Dr. ARIJIT PASAYAT, J.

Challenge in this appeal is to the judgment passed by a learned Single Judge of the Andhra Pradesh High Court dismissing the Civil Revision petition filed under Article 227 of the Constitution of India, 1950 (in short 'the Constitution') read with Section 115 of the Code of Civil Procedure, 1908 (in short the 'Code').

Background facts in a nutshell are as follows:

The appellant filed a suit O.S. No.57/96 against respondent no.2 for recovery of Rs.4,49,500/-. The respondent no.1 also filed a suit O.S. No. 65/96 against respondent no.2 for foreclosure of the mortgage in his favour for a sum of Rs.1,00,000/-. Both the suits were pending on the file of the Senior Civil Judge, Suryapet. During the pendency of the suit appellant filed IA no. 413/96 for attachment before judgment and same was ordered in terms of order dated 7.10.96. OS No.65/96 filed by respondent no.1 was decreed against respondent no.2. Respondent no.1 filed an execution petition (EP No.1/99) and sought for sale of mortgaged property as respondent no.2 did not satisfy the decree. Respondent no.1 indicated the value of the property to be rupees three lakhs. The bailiff after obtaining information from the Registrar and Municipal Office mentioned value of the property at Rs.2,55,490/-. The appellant's suit OS 57/96 was decreed against respondent no.2. The said respondent No. 2 - judgment debtor was set ex parte as he did not attend the EP proceedings i.e. EP no.1/99. Proclamation was published in newspaper "Eenadu". The matter was adjourned from time to time. Appellant filed execution petition EP no.19/01 seeking direction for sale of schedule property for realization of the amount of Rs.5,69,816/- due under the judgment and decree dated 16.2.2000 made in OS No.57/96.

Respondent no.2 filed an application EA No.90/01 in EP No.1/99 under Order XXI Rules 69 read with Sections 47 and 151 of the Code seeking a direction to stop the auction to be held on 12.11.2001 and sought for adjournment of the matter for settlement of terms and conditions of sale. Fresh publication and proclamation of sale was made in newspaper

namely, Neti Manadesam. Learned Civil Judge dismissed the application EA No.90/91 in EP No.1/99 filed by respondent no.2. The said order was challenged before the High Court in CRP no.6036/01. Again proclamation of sale was published in 'Neti Mandadesham' and the decree holder purchased the property for Rs.3,12,000/- in OS No.57/96. Thereafter the appellant filed an application EA No.42/02 under Order XXI Rule 90 of the Code to aside the sale and to re-auction the schedule property, as the respondent no.1 has not taken proper steps for wide publicity of the auction. It was stated that the value of the property was not less than rupees six lakhs. Objection was filed by the respondents. The judgment-debtor categorically stated in the counter that the value of the property is more than rupees 8 lakhs. The sale was confirmed on 24.1.2002. The High Court dismissed CRP filed by the judgment debtor-respondent no.1. The appellant filed an application EA No.107/03 in EA No.42/02 in EP No.1/99 to receive the valuation report issued. Learned Civil Judge dismissed the application. The High Court was moved. As noted above the High Court, dismissed the Civil Revision petition being of the view that allegations made in the petition are general in nature, and the affidavit with the petition does not disclose whether objection relates to non publication in the newspaper or places.

In support of the appeal learned counsel for the appellant submitted that the newspaper in which the publication was made is not a wide circulating newspaper. Further the valuation at which the decree holder purchased is very low. Additionally, it is submitted that in terms of Order XXI Rule 64 of the Code the Court was required to find out whether a part of the property would have sufficed to meet the decretal amount, which was not done in the present case.

Learned counsel for the respondent supported the order.

It is to be noted that the High Court has categorically found that initially the auction was notified in newspaper 'Eanadu' with wide circulation, and that was done on two occasions. The grievance about the publication in a newspaper with inadequate circulation would have been a factor provided the earlier notice was published in some newspaper not having wide circulation, but admittedly the publication was made in newspaper 'Eanadu' having a wide circulation. Additionally, it was submitted that the stand regarding non-compliance with the requirements of Order XXI Rule 54 sub-rule (2) of the Code is of no consequence because the objection has to be specific and not to be general in nature. In the absence of specific allegations it would not be possible for either parties or the executing court to deal with the same. This conclusion of the High Court is in order.

However, the grievance of the appellant so far non-compliance with the requirements of Order XXI Rule 64 of the Code is on sound footing.

Order XXI Rule 64 reads as follows:

"64. 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). The position was also highlighted in Balakrishnan v. Malaiyandi Konar (2006 (3) SCC 49).

In the aforesaid background normally we would have remit ted the matter for consideration of the aspects covered by Order XXI Rule 64 of the Code. But considering the peculiar facts of the case and the long passage of time, we direct that the respondent no.1 shall pay a sum of rupees one lakh to the appellant within a period of three months. In case of non-payment of the aforesaid amount, the appellant shall be free to pay a sum of Rs.3,12,000/- with 9% interest from the date of auction, to the respondent no.1 and get the property conveyed in his favour under the directions of the Court.

Appeal is accordingly disposed of with no order as to costs.