



2025 INSC 1353

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 8887 OF 2011

G.R. Selvaraj (Dead), through LR.

... Appellants

versus

K.J. Prakash Kumar and others

... Respondents

J U D G M E N T

SANJAY KUMAR, J

1. By order dated 10.02.2009 passed in C.R.P. (NPD) No.2574 of 2007, a learned Judge of the High Court of Judicature at Madras invalidated the auction sale held on 12.09.2002 by the learned IXth Assistant Judge, City Civil Court, Chennai, in Execution Petition No. 199 of 1998 in Original Suit No. 9158 of 1995. Aggrieved thereby, the auction purchaser, G.R. Selvaraj, filed this appeal.

2. G.R. Selvaraj, the appellant, died during the pendency of this appeal and his legal representatives, being his widow, five sons and two daughters, were brought on record. At the risk of the appellant(s), the

name of respondent No.4, Rasheeda Yasin, the decree holder, was deleted from the array of parties, *vide* order dated 20.11.2012. As she is not a necessary party anymore, her absence has no impact on this case.

3. O.S. No. 9158 of 1995 (earlier, C.S. No. 297 of 1995) was filed by Rasheeda Yasin, respondent No. 4, against Komala Ammal and her son, K.J. Prakash Kumar, for recovery of a sum of ₹3,75,000/- along with interest and costs. It was her case that the defendants, along with late K. Jagannathan, the husband of the first defendant and father of the second defendant, jointly borrowed a sum of ₹2,00,000/- from her on 02.03.1992 and were, therefore, liable to repay the same to her along with interest. The suit was decreed *ex parte* on 16.04.1997 by the learned IInd Assistant Judge, City Civil Court, Chennai, directing the defendants therein to pay the plaintiff a sum of ₹3,75,000/- with interest on the principal sum of ₹2,00,000/- @ 18% per annum, from the date of the plaint till the date of realization, along with costs of ₹10,435.50/-.

4. Execution Petition No. 199 of 1998 was filed by Rasheeda Yasin on 20.01.1998 seeking execution of the decree dated 16.04.1997, by attachment and sale of the property belonging to the defendants, viz., the house and site, admeasuring 2120 square feet, situated at Door No. 90, Astabujam Road at Choolai, (Old No. 43), Chennai. The site was, thus, a little less than one Ground (2400 square feet). The decretal amount, as on that date, stood at ₹4,98,145.50/-.

5. Komala Ammal and K.J. Prakash Kumar, the judgment debtors/ defendants, made an unsuccessful attempt to have the judgment and decree dated 16.04.1997 set aside. They also participated in the execution proceedings by filing various applications, including for enlargement of time to make payments in instalments, as directed by the executing Court. However, owing to their failure in complying with the decree, the property mentioned above was directed to be attached on 14.12.1998. The sale papers were filed on 12.07.1999. Notice was issued to the judgment debtors on 23.07.1999. On 07.09.1999, service was held sufficient but the judgment debtors were called absent and they were set *ex parte*. The first sale proclamation came to be issued thereafter on 01.11.1999, fixing the date of the auction sale as 05.01.2000. Considering the valuation of the property by Rasheeda Yasin @ ₹10,50,000/- for fixation of the upset price and the estimation by the Court Bailiff @ ₹15,25,000/-, the executing Court fixed the upset price at ₹16,25,000/-. However, there were no bids in the auction sale on 05.01.2000. Thereupon, Rasheeda Yasin filed E.A. No. 271 of 2000 seeking reduction of the upset price to ₹13,25,000/-. This E.A. was filed on 10.01.2000. Notice was issued thereon by the executing Court on 18.01.2000, and K.J. Prakash Kumar, judgment debtor No. 2, appeared in person on 24.02.2000 and sought time on behalf of himself and Komala Ammal, judgment debtor No. 1. They filed their counter on 22.03.2000.

6. After enquiry and upon hearing the arguments of the judgment debtors, the E.A. was ordered on 21.09.2000, reducing the upset price to ₹14,75,000/-. The auction sale was fixed on 30.01.2001. However, there were no bids even on that day. Rasheeda Yasin, the decree holder, thereupon, filed E.A. No. 4950 of 2001 seeking further reduction of the upset price to ₹10,50,000/-. Despite service of notice, the judgment debtors, Komala Ammal and K.J. Prakash Kumar, failed to appear before the executing Court on 08.11.2001. They were accordingly set *ex parte* and the upset price was reduced to ₹12 lakh. An application to set aside this order was unsuccessfully filed by the judgment debtors. As there were no bids even at the upset price of ₹12 lakh, Rasheeda Yasin, the decree holder, filed E.A. No. 2017 of 2002 seeking further reduction of the upset price to ₹10,50,000/-. Despite service of notice, the judgment debtors were called absent on 11.07.2002 and the upset price was reduced to ₹11,00,000/-. It is pursuant to this last exercise, that the sale was finally held on 12.09.2002 and G.R. Selvaraj emerged successful at the knockdown price of ₹11,03,000/-.

7. The sale certificate was issued to G.R. Selvaraj on 10.01.2003 after he deposited the sale consideration amount before the executing Court, which was duly handed over to Rasheeda Yasin, the decree holder. While so, E.A. No. 475 of 2002 was filed by the judgment debtors, Komala Ammal and K.J. Prakash Kumar, in E.P. No. 199 of 1993 under Order XXI

Rule 90 of the Code of Civil Procedure, 1908¹, to set aside the sale held on 12.09.2002. Significantly, in their application in E.A. No. 475 of 2002, the judgment debtors, Komala Ammal and K.J. Prakash Kumar, mainly raised the issue of reduction of the upset price, alleging that it was done without notice to them, apart from the ground that the sale was not held at the spot where the property was situated. They only made a bald allegation that the proceedings of the sale were totally against Order XXI Rule 66 CPC. By order dated 15.10.2004, the learned IXth Assistant Judge, City Civil Court, Chennai, dismissed the application.

8. The dismissal order was subjected to appeal in C.M.A. No. 17 of 2005 before the learned III Additional Judge, City Civil Court, Chennai. Komala Ammal died during the course of these appeal proceedings and her daughters, K.J. Hemalatha and K.J. Padmasini, were brought on record as her legal representatives. The appellate Court dismissed the appeal with costs, by judgment dated 13.07.2007. Aggrieved by this judgment, K.J. Prakash Kumar and his sisters, K.J. Hemalatha and K.J. Padmasini, filed CRP (NPD) No. 2574 of 2007 before the High Court.

9. What weighed with the High Court in ultimately holding in favour of the judgment debtors was that the executing Court had not examined whether sale of a part of the property in question would have satisfied the

¹ For short, 'CPC'.

decree, in terms of Order XXI Rule 66(2)(a) CPC. Noting that Order XXI Rule 90(3) CPC placed a statutory bar on the judgment debtor from raising any ground to set aside the sale which the judgment debtor could have taken on or before the date on which the proclamation of sale was drawn up, the High Court did not apply this bar as the executing Court was found fault with on the aforestated count. Citing judgments of this Court, the High Court held that the sale of the property in entirety caused substantial injury to the judgment debtors and set aside the sale held on 12.09.2002. Consequential directions were issued for initiation of fresh steps.

10. The issue in this appeal boils down to whether Order XXI Rule 90(3) CPC would have an overriding effect barring the judgment debtors from seeking invalidation of the sale when they could have but never raised the ground, that the entire property need not have been sold to satisfy the decree, at a point of time before the last sale proclamation. Significantly, Order XXI Rule 90 CPC was substituted by Act No. 104 of 1976, with effect from 01.02.1977. Prior thereto, Order XXI Rule 90 CPC read as under:

‘90. Application to set aside sale on ground of irregularity or fraud. -

(1) Where any immovable property has been sold in execution of a decree, the decree-holder, or any other person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.

(2) Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.’

After its amendment, Order XXI Rule 90 CPC now reads as under:

‘90. Application to set aside sale on ground of irregularity or fraud.—

(1) Where any immovable property has been sold in execution of a decree, the decree-holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.

(2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

(3) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up.’

11. In this context, we may now refer to the decisions relied upon by the High Court. In ***Ambati Narasayya vs. M. Subba Rao and another***², the execution sale was conducted on 31.05.1976 and an application was filed under Order XXI Rule 90 CPC to set it aside. One of the grounds taken in support of the application was that the judgment debtor therein was not served with notice. However, the executing Court rejected his application. In appeal, an additional ground was raised that the executing Court ought to have sold only such portion of the land as would have satisfied the decree and that the sale of the entire property was illegal. However, the appeal and, thereafter, the revision filed before the High Court met with failure. It was in these circumstances that the judgment debtor came before this Court. Taking note of Order XXI Rule 64 CPC, this Court

² 1989 Supp (2) SCC 693

observed that in all execution proceedings, the executing Court has to first decide whether it is necessary to bring the entire property to sale or only such portion thereof as may seem necessary to satisfy the decree. It was held that a sale, without examining this aspect and not in conformity with this requirement, would be illegal and without jurisdiction. Reference was made to ***Takkaseela Pedda Subba Reddi vs. Pujari Padmavathamma***³, wherein this Court had examined the scope of Order XXI Rule 64 CPC and took a similar view to the effect that the executing Court derives jurisdiction to sell attached properties only to the point at which the decree is fully satisfied and the words 'necessary to satisfy the decree' clearly indicate that no sale can be allowed beyond the decretal sum mentioned in the sale proclamation. Taking note of this legal position, this Court held that the sale of the entire extent of 10 acres for ₹17,000/- to satisfy a decree for ₹2,400/- was unnecessary. It was further held that the land could not be taken to be indivisible and that the executing Court could have demarcated and sold a portion thereof. It was held that a duty is cast upon the executing Court to sell only such property or portion thereof, as would be necessary to satisfy the decree and this was the mandate of the legislature, which could not be ignored. The sale was, accordingly, held to be in contravention of Order XXI Rule 64 CPC.

³ (1977) 3 SCC 337

12. Notably, both **Ambati Narasayya** (*supra*) and **Takkaseela Pedda Subba Reddi** (*supra*) were decisions delivered in the context of the unamended Order XXI Rule 90 CPC, that is, prior to insertion of Order XXI Rule 90(3) therein.

13. In **Desh Bandhu Gupta vs. N.L. Anand & Rajinder Singh**⁴, a similar question arose for consideration in relation to an execution sale held on 06.07.1979, i.e., post the coming into force of the substituted Order XXI Rule 90 CPC. Again, there was no notice to the judgment debtor, the appellant. Further, there was no sale proclamation and no notice was issued before settling the terms of the sale. However, the executing Court rejected the application to set aside the sale, in view of Order XXI Rule 90(3) CPC. It was held that pre-sale illegalities or irregularities would not vitiate the sale and the application was dismissed. The appellate Court as well as the High Court, in revision, followed the same approach. The matter accordingly came before this Court.

14. Noting that a specific procedure was prescribed in the Code of Civil Procedure, 1908, with regard to sale of attached properties during the course of execution, this Court held that Order XXI Rule 66(1) enjoined the Court that the details enumerated in Order XXI Rule 66(2) should be specified as fairly and accurately as possible. It was observed that the

⁴ (1994) 1 SCC 131

duty to comply with it arises only after service of notice on the judgment debtor who is, thus, given an opportunity in the settlement of the value of the property. It was further observed that the absence of notice caused irremediable injury to the judgment debtor as the absence of notice disabled him from offering his estimate of the value and bringing intending bidders at the time of the sale. It was, accordingly, held that a sale made without notice to the judgment debtor is a nullity, as it divests the judgment debtor of his right, title and interest in his property without an opportunity. The omission of service of notice on the judgment debtor, *per* this Court, would render void the action taken and the sale in pursuance thereof.

15. On facts, this Court found that the due procedure had not been followed as the appellant was not given any notice and an occasion for him to offer his valuation did not arise. It was observed that before depriving a judgment debtor of the remedy under Order XXI Rule 90 CPC, it must be seen whether he had notice from the executing Court and still acquiesced, by taking no action before the date of sale, and if so, he would then be precluded from assailing its legality or correctness thereafter. Some of the observations made by this Court, which are of relevance presently, are extracted hereunder:

‘14. The Code, therefore, has taken special care charging the duty on the Executing Court and it has a salutary duty and a legislative mandate to apply its mind before settling the terms of proclamation and satisfy that if part of such property as seems necessary to satisfy the

decree should be sold if the sale proceeds or portion thereof is sufficient for payment to the decree-holder or the person entitled under the decree to receive the amount and so much of that property alone should be ordered to be sold in execution. In *Ambati Narasayya v. M. Subba Rao* [1989 Supp (2) SCC 693 : AIR 1990 SC 119] this Court held that it is the duty cast upon the court under Order 21 Rule 64 to sell only such property or a portion thereof as may be necessary to satisfy the decree. It is a mandate of the legislature which cannot be ignored.In *Takkaseela Pedda Subba Reddi v. Pujari Padmavathamma* [(1977) 3 SCC 337 : (1977) 3 SCR 692] to recover the decree debt in two decrees, the properties situated in two different villages were brought to sale. In the first instance the property in 'D' village fetched a sum of Rs 16,880, which was sufficient to satisfy the decretal amount. The property in 'G' village was also sold which fetched a sum of Rs 12,000. This Court set aside the sale of 'G' village. Admittedly the site in sale is to the extent of 550 sq. yards, situated in a commercial area around which the petroleum installations are established. Though, as contended by Shri Madhava Reddy, that there may be building regulation for division of the property into portions, but the court made no attempt to sell a portion of the property, maybe 100 yards or 150 yards out of it, or whether undivided portion thereof would have satisfied the decree debt. It could be legitimately concluded that the court did not apply its mind at all to this aspect as well.

15. To get over the difficulty, Shri Madhava Reddy has fallen back on Order 21 Rule 90(3) of the Code, which provides that "no application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date of which the proclamation of sale was drawn up". Undoubtedly, this special rule was brought on statute by 1976 Amendment Act. It is like a "caveat emptor" that the judgment-debtor be vigilant and watchful to vindicate pre-sale illegalities or material irregularities. He should not stand by to procrastinate the execution proceedings. If he so does, Rule 90(3) forewarns him that he pays penalty for obduracy and contumacy. Equally it is a reminder that the court should be strict to comply with the procedural part under Rule 54(1-A) before depriving the judgment-debtor of the remedy under Order 21 Rule 90 CPC. If he had notice from court and acquiesced by taking no action before the date of sale, he would be precluded to assail its legality or correctness thereafter. '
(Emphasis is ours)

At the cost of repetition, we must lay stress on this Court's specific observation that, had it been a case where he had notice and acquiesced by taking no action before the date of the sale, the judgment debtor would be precluded from assailing its validity or correctness thereafter.

16. We may also note the recent decision of this Court in ***Bhikchand S/o Dhondiram Mutha (Deceased) through LRs vs. Shamabai Dhanraj Gugale (Deceased) through LRs***⁵ in the context of an execution sale. In that case, the sale was held on 09.08.1985 and the decree holders, respondent Nos. 1 and 2 therein, themselves purchased the attached property. The question arose as to why properties valued at over ₹1,05,700/- had to be sold to satisfy a decree for ₹27,694/-. Taking note of Order XXI Rule 66(2) CPC and the law laid down in ***Ambati Narasayya*** (*supra*) and ***Takkaseela Pedda Subba Reddi*** (*supra*), this Court held that the executing Court's power to auction any property or part thereof also enjoins an obligation on that Court to examine the issue as to whether the sale of part of the property would have been sufficient to satisfy the decree. However, this case did not involve the application of Order XXI Rule 90(3) CPC, which postulates a bar against setting aside of the sale at the behest of a judgment debtor, if he failed to raise an available ground to invalidate it at the appropriate stage.

⁵ 2024 INSC 411

17. Given the insertion of Order XXI Rule 90(3) in the statute book with effect from 01.02.1977, it would be incumbent upon a judgment debtor or any other interested person who applies for setting aside an execution sale, held thereafter, to satisfy the executing Court that the ground upon which the application was made could not have been taken on or before the date on which the proclamation of sale was drawn up. In effect, if such a ground could have been taken by that applicant who seeks setting aside of the sale but he failed to do so at the appropriate stage, he would stand barred, by Order XXI Rule 90(3) CPC, from doing so at a subsequent stage. It is in this context that the aforementioned observations made by this Court in ***Desh Bandhu Gupta*** (*supra*) gain significance as that was a case involving an execution sale held after the insertion of Order XXI Rule 90(3) CPC and this Court made it clear that, even in the context of a material irregularity under Order XXI Rule 66(2)(a) CPC, if the judgment debtor had been put on notice by the executing Court but had acquiesced, by taking no action before the date of the sale, he would be precluded from assailing its legality or correctness thereafter. In a given case, where a judgment debtor is not given notice prior to the sale, as was the situation in ***Desh Bandhu Gupta*** (*supra*), Order XXI Rule 90(3) CPC obviously cannot posit a bar to his raising a ground thereafter.

18. However, on the facts obtaining presently, we are convinced that not only were the judgment debtors in the case on hand put on notice at every

stage during the exercises undertaken by the executing Court to reduce the upset price from one unsuccessful sale to the other, they also participated to an extent and then chose to refrain from doing so. Therefore, they do not have the right to claim that they were not put on notice, though they feebly contended to such effect. The record clearly negates their claim in that regard. Having failed to raise a material irregularity in the context of Order XXI Rule 66(2)(a) CPC at the appropriate stage, i.e., with regard to sale of a part of the property being sufficient to satisfy the decree, it is not open to them to now raise such a belated plea and blithely place the burden on the executing Court, so as to seek setting aside of a sale held as long back as in the year 2002. Unfortunately, the High Court, having noted the bar postulated by Order XXI Rule 90(3) CPC in para 31 of the impugned judgment, failed to give effect to it assuming that the obligation under Order XXI Rule 66(2)(a) CPC would operate independently upon the executing Court, irrespective of the lapse on the part of the judgment debtors.

19. The judgment dated 10.02.2009 passed by the High Court of Judicature at Madras in C.R.P. (NPD) No.2574 of 2007 is, therefore, set aside, and the judgment dated 13.07.2007 passed by the learned IIIrd Additional Judge, City Civil Court, Chennai, in C.M.A. No. 17 of 2005, is confirmed, thereby affirming the order dated 15.10.2004 passed by the

learned IXth Assistant Judge, City Civil Court, Chennai, in E.A. No. 475 of 2003 in E.P. No. 199 of 1998 in Original Suit No. 9158 of 1995.

The appeal is allowed in the aforestated terms.

In the circumstances, there shall be no order as to costs.

.....J
[SANJAY KUMAR]

.....J
[ALOK ARADHE]

New Delhi;
November 25, 2025.