

A TAKASEELA PEDDA SUBBA REDDY

v.

PUJARI PADMAVATHAMMA & ORS.

April 28, 1977

B [P. N. BHAGWATI AND S. MURTAZA FAZAL ALI, JJ.]

Code of Civil Procedure, (Act V of 1908), 1908—Order XXI, Rule 64—Scope of—Meaning of the words “as may seem necessary to satisfy the decree”.

C Order XXI Rule 64 of the C.P.C. lays down that “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.”

D The 5th respondent/decree-holder, S.P.R. Reddy obtained two decrees against the Judgment-debtor Pujari Subbarayudu in two suits viz., O.S. 15 of 1949 and O.S. 19 of 1953. He filed execution proceedings No. 24 of 1953 in the trial Court for selling the properties belonging to the judgment-debtor in Devanoor and Gudipadu villages in order to satisfy the decree in O.S. 15 of 1949. He also applied for permission to bid at the auction sale. In the auction sale held on March 2, 1955, the 5th respondent purchased the lands situated in village Devanoor for a sum of Rs. 16,880/-. Despite the fact that the sale proceeds of the lands in village Devanoor alone was sufficient to satisfy the decretal amount mentioned in the warrant of sale and the proclamation of sale viz.: Rs. 16,715.50, the Court proceeded to sell the properties of the judgment-debtor in village Gudipadu which fetched Rs. 12,500/- and which were purchased by the appellant auction-purchaser. The judgment-debtor filed an application on March 31, 1955 to set aside the sale contending, *inter alia*, that once the sale of the properties in village Devanoor was sufficient to satisfy the amount mentioned in the sale proclamation, the Court should have stopped the sale as required by the mandatory provisions of Order XXI Rule 64 of the C.P.C. The Trial Court rejected the said application; whereupon the decree-holder on April 20, 1955 obtained an order from the court for rateable distribution of the sale proceeds. In appeal the High Court accepted the plea of the judgment-debtor regarding non-compliance with the provisions of O.XXI Rule 64 C.P.C. and set aside the sale with respect to the properties situated in village Gudipadu.

F Dismissing the appeal by certificate the Court,

HELD : (1) The High Court rightly held that as the sale of the properties in village Devanoor fetched an amount mentioned in the sale warrant, the Executing Court was not justified in proceeding with the sale of the properties in village Gudipadu and should have stopped the sale. [694 F]

G (2) The logical corollary which flows from O.XXI Rule 64 of the Code is that where the amount specified in the proclamation of sale for the recovery of which the sale was ordered is realised by sale of certain items, the sale of further items should be stopped. [695 C-D]

H (3) Under Order XXI Rule 64, the Executing Court derives jurisdiction to sell properties attached only to the point at which the decree is fully satisfied. The words “necessary to satisfy the decree” clearly indicate that no sale can be mentioned in the sale proclamation and is sufficient to satisfy the decree, no allowed beyond the decretal amount mentioned in the sale proclamation. In other words, where the sale fetches a price equal to or higher than the amount further sale should be held and the court should stop at that stage. [695 E-F]

(4) In the facts and circumstances of the present case, there being nothing to show that the decree-holder had approached the court for including the second decretal amount obtained in O.S. 19 of 1953 in the proclamation of sale, the

Executing Court was not justified in selling the properties situated in village Gudipadu. The fact that the judgment-debtor did not raise an objection on this ground before the Executing Court is not sufficient to put him out of court because this was a matter which went to the very root of the jurisdiction of the Executing Court to sell the properties and the non-compliance with the provisions of O.XXI, Rule 64 of the Code was sufficient to vitiate the same so far as the properties situated in village Gudapadu were concerned. [695 G-H, 696 A]

(5) The Court remitted the matter to the Executing Court for an inquiry with the following directions :

(i) The appellant will have to return the properties in village Gudipadu to the judgment-debtor and he will be entitled to receive the value of improvements made by him during the time he was in possession of these properties, as determined by the Executing Court, in addition to Rs. 12,500/-.

(ii) He will not be entitled to any interest on the value of the improvements, if he is found to be in possession of the property.

(iii) If the Executing Court finds that the auction-purchaser was not in possession of the properties, the judgment-debtor will have to refund the amount of Rs. 12,500/- to the appellant with interest at the rate of 12 per cent per annum from the date of sale upto the date of refund. [696 B-E]

CIVIL APPELLATE JURISDICTION : C. A. No. 2381 of 1968.

(From the Judgment and Order dated the 30th March 1965 of the Andhra Pradesh High Court in Appeal against Order No. 443 of 1963)

P. Rani Reddy, K. Jayaram and K. Ram Kumar, for the appellant.

B. R. Agarwala, for respondents.

The Judgment of the Court was delivered by

FAZAL ALI, J. This appeal by certificate arises out of execution proceedings in respect of a decree obtained by the respondents/decreeholders. It appears that the 5th respondent/decreeholder Siddam Pedda Rami Reddi hereinafter referred to as "SP" Reddi—obtained a decree in O. S. No. 15 of 1949 from the Court of Sub-Judge Kurnool against the judgment-debtor Pujari Subbarayudu hereinafter referred to as "Pujari" or "judgment-debtor". The 5th respondent had also obtained another money decree against Pujari in another suit being O.S. No. 19 of 1953. The 5th respondent/decreeholder filed Execution Proceedings No. 24 of 1953 in the Trial Court for selling the properties belonging to the judgment-debtor in order to satisfy the decree in O. S. No. 15 of 1949 and he also applied for permission to bid at the auction sale. The first sale was held on October 12, 1954 at which the lands situated in villages Devanoor and Gudipadu were put to sale. But this sale was set aside as there was some delay in payment of the sale price. Consequently a second sale was held on March 2, 1955 at which the 5th respondent SPR Reddi purchased the lands situated in village Davanoor and the appellant/auction-purchaser T.P.S. Reddy purchased the lands in village Gudipadu. It is also not disputed that in the warrant of sale as also the sale proclamation, the decretal amount for which the properties were to be sold was mentioned as Rs. 16,715-8-0. The sale of lands in village

A Devanoor alone fetched a sum of Rs. 16,880/- at which the sale was knocked down. Thus it would appear that the sale proceeds of the lands in village Devanoor were sufficient to satisfy the decretal amount mentioned in the proclamation of sale. Despite this fact, the Court proceeded to sell the properties of the judgment-debtor in village Gudipadu which fetched Rs. 12,500/- and which were purchased by the appellant/auction-purchaser.

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On April 20, 1955 the decree-holder obtained an order from the Court for rateable distribution of the sale proceeds. In other words, this order was passed by the Court not before the sale so that the entire decretal amount could have been mentioned in the sale proclamation but a few days after the sale had already taken place. This is rather an important aspect of the matter which appears to have been completely overlooked by the Trial Court. On March 31, 1955 the

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judgment-debtor Pujari filed an application to set aside the sale on various grounds, namely, that the sale was vitiated by material irregularities which caused serious prejudice to the judgment-debtor and that the properties sold by the Court were valuable properties and the same were grossly undervalued in the sale proclamation. Finally it was contended by the judgment-debtor that once the sale of the properties in village Devanoor was sufficient to satisfy the amount mentioned in the sale proclamation, the Court should have stopped the sale as required by the mandatory provisions of O.21 r. 64 of the Code of Civil Procedure—hereinafter referred to as 'the Code'—instead of continuing the sale of the properties—in village Gudipadu. The Trial Court, however, after hearing the objections of the decree-holder rejected the application of the judgment-debtor. Thereafter the

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judgment-debtor preferred an appeal before the High Court which, while negating the grounds taken by the judgment-debtor regarding the material irregularities in the conduct of sale or the under-valuation of the properties, accepted the plea of the judgment-debtor regarding the non-compliance with the provisions of O.21 r. 64 of the Code. The High Court held, and in our opinion rightly, that as the sale of the properties in village Devanoor fetched an amount which was sufficient

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to satisfy the amount mentioned in the sale warrant, the Executing Court was not justified in proceeding with the sale of the properties in village Gudipadu and should have stopped the sale. The High Court accordingly accepted the plea of the judgment-debtor and set aside the sale with respect to the properties situated in village Gudipadu, but granted a certificate to the appellant to file an appeal in this Court and hence this appeal before us.

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In this appeal the facts are more or less undisputed and the only serious point argued by the appellant is that the High Court was in error in setting aside the sale because even if the entire decretal amount was not mentioned in the sale proclamation, that was at best an irregularity which did not cause any prejudice to the judgment-debtor. It was also argued by learned counsel for the appellant that the judgment debtor did not raise any objection before the Executing Court against continuing the sale of other properties situated in village Gudipadu. It was next submitted that the 5th respondent/decreed-holder had obtained another decree in O.S. 19 of 1953 and the total

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amount under the two decrees fully justified the selling of the properties in village Gudipadu also, particularly when the decree-holder had taken an order from the Executing Court for rateable distribution of the sale proceeds. It is true that the High Court has not considered this aspect of the matter, but in our opinion the contentions raised by the appellant are wholly untenable. It is not disputed that the warrant of sale was prepared long after the 5th respondent/decreed-holder had obtained the second decree in O. S. 19 of 1953 and yet no attempt was made by the decree-holder to approach the Court for amending the decretal amount mentioned in the sale proclamation, so as to include the decretal amount not only of the decree in the first suit No. O. S. 15 of 1949 but also of the decree in the second suit in O. S. 19 of 1953. In these circumstances, therefore, under the provisions of O.21 r. 64 of the Code when the amount as specified in the sale proclamation was fully satisfied by the sale of the properties in village Devanoor, the Court should have stopped the sale of further items of the properties. It is manifest that where the amount specified in the proclamation of sale for the recovery of which the sale was ordered is realised by sale of certain items, the sale of further items should be stopped. This, in our opinion, is the logical corollary which flows from O.21 r. 64 of the Code which may be extracted thus :

“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.”

Under this provision the Executing Court derives jurisdiction to sell properties attached only to the point at which the decree is fully satisfied. The words “necessary to satisfy the decree” clearly indicate that no sale can be allowed beyond the decretal amount mentioned in the sale proclamation. In other words, where the sale fetches a price equal to or higher than the amount mentioned in the sale proclamation and is sufficient to satisfy the decree, no further sale should be held and the Court should stop at that stage. In the instant case, we have already indicated that the sale of lands in village Devanoor alone fetched a sum of Rs. 16880 which was more than sufficient to satisfy the amount of Rs. 16,715-8-0 mentioned in the sale proclamation. It is true that the decree-holder had obtained another decree in O.S. No. 19 of 1953, but there is nothing to show that the decree-holder had approached the Court for including the second decretal amount in the proclamation of sale. In these circumstances, therefore, we are clearly of the opinion that the Executing Court was not justified, in the facts and circumstances of the present case, in selling the properties situated in village Gudipadu. The fact that the judgment-debtor did not raise an objection on this ground before the Executing Court is not sufficient to put him out of Court because this was a matter which went to the very root of the jurisdiction of the Executing Court to sell the properties and the non-compliance with the provisions of O. 21 r. 64 of the Code was sufficient to vitiate the same so far as the

A properties situated in village Gudipadu were concerned. For these reasons, the contentions raised by counsel for the appellant must be overruled.

This, however, does not put an end to the issue, because the High Court, while setting aside the sale, has passed no order for adjusting the equities between the parties. According to the appellant he had taken possession of the properties purchased by him at the auction sale and had made substantial improvements. If the sale of these properties is to be set aside, the appellant will have to return these properties to the judgment-debtor, but he will be entitled to receive the value of improvement's made by him during the time he was in possession of those properties in addition to the return of the sum of Rs. 12,500/-. The Executing Court will have to hold an inquiry into the matter and determine the value of the improvements made by the appellant which will have to be paid to him. The appellant will not be entitled to any interest on the value of the improvements if he is found to be in possession of the properties. If, however, the Executing Court finds that the auction-purchaser was not in possession of the properties and the properties continued to be in possession of the judgment-debtor, then the question of the value of improvements will naturally not arise. In that event the judgment-debtor will have to refund the amount of Rs. 12,500/- to the appellant with interest at the rate of 12% per annum from the date of sale upto the date of refund.

For these reasons, therefore, the appeal is dismissed with the modification indicated above and the case is sent back to the Executing Court to hold an inquiry into the matter. In the special and peculiar circumstances of the present case, we make no order as to costs.

S.R.

Appeal dismissed.