

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 87 OF 2004

Uttamchand S/o Ratanlal Chandiwal
(since deceased through Legal Representatives)

- a) Lalchand S/o Uttamchand Chandiwal
age 63 years
- b) Chandmal S/o Uttamchand Chandiwal
age 59 years
- c) Kailash S/o Uttamchand Chandiwal
age 53 years
- d) Mahavir S/o Uttamchand Chandiwal
age 45 years
- e) Vijay S/o Uttamchand Chandiwal
age 41 years

Occu.: Service and others
business R/o Chelipura, Aurangabad .. Petitioners

Vs.

Gaurichand S/o Trimbak Dabhade,
Age major, Occu. Agri.,
R/o. Wadgaon Rampuri,
(Near Ambilohol), Tq. Gangapur,
District Aurangabad .. Respondent

Mr. P.S. Agrawal, Advocate for petitioners
None present for respondent though served

CORAM : M.T. JOSHI, J.
RESERVED ON : 02/07/2015
PRONOUNCED ON : 05/08/2015

JUDGMENT :

. Heard Mr. P.S. Agrawal, Advocate for the petitioners.

2. None appears for the respondent though duly served.

3. Aggrieved by the declaration of the executing Court that the sale of immovable property i.e. two agricultural fields through Court is set aside, the present Civil Revision Application is preferred by the original decree holder.

4. The decree holder has started the execution proceedings for recovery of an amount of Rs.8152/- with interest @ 1.75 % per month till its realization on the strength of the decree passed in Regular Civil Suit No. 245 of 1978 dated 24/8/1982. In the said execution, initially notice was issued to the present respondent-judgment debtor. He appeared in the same. Thereafter, the litigation took place between the petitioner-decree holder and the wife as well as the minor children of the

judgment debtor. However, those objections were overruled. Thereafter, the petitioner-decree holder sought the execution of the decree by auction sale of two agricultural fields of the present respondent i.e. gat no.78 and gat no.43 of the village. Attachment procedure was first taken and, thereafter, first two bids for sale were held on 7/10/1985 and third bid was held on 11/2/1986. No other bidder has appeared and with the permission of the Court, the present petitioner-decree holder himself bid for the same and accordingly, the lands were auctioned. The panchas had earlier valued the land gat no.78 for Rs.5,000/- and land gat no.43 for Rs.3,000/-. After the third bid was knocked on 11/2/1986, the present respondent decree holder filed application on 3/8/1992 for setting aside the sale in which the impugned order is passed of setting aside the sale. Hence, the present revision application.

5. The learned executing Court held that notice of attachment to the decree holder as per the rules providing next date of appearance in the Court was not

issued. Further, illegal valuation of the property is made by the panchas i.e. for gat no. 43, valuation was made at Rs.3,000/-, though it was bigger than gat no.78 which was valued at Rs.5,000/- though both the lands admittedly being of same quality. Further, the process for bidding the auction was also illegal as while two bids were taken place on 7/10/1985, as per the provisions of Order 21 of the Code of Civil Procedure, the third bid ought to have been taken place within one month. The same, however, has taken place on 11/2/1986. Therefore, as per the provisions, a fresh sale process was required. The objection of the present petitioner that the application was beyond limitation, was not accepted and in the result, the application came to be allowed.

6. Mr. P.S. Agrawal submits that the record would show that in the execution proceedings earlier the notice was issued to the respondent-judgment debtor. He however appeared after 6-1/2 years in the proceedings. Therefore, the claim that the notice of attachment was not proper is merely a technical plea.

The respondent failed to appear in the execution proceedings and to raise any objection regarding the valuation and regarding the dates of sale etc. However, belatedly after a period of 6-1/2 years, the objection was raised and, therefore, in view of the provisions of Order 21 Rule 90 of the Code of Civil Procedure, which requires such objection to be filed within sixty days, the application ought to have been dismissed.

7. Upon hearing learned counsel for the petitioners, in my view, there is no merit in the revision application since the learned executing Court has not committed any material irregularity. The Civil Revision Application is therefore dismissed without any order as to costs for the reasons to follow.

R E A S O N S

8. It cannot be gainsaid that the judgment debtor is required to be noticed at the time of attachment of the property to be sold in execution and the date of

next hearing is required to be put in such a notice. The format of the notice used by the executing Court was old one which was prevalent prior to the amendment to the provisions of the Code of Civil Procedure in the year 1976. Therefore, though the amended provisions of the Code of Civil Procedure requires that the date be fixed for hearing of the objection on the attachment, the same was not intimated to the judgment debtor.

9. Ex-facie illegal valuation has been highlighted by the learned executing Court. Smaller piece of the agricultural land was valued at Rs.5,000/- while the bigger piece of land of the same quality of land was valued at Rs.3,000/- by the panchas. No third party bidder has participated in the bid. In the circumstances, though first and second bid had taken place on 7/10/1985, the third bid had taken place beyond the period of 30 days i.e. on 11/2/1986, wherein also, solely the decree holder has participated and purchased both the lands, which admeasured totally 26 acres in auction purchase for the decretal amount. Since there was no notice to the respondent judgment debtor of the

date on which the objections to the attachment would be heard was given and since the third bid was held much beyond 30 days period, as required by law and since there was ex-facie under-valuation, the provisions regarding the issue of limitation to file the application would not apply since it would be a case of fraud.

. In the circumstances, the ratio in the cases of **"Mangilal Narsingdas Gattani Vs. Shaligram Ukarda Payghan"** 2002 (Supp. 2) Bom. C.R. 598, **"Ramanlal Premchand Shah V. Indumati Bhagwandas"** AIR 1990 Gujarat 1 and **"Saheb Khan V. Mohd. Yousufuddin & Ors."** AIR 2006 SC 1871 would not be applicable to the present case. In the circumstances, the following order:-

10. Civil Revision Application is hereby dismissed without any order as to costs.

[M.T. JOSHI]
JUDGE

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