

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

TUESDAY THE SIXTH DAY OF OCTOBER, TWO THOUSAND AND  
FIFTEEN

PRESENT  
**THE HON'BLE SRI JUSTICE M.S.K.JAISWAL**

**A.S.No.938 of 1995**

Between:

Amanana Venkataratnam and 2 others

..... APPELLANTS

AND

Nadikoppula Seetharamaswamy (Died) and 12 others

.....RESPONDENTS

**The Court made the following:**

**THE HON'BLE SRI JUSTICE M.S.K.JAISWAL**

**A.S.No.938 of 1995**

**ORDER:**

The unsuccessful plaintiffs in O.S.No.36 of 1990 on the file of the Subordinate Judge, Rajam are the appellants in the present appeal.

2. The plaintiffs filed the said suit for declaration of title over the suit schedule property and for consequential injunction, which was dismissed vide judgment dated 31.07.1995.

3. For the sake convenience, the parties are referred to as arrayed in the suit.

4. The material averments in the plaint are as follows:

The plaintiffs purchased the suit schedule property from Defendants 2 to 4 and their father late Donthamsetti Satyanarayana for a valuable consideration of Rs.25,000/- under a registered sale deed dated 27.12.1978 and since then they have been in peaceful possession and enjoyment of the same. Even prior to the sale deed, the plaintiffs entered into an agreement of sale on 22.11.1978. The plaintiffs are non-residents of Rajam and one of the plaintiffs used to visit Rajam now and then. They came to know that there was a collusive attachment made against the suit property behind their back and the same was brought to sale on 20.06.1988. The plaintiffs are not aware of the court proceedings i.e. attachment, proclamation or sale in respect of the schedule property. They came to know that the 1<sup>st</sup> defendant filed a suit in O.S.No.169/1978 against late Donthamsetti Satyanarayana for recovery of amounts and later filed execution petition for sale of the schedule property and in the Court auction, the 13<sup>th</sup> defendant purchased the property. It is stated that the Judgment Debtor-Donthamsetti Satyanarayana has no saleable interest at all in the schedule property as he had already sold the said property in favour of the plaintiffs under registered sale deed dated 27.12.1978 and since then the plaintiffs have become the absolute owners and possessors of the schedule property. Even the encumbrance certificate filed in E.P.No.5/1987 in O.S.No.169/1978 clearly shows that the Judgment Debtor therein has no right, title and interest as on the date of attachment. Donthamsetti Satyanarayana, the Judgment Debtor in E.P.No.5/1987 with a view to deprive the rights of the plaintiffs, suppressed the real facts and colluded with the decree holder i.e. 1<sup>st</sup> defendant and remained *ex parte* in O.S.No.169/1978 and allowed a decree to be passed and proceed with the auction of the schedule property in favour of 13<sup>th</sup> defendant. The plaintiffs were kept in dark all along by the decree holder, judgment debtor and auction purchaser in O.S.No.169/1978. The plaintiffs came to know the above fraud at the

end of 1988 and immediately they filed claim petition in E.P.No.5/1987 in O.S.No.169/1978. It is stated that the sale proceedings in E.P.No.5/1987 in O.S.No.169/1978 are illegal and not binding on the plaintiffs. The trial Court on the ground that the claim is belated and not maintainable, dismissed the claim petition filed by the plaintiffs. Aggrieved by the same, the plaintiffs filed appeal in CMA No.1/1990 and the lower appellate Court granted stay in the said appeal staying all further proceedings, like confirmation of sale and delivery of property in favour of the auction purchaser in E.P.No.5/1987 in O.S.No.169/1978. Hence the plaintiffs filed the suit seeking declaration of their title over the schedule property.

5. Defendant No.1, who filed suit against Donthamsetti Satyanarayana in O.S.No.169/1978 on the file of the District Munsif, Rajam and obtained a decree, resisted the suit and filed written statement raising the following contentions;

It is not correct to say that the plaintiffs purchased the schedule property vide registered sale deed dated 27.12.1978 from Donthamsetti Satyanarayana. It is contended that the plaintiffs are well aware of the interim attachment order passed in O.S.No.169/1978 in respect of the schedule property and there was no illegality or fraud in conducting sale of the schedule property in E.P.No.5/1987. The 1<sup>st</sup> defendant filed O.S.No.169/1978 against Satyanarayana basing on a promissory note executed by him. In I.A.No.667/1978 filed by him in the said suit, the trial Court issued a conditional attachment on 04.12.1978 which was effected on 05.12.1978 and by that time, there was neither any sale agreement nor sale deed in favour of any one of the plaintiffs in respect of the schedule property. It is contended that after attachment of the suit schedule property was effected, the plaintiffs in collusion with Donthamsetti Satyanarayana, brought into existence a collusive registered sale deed dated 27.12.1978. It is contended that late Donthamsetti Satyanarayana incurred debts from various persons and

most of them filed suits. The said Satyanarayana filed insolvency petition and the same was dismissed. The plaintiffs are close friends of Donthamsetti Satyanarayana and they are fully aware of the debts incurred by Satyanarayana and filing of insolvency petition by him. The plaintiffs with a view to have wrongful gain and to defeat the rights of the creditors, colluded with Satyanarayana and brought into existence the collusive ante-dated agreement of sale and thereafter the sale deed. It is contended that the alleged agreement of sale had not seen the light of the day till the plaintiffs choose to file E.A.No.89/1988 in E.P.No.5/1987 in O.S.No.169/1978. It is contended that the issue involved in the suit was already considered and negatived in E.P.No.5/1987 in O.S.No.169/1978 and hence the same is hit by *res judicata*. The suit is not maintainable and barred by time.

6. Defendant Nos.2 & 3, who are sons of late Donthamsetti Satyanarayana, also resisted the suit and filed written statement raising the following contentions;

Their father Donthamsetti Satyanarayana got the schedule property towards his share in the partition and there was no necessity to borrow amounts for family necessity. The plaintiffs are close associates to their father Satyanarayana and they used to provide small amounts for his vices and made their father to incur loans from Vysya Bank and Andhra Bank of Rajam Branches. It is contended that the plaintiffs successfully created a situation whereupon their father was given pressure from Vysya Bank to clear off the loans indebted by him. In those circumstances, at the evil advise of the plaintiffs, their father Satyanarayana executed a sham and nominal sale deed in favour of plaintiffs to get over the pressures from the creditors, as such, the sale deed dated 27.12.1978 is not true, valid and binding on the defendants. It is contended that Defendants 2 to 4 did not join in the execution of the alleged sale deed. The schedule property was in possession and enjoyment of their father only. Their father opposed the validity of

attachment effected by the 1<sup>st</sup> defendant and others in respect of the schedule property. It is contended that the transactions of Defendants 1, 13, the plaintiffs and the court auction proceedings are not binding on the defendants 2 to 4. It is contended that defendants 2 to 4 are in joint possession of their respective shares of the suit schedule property.

7. The Court guardian, representing the 4<sup>th</sup> respondent, filed written statement, contending that the sale deed dated 27.12.1978 said to have been executed by late Satyanarayana during the minority of the 4<sup>th</sup> defendant is not true, valid and binding on the 4<sup>th</sup> defendant. It is contended that the attachment proceedings in O.S.No.169/1978 and E.P.No.5/1987 are also collusive transactions. It is contended that the suit schedule property is joint family property and hence the proceedings in E.P.No.5/1987 and the subsequent proceedings in E.A.No.89/1988 are all void and not binding on the 4<sup>th</sup> defendant.

8. Defendants Nos.5 to 12 filed a memo adopting the written statements filed by Defendants Nos.2 to 4.

9. Defendant No.13, who purchased the schedule property in the Court auction, resisted the suit and filed written statement with the following contentions:

10. Late Donthamsetti Satyanarayana got the schedule property in partition with his father and brothers. Late Satyanarayana was indebted to several persons and some of creditors filed suits against Satyanarayana. In order to avoid the payment to the creditors, Satyanarayana, on the evil advice of the plaintiffs, executed a sham and nominal sale deed in favour of plaintiffs on 27.12.1978 with untrue recitals for a very low price and brought into existence the ante-dated sale agreement dated 22.11.1978 to make appearance that there is genuine transaction of sale and for raising such a plea in the suits filed by the creditors and to screen away the property from the reach of the creditors. It is contended that the plaintiffs never filed petitions disputing attachments. The agreement dated 22.11.1978 is a fabricated

document. It is further contended that the 1<sup>st</sup> defendant obtained a decree and brought the schedule property for sale in execution and gave wide publicity. The 13<sup>th</sup> defendant after having made all enquiries, purchased the property on 20.06.1988 in open auction for a consideration of Rs.3,25,000/-. The plaintiffs filed a petition to set aside the sale after 30 days of the sale and the same was dismissed on merits.

11. The trial Court framed the following issues arising out the of pleadings of the parties;

- 1) Whether the sale deed dated 27.12.1978 is sham and nominal and brought into existence to defeat the rights of the 1<sup>st</sup> defendant?
- 2) Whether the sale deed dt.27.12.1978 is true, and binding on defendants 2 to 12?
- 3) Whether the plaint schedule properties are the joint family properties of Donthamsetti Satyanarayana and defendants 2 to 12?
- 4) Whether the sale deed dated 27.12.1978 is void against the interest of the 13<sup>th</sup> defendant?
- 5) Whether the suit is barred by the principal of *res judicata* by virtue of order passed in E.A.No.89/88 in E.A.No.5/87 in O.S.No.169/78 on the file of the District Munsif, Rajam?
- 6) Whether the suit is barred by limitation?
- 7) Whether the court fee paid is correct?
- 8) Whether the plaintiffs are entitled to the declaration of their title and for permanent injunction?
- 9) To what relief?

12. During course of trial, on behalf of plaintiffs, PWs 1 to 4 were examined and Exs.A1 to A26 were marked. On behalf of defendants, DWs 1 to 6 were examined and Exs.B1 to B20 and Exs.C1 to C6 were marked.

13. The trial Court after a consideration of the oral and

documentary evidence adduced on either side, dismissed the suit, holding that the sale deed dated 27.12.1978 is a sham, nominal and colourable transaction, brought into existence in order to defeat the right of the 1<sup>st</sup> defendant and the other creditors of late Satyanarayana, that defendants 2 to 12 cannot question either the alienation or the attachment proceedings and the court sale of the suit property held at the instance of the creditors, that the claim of the plaintiffs is barred by time, and that the plaintiffs are not entitled for declaration of their title over the schedule property.

14. Aggrieved by the said judgment, the appellants/plaintiffs filed the present appeal contending that the Court below has miserably failed to consider Exs.A1 and A26 which clearly prove that the plaintiff purchased the schedule property under Ex.A2 for a consideration of Rs.27,3000/-, which was attested even by one of the brothers of Satyanarayana; that the Court below erred in dismissing the suit merely on presumptions and assumptions, that the Court below completely ignored the evidence of PW 1, payment of taxes, discharge of debts, electricity arrears etc. and therefore, the judgment of the Court below is liable to be set aside.

15. Heard the learned counsel appearing for the appellants as well as the respondents.

16. The points that arise for consideration in this appeal are;

- (i) Whether the plaintiffs are entitled to file the suit seeking declaration of title over the schedule property, when they were unsuccessful in E.A.No.89/1988 in E.P.No.5/1987 in O.S.No.169/1978 in respect of the same property?
- (ii) Whether on the facts and in the circumstances of the case, the trial Court is justified in dismissing the suit of the plaintiffs for declaration, and whether there are any grounds to set aside the decree and judgment of the trial Court?

Points:

17. The learned counsel for the appellants would contend that the Court below has miserably failed to consider Exs.A1 to A26 which clearly reveal that the appellants/plaintiffs had purchased the schedule property under Ex.A2 for a valuable consideration of Rs.27,300/- and as per terms of Ex.A1 sale agreement, they discharged the debt of Satyanarayana to Vysya Bank under Ex.A3 receipt, that the documents were mortgaged to Andhra Bank and under Exs.A16 the names of the plaintiffs were mutated in the revenue records and thus the plaintiffs are *bona fide* purchasers of the schedule property. The learned counsel further contends that the Court below erred in dismissing the suit basing on surmises and it also erred in observing that Ex.A2 does not disclose the recital of delivery of possession to the plaintiffs. The learned counsel further contends that the Court below has not taken into consideration the revenue records, encumbrance certificate and mortgage documents with respect to the schedule property and erroneously dismissed the suit of the plaintiffs.

18. The learned counsel appearing for the contesting respondents would submit that the Court below elaborately discussed each and every document that were produced on either side and rightly dismissed the suit of the plaintiffs, which does not call for any interference. The learned counsel further contends that the plaintiffs raised their claim of title in E.A.No.89/1988 in E.P.No.5/1987 in O.S.No.169/1978 and the same was dismissed and hence the suit of the plaintiffs is not maintainable. The learned counsel further submits that Ex.A1 sale agreement is a created document with ante date for purpose of defeating the rights of the 13<sup>th</sup> defendant, the auction purchaser over the schedule property.

19. Earlier to the suit, the daughter of late Donthamsetti Jagannadham, by name Kanakam Satyamma filed suit in O.S.No.28/1993 against the plaintiffs herein and others seeking

partition, contending that during life time, her father Jagannadham gave some property to his three sons and since 1967 her father and sons are living separately as divided members and the schedule property is the self-acquired property of late Jagannadham and her brothers have no right over the schedule property. She further pleaded that her elder brother Satyanarayana, after death of her father Jagannadham, used to maintain the property and used to pay usufruct over the schedule property to her and her sisters. She further contends that after death of her father Jagannadham and her mother, herself and her sisters have become the absolute owners of the schedule property under Hindu Succession Act.

20. The plaintiff Kanakam Satyamma in O.S.No.28/1993 further contends that her elder brother Donthamsetti Satyanarayana addicted to bad vices and indebted to Banks, and suppressing the real facts with regard to schedule property, executed a sham and nominal sale deed on 27.12.1978 in favour of the plaintiffs herein within an intention to deprive her rights and her sisters' rights over the schedule property.

21. A perusal of the entire record would go to show that Donthamsetti Satyanarayana was indebted to the 1<sup>st</sup> defendant herein, by name Nadikoppula Seetharamaswamy, and the said Seetharamaswamy for recovery of amount from Satyanarayana, filed a suit in O.S.No.169/1978 on the file of the District Munsif, Rajam and in that suit, Satyanarayana remained *ex parte* and the same was decreed. In the said suit, the 1<sup>st</sup> defendant filed I.A.No.667/1978 under Order 38 Rule-5 CPC seeking attachment of the schedule property before judgment and the same was ordered and the property was attached before judgment on 05.12.1978. Satyanarayana contested the said I.A., however, the attachment was made absolute by the trial Court. The 1<sup>st</sup> defendant filed E.P.No.5/1987 in O.S.No.169/1978 for sale of the schedule property in execution of the decree and the execution proceedings were pending for more than one year. In the court auction

proceedings, the 13<sup>th</sup> defendant purchased the schedule property on 20.06.1988 for a consideration of Rs.3,25,000/-. After sale proceedings, the plaintiffs approached the Court below by filing E.A.No.89/1988 in E.P.No.5/1987 in O.S.No.169/1978 and the same was rejected by the Court below. Thereafter, the plaintiffs filed the present suit.

22. The suit filed by Kanakam Satyamma, daughter of late Donthamsetti Jagannadham and sister of Donthamsetti Satyanarayana, seeking partition of the schedule property in O.S.No.28/1993 on the file of the Subordinate Judge, Rajam was dismissed, aggrieved by the same, the legal representatives of Kanakam Satyamma filed appeal in A.S.No.128/2006 before this Court.

23. The case of the appellants/plaintiffs is that they have entered into agreement of sale of the schedule property under Ex.A1 with Donthamsetti Satyanarayana and subsequently obtained Ex.A2 sale deed and they discharged the loans of Satyanarayana as agreed. Their further case is that they mortgaged the property to Banks and their names were mutated in the revenue records and the property is in their peaceful possession and enjoyment.

24. The learned counsel for the appellants submitted that though the plaintiffs were unsuccessful in E.A.No.89/1988 in E.P.No.5/1987 in O.S.No.169/1978 on the file of the District Munsif, Rajam, the suit filed by the plaintiffs is maintainable, in view of the ratio laid down in

***Gangineni Damodar Naidu v. Kurapati Kondaiah Naidu*** <sup>[1]</sup> where this Court held as under:

“Even where an adjudication, on merits, was rendered, in respect of part of the dispute, it cannot operate as *res judicata*, as regards the rest of the dispute. When a claim petition in execution petition was dismissed as not maintainable and time barred, it cannot be said that the suit is barred on the ground that the leave of the Executing Court was not obtained before filing it.

Order XXI provides for adjudication of claims, on par with suits, in the execution proceedings itself, at the

stages of attachment and recovery of possession; whereas it does not contain similar provision, in relation to the stage of sale. The right of an individual to file a suit, is almost universally recognized under the CPC and any bar to it, whether under CPC, or any other law, for the time being in force, must be specific. A suit cannot be barred on mere surmises and inferences.”

25. In the present also the plaintiffs approached the Court with a claim petition after auction proceedings are over and the Court below dismissed their application as time barred. Therefore, in view of the above decision of this Court, it cannot be said that the suit of the plaintiffs is not maintainable and hit by the principles of *res judicata*.

26. Coming to the next issue whether Exs.A1 and A2 are genuine and the plaintiffs would get any right over the schedule property under the guise of Exs.A1 and A2.

27. One Kanakam Satyamma, the elder sister of Dontham Satyanarayana, in O.S.No.28/1993, filed by her seeking partition of the self-same schedule property, had stated that her brother Satyanarayana had no right over the schedule property and the same was vested in her favour and in favour of her sisters after demise of her father and mother, as her father and brothers were partitioned way back in the year 1967, and Satyanarayana is only caretaker of the schedule property and he had not acquired any saleable rights. She further stated that the plaintiffs herein are close associates and friends of her brother Satyanarayana. She also stated that the agreement of sale and sale deed which are marked as Exs.A1 and A2 herein are sham and nominal documents and they were purposefully executed by her brother Satyanarayana only in order to evade to give share in the schedule property to her and her sisters for a nominal price in favour of plaintiffs, who are his close friends.

28. Admittedly, the plaintiffs are close friends of Donthamsetti Satyanarayana. Satyanarayana was indebted to various persons and

banks, and the creditors filed as many as six suit in 1978 and 1979 and obtained attachment of the schedule property before judgment. 1<sup>st</sup> defendant is one of the creditors and he filed suit against Satyanarayana in O.S.No.169/1978 on the file of the District Munsif, Rajam and obtained decree and later filed E.P.5/1987 for execution of the decree and 13<sup>th</sup> defendant purchased the schedule property in the court auction on 20.06.1988. At that stage, the plaintiffs filed E.A.No.89/1988 under order 21 Rule 90 CPC to set aside the sale and the same was dismissed. Aggrieved by the same, the plaintiffs filed CMA.1/1990 and subsequently they withdrew the same and filed the present suit seeking declaration of their title over the schedule property.

29. The suit property is a mango tope of an extent of Ac.9.71 cents situated at Ponugutivalasa village. As per Ex.A1 the plaintiffs agreed to discharge debt of Satyam due to Vysya Bank and after discharge, obtained sale deed on 27.12.1978. It is pertinent to note that in O.S.No.169/1978 the schedule property was attached before judgment on 04.12.1978 in I.A.No.667/1978 filed under Order 38 Rule 5 CPC and the attachment was effected on 05.12.1978 under Ex.B2. Therefore, before the date of Ex.A2 sale deed i.e. by 27.12.1978 the property was attached. As seen from Ex.A2 sale deed, there was no recital with regard to delivery of possession of the property in favour of plaintiffs under Ex.A2. The encumbrance certificate, which was obtained after attachment of property, shows that the plaintiffs have purchased the property.

30. The claim of the plaintiffs is that Satyanarayana has no title or saleable interest in the property and hence the court auctions proceeding will not bind on them and the auction purchaser will not get any right over the property. The documents viz., electricity bills, revenue records etc. are all subsequent to attachment of property. The plaintiffs are friends of Satyanarayana and they are well aware about the suits filed by the creditors of Satyanarayana and they simply stated that they

are non-residents of Rajam and they do not know about execution proceedings. The attachment of property before judgment was made by beat of tom tom in and around the suit schedule locality. Exs.A1 and A2 are admittedly executed at Rajam and Ex.A2 sale deed was executed subsequent to attachment of property in the suit filed by the 1<sup>st</sup> defendant. It is not believable that the plaintiffs are ignorant of the execution proceedings. Though they have knowledge of the execution proceedings, they did not choose to file claim petition before sale proceedings and they wantonly filed claim petition after sale proceedings are over.

31. Ex.A1 is silent as to when the advance was paid to Satyanarayana and it is also not mentioned about the mortgages pending. It is recited that except a charge under sale deed, there were no mortgages, though the property was attached before judgment in the suit filed by the 1<sup>st</sup> defendant. It was recited in Ex.A1 that the property was delivered on the same day, but the same fact was not recited in Ex.A2 sale deed. The Court below found that Exs.A1 and A2 are brought into existence for the reasons as mentioned in paragraph-18 of the judgment.

32. According to PW 1, on the date of sale deed, he discharged the debt of Satyanarayana and obtained Ex.A3 receipt and placed before the Sub-Registrar's office and thereafter, the scribe prepared the sale deed, but there was no mention in the sale deed in this regard. At page 12 of the sale deed there was an incorporation as to passing consideration which was closely written to adjust the sheet. The evidence of PWs 1 and 2 shows that PW 1 alone came forward to purchase the property on the intimation of PW 2 that Satyanarayana intended to sell the schedule property. PW 2 admitted that himself and Satyanarayana are childhood friends. PW 2 is well aware of the loans taken by Satyanarayana and both of them hatched up a plan to screen away the property from the hands of creditors and created sham and

nominal documents in respect of the schedule property in favour of plaintiffs under Exs.A1 and A2. By the date of Ex.A2 there was attachment over the schedule property and suits filed by the creditors against Satyanarayana. If anybody wants to purchase a property, he would be expected to make thorough enquiries with regard to title of the property. But in the present case, without making any enquiries, PW 1 came forward to purchase the property. PW 1 admitted that he did not even peruse the revenue records before purchasing the property. PW 1 is admittedly a businessman. It is not believable that without making any enquiries, being businessman, PW 1 purchased the property. Ex.A4 letter does not specify the date of mortgage by Satyanarayana. The Court below elaborately considered the evidence of PWs 1 and 4 and documentary evidence adduced by them and held that Exs.A1 and A2 are sham and nominal and brought into existence to defeat the rights of the creditors of Satyanarayana.

33. As rightly held by the Court below under Section 53 of the Transfer of Property Act, the transfer of immovable property made with an intention to defeat or delay the creditors of the transferor shall be void. As already stated, by the date of Ex.A2, some creditors of Satyanarayana filed suits and obtained attachment of the suit schedule property before judgment. There is no evidence that by the date of Ex.A2, Satyanarayana has got some more properties other than the suit schedule property to discharge his debts. The conduct of the parties prior to the transaction and subsequent to the transaction have to be taken to examine the real intention. The evidence of PWs 1 and 2 shows that Exs.A1 & A2 were brought into existence only to circumvent the attachment of the schedule property. The conduct of Satyanarayana in failing to contest the suit and execution proceedings till the property is sold would disclose that Ex.A2 sale deed is fraudulent transaction.

34. Strong reliance is placed upon by the plaintiffs on the fact that in the encumbrance certificate that was produced at the time of court

auction in E.A.No.89/1988 in E.P.No.5/1987 in O.S.No.169/1978, it was specifically mentioned that there is sale deed in favour of plaintiffs herein and in spite of that the Court proceeded with the auction. This submission would have been relevant, had the sale deed is prior to the attachment before judgment was ordered. It may be recalled that the court has attached the mango tope on 05.12.1978 and Ex.A2 registered sale deed is dated 27.12.1978. Therefore, any alienation made subsequent to the attachment is liable to be ignored and they need not be considered and accepted. Therefore, it cannot be said that the Executing Court went wrong in putting the suit mango tope in auction even though it was already sold in favour of the plaintiffs on 27.12.1978.

35. Reliance is placed upon **Ahmedabad Municipal Corpn. v. Haji Abdulgafur**<sup>[2]</sup>, wherein, the Supreme Court held as under:-

“There is no warranty of title in an auction sale. It is axiomatic that the purchaser at the auction sale takes the property subject to all the defects of title and the doctrine of *caveat emptor* (purchaser be aware) applies to such a purchaser. The case of judgment-debtor having no saleable interest at all in the property sold is, however, different and is not covered by this doctrine.”

The above dictum is not in dispute.

36. The learned counsel appearing for the appellants/plaintiffs, relied upon the following authority:-

In **Sai Enterprises v. Bhimreddy Laxmaiah**<sup>[3]</sup>, it is observed as under:-

“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)".

37. The crucial aspect in the matter is as to whether prior to the attachment on 05.12.1978 the suit mango tope was subject matter of agreement of sale, if the agreement of sale is proved to be in existence by the date of the attachment, the agreement holder would get preferential rights, but not otherwise. Similarly, if the property i.e. the subject matter of attachment is sold subsequent to the Court attachment, the same could not be taken into consideration. In the instant case, what is to be essentially determined is as to whether Ex.A1 was executed prior to the attachment as claimed by the plaintiffs or whether the same has been brought into existence only with the intention of defeating the creditors of Satyanarayana and to circumvent the legal impediment in view of the property being attached in Court.

38. In ***Raghunath Pradhani v. Damodra Mahapatra***<sup>[4]</sup>, a Three- Judge Bench of the Supreme Court held as under:-

“Though the order of attachment was prior to the sale of the property to the appellant, it was void as it was contrary to the express inhibition contained in Clause 6 of the Regulation 2 of 1956 read with Rule 4 made thereunder. Under the registered sale deed executed by respondent 3 in favour of the appellant, after obtaining the permission of the competent authority, the title to the property vested in the appellant and respondent 3, the Judgment-debtor, had no saleable interest left in the property which could be brought to sale in the Court auction. Only the right, title and interest of the Judgment-debtor can be brought to sale in a Court sale and nothing more. Therefore, the auction purchaser, respondent 2, could get nothing in the auction sale. The auction sale cannot displace the title of the appellant. The auction sale is void also because the competent authority had granted permission only to sell the property for Rs.4000/-, but the property was sold for a lesser amount at the auction.”

39 It is not in controversy that as many as six suits were filed by different persons against Satyanarayana in 1978 and 1979 for recovery of money and one of them is O.S.No.169/1978 which was filed by Defendant No.1. He obtained attachment before judgment in I.A.No.667/1978 in O.S.No.169/1978 though the said application was keenly contested by Satyanarayana who was alive by that time, the attachment was made absolute. Thereafter, Satyanarayana did not contest the suit, he remained *ex parte* and the suit was decreed and execution proceedings were taken out in E.P.No.5/1987. After following the due procedure, sale was conducted by the executing Court on 20.06.1988 and Defendant No.13 is the auction purchaser, and these aspects are not in controversy and they are also established from the documents that are marked.

40. While Defendants Nos.1 and 13 are having one set of defence, namely while Defendant No.1 is the decree holder in O.S.No.169/1978, whereas Defendant No.13 is the auction purchaser in the court sale conducted in pursuance of the decree in the said suit.

Plaintiffs are having different set of defence and as a matter of fact their contest is against Defendants Nos.1 and 13. The case of the plaintiffs is that Satyanarayana who enjoyed and possessed the suit mango tope has sold the same to them under Ex.A2 registered sale deed dated 27.12.1978. Nearly one month prior thereto, there was an agreement of sale and in pursuance thereto, the registered sale deed was executed. The consideration for the suit tope is said to be Rs.25,000/- In the sale deed, it was mentioned that Satyanarayana is selling the suit schedule property to meet certain debts including that of Vysya Bank to which Satyanarayana indebted to a tune of about Rs.8,000/- This sale deed is dated 27.12.1978. The attachment before judgment was effected on 05.12.1978. As matters stand, since the sale deed is subsequent to the attachment before judgment, it becomes irrelevant in so far as the decree holder is concerned. However, in order to overcome the same, Ex.A1 which is said to be agreement of sale has been brought into existence on 22.11.1978 and that is prior to the attachment by the Court. On the basis of Ex.A1, it is contended by the plaintiffs that even prior to registered sale deed, there is an agreement of sale effected in respect of the suit schedule property and thereafter, Ex.A2 sale deed was executed. Plaintiffs pleaded ignorance with regard to the suit and attachment application filed by Defendant No.1 in O.S.No.169/1978. However, their contention is that Satyanarayana keenly contested the suit as well as attachment application filed by Defendant No.1 at that time.

41. Admittedly, the suit mango tope was purchased by late Jagannadham under registered instrument in the year 1964. The plaintiffs have purchased the same under Ex.A2 registered sale deed dated 27.12.1978, said to be in pursuance to Ex.A1 agreement of sale dated 22.11.1978. It is also not disputed that even by the date of sale by Satyanarayana in favour of the plaintiffs, the suit mango tope stood in the name of Jagannadham, who, however, died in 1971. The plaintiffs

being prudent businessmen ought to have satisfied themselves as to how Satyanarayana alone is competent to sell the suit mango tope, which admittedly stands in the name of his father Jagannadham. It may also be noted that Apparao, the brother of Satyanarayana has attested Ex.A2 sale deed as a witness. While Satyanarayana died in 1982, Mukhalingam, the other brother of Satyanarayana died in 1981. Therefore, when the sale deed Ex.A2 was executed, by that time both the brothers of Satyanarayana, viz., Mukhalingam and Apparao were alive. While Apparao had attested the Sale Deed, Mukhalingam did not join in the said sale deed in any capacity whatsoever. When the property stood in the name of Jagannadham, the father of three brothers, if the three brothers, viz., Satyanarayana, Mukhalingam and Apparao have executed the sale deed, there could have been some meaning in presuming that the plaintiffs have obtained the sale deed from all three sons of Jagannadham, since Jagannadham died in the year 1971 and his wife Narayanamma died in 1979. As a matter of fact, by the date of the sale deed Ex.A2, Narayanamma, the wife of Jagannadham was alive.

42. Upon carefully perusing the recitals of Exs.A1 and A2 and surrounding facts and circumstances, it can be said that Ex.A1 is not a genuine document and that the same has been brought into existence only to circumvent the requirement of law that the agreement of sale in respect of the suit schedule mango tope is prior to attachment before judgment. One of the strong circumstances for drawing such conclusion is that in Ex.A2 sale deed there is no reference about Ex.A1 agreement of sale and only reference thereto is by way of interpolation and insertion and even that interpolation and insertion is made in a most inappropriate place in the sale deed. Even if the said interpolation is taken to be made at the relevant time that do not appear to be having any bearing to the agreement of sale. It appears that the said "agreement" was in respect of making the payment of part of sale consideration to the Vysya Bank

as agreed. The scribe of Ex.A1 and Ex.A2 is one and same. He was examined as PW 4. He is a Teacher and a professional document writer. He admits that when Ex.A2 sale deed was being scribed, the agreement Ex.A1 was very much before him. Still he did not make a reference to it and he admits that it may be due to oversight. It is also in the evidence that the agreement Ex.A1 was executed in the Office of Sub-Registrar, Rajam. Yet it was not registered. That apart in Ex.A1 itself there was mention that possession of the suit tope was delivered. The consideration was said to be Rs.25,000/- On the date of agreement of sale, only a sum of Rs.2,300/- was paid by the purchasers and that is said to be the cost of electrical motor pump set which existed in the suit schedule land. That means, virtually even without receiving any consideration for the suit mango tope on the date of Ex.A1 agreement, plaintiffs want it to be believed that Satyanarayana delivered possession to them on the date of agreement. It is also to be noted here that even though plaintiffs claim to have been put in possession of the suit mango tope, which was to an extent of Ac.10.00 as long back in 1978, no revenue record was produced by them to show their possession. Payment of electricity consumption charges by itself cannot be taken as establishing the possession of the schedule mango tope.

43. In **Ashwin S.Mehta & Anr. v. Custodian & Ors.**<sup>[5]</sup>, the Supreme Court made the following observations:-

“In view of the matter, evidently, creation of any third-party interest is no longer in dispute nor the same is subject to any order of this Court. In any event, ordinarily, a *bona fide* purchaser for value in an auction-sale is treated differently than a decree-holder purchasing such properties. In the former event, even if such a decree is set aside, the interest of the *bona fide* purchaser in an auction-sale is saved. (See *Nawab Zainn-ul-Abdin Khan v. Mohd.Asghar Ali Khan* (1887) 15 IA12. The said decision has been affirmed by this Court in *Gurjoginder Singh V.*

*Jaswant Kaur (1994) 2 SCC 368).*

44. The 2<sup>nd</sup> plaintiff who was examined as PW 1 admitted that the relationship between himself and his Vendor Satyanarayana was cordial and they were meeting now and then since they were running businesses at Rajam. The sale deed Ex.A2 came to be executed on 27.12.1978, whereas the schedule property was attached by the Court on 05.12.1978. Satyanarayana was very much aware about the attachment inasmuch as he contested the proceedings. It is difficult to believe that Satyanarayana would not have informed the plaintiffs about there being attachment before judgment in respect of the suit schedule property, which was purchased by the plaintiffs under Ex.A2. Significantly, it is pertinent to note that even though the property was sold in Court auction in 1988, PW 1 stated that he was not aware of it till the boys who are working in his shop informed him the said fact. This is a far fetched explanation on the part of PW 1.

45. During pendency of the present appeal, the appellants/plaintiffs sought for an injunction by filing CMP No.11158/1995 in A.S.No.938/1995. When the learned Single Judge refused to grant injunction pending disposal of the appeal, the appellants/plaintiffs preferred LPA No.155/1995 and a Division Bench of this Court, by judgment dated 21.11.1995, refused to grant injunction in favour of the appellants/plaintiffs, but directed the auction purchaser to deposit a sum of Rs.25,000/- every year to the credit of the suit by way of security.

46. The learned senior civil judge has appreciated the voluminous oral and documentary evidence elaborately in all aspects in proper perspective and delivered the judgment. As a matter of fact, each and every contention coupled with oral and documentary evidence has been considered and discussed in detail. I agree with the findings arrived at by the Court below and I find no infirmity legal or otherwise

warranting interference with the said findings.

47. For the foregoing reasons, the Appeal is dismissed. The appellants/plaintiffs shall pay to Defendant No.1-Nadikoppula Seetharamaswamy (Decree Holder) and Defendant No.13-Potta Seetharama Gupta (Auction Purchaser) the costs of this appeal. It is made clear that Defendant No.13-Potta Seetharama Gupta (Auction Purchaser) is at liberty to withdraw the amounts deposited by him before the Court below together with accrued interest, after the appeal time is over.

Pending miscellaneous applications, if any, shall stand closed in consequence.

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**M.S.K.JAISWAL,J**

Date: 06.10.2015

Dsr

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[\[1\]](#) 2007(1) ALD 106

[\[2\]](#) (1971) 1 SCC 757

[\[3\]](#) (2007) 13 SCC 576

[\[4\]](#) (1979) 1 SCC 508

[\[5\]](#) (2006) 2 SCC 385