

HONOURABLE SRI JUSTICE S.RAVI KUMAR

C.M.A.No.636 of 2015

Dated 9-8-2016

Between:

T.Venkateshwar Rao.

..Appellant.

And:

M/s.Cholamandalam Investment & Finance Ltd., represented by its Managing Director M.Girish Kumar and others.

..Respondents.

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C.M.A.No.636 of 2015

JUDGMENT:

This appeal is against order dated 19-8-2015 in E.A.No11 of 2015 in E.P.No.8 of 2014 on the file of II Additional District Judge, Ranga Reddy District at L.B.Nagar.

Appellant and 3rd respondent herein are J.Drs. and they filed petition under Order 20 Rule 90 C.P.C. to set aside the sale i.e., conducted on 22-2-2015.

Appellant contended that there was a clandestine understanding between the Decree Holder and the auction purchaser to knock away the property for lesser price both of them played fraud with the court and that the sale is liable to be set aside on that ground. He also contended that there is a glaring material irregularity in publication and conducting auction and on that ground also, sale is liable to be set aside.

Decree Holder opposed the application and filed counter disputing the affidavit averments of First J.D.R. and on a consideration of contentions

and rival contentions of both parties, Court below dismissed the application holding that objections raised by the appellant herein are not tenable. Aggrieved by the same, present appeal is preferred.

Heard both sides.

Advocate for appellant mainly contended that Executing Court issued proclamation for sale of property on 26-9-2014 and the amount mentioned in the warrant was Rs.16,59,783/- as on 31-10-2014 but publication was issued in Eenadu Daily on 21-1-2015. He further submitted that proclamation did not contain the place of sale, time of sale and value of J.Dr. which are mandatory as per Order 21 Rule 66 (2) of C.P.C. He further submitted that actual market value of the property is above Rs.99 lakhs as it is located in prime area of Nagole village, but property was sold for a meager sum of Rs.34 lakhs. He further submitted that though several material irregularities in conduct of sale were pleaded and brought to the notice of the Court below, none of them were answered and the trial court dismissed the application without proper application of mind. He further submitted that the observation of the court below that J.Dr. has to file a petition under Order 21 Rule 89 C.P.C. by depositing the sale amount is absolutely incorrect, particularly, when J.Dr. pleaded collusion between Decree Holder and auction purchaser by playing fraud and on the ground of material irregularities in publication in conduct of sale.

On the other hand, advocate for Decree Holder submitted that J.Drs. filed applications before the Court below seeking time for payment of the amount but they failed to pay the amount

and the court below after granting reasonable time proceeded with sale of property. He further submitted that as per the market value produced by the Decree Holder, the Court below fixed upset price and thereafter, auction was conducted and there is no material irregularity in conducting sale. He further submitted that there are no grounds to interfere with the order of the court below.

Now the point that would arise for my consideration in this appeal is whether the order of the court below is proper, legal and correct?

POINT:

As seen from the material, an award was passed on 25-10-2010 and that was executed before the lower court. A house property in plot bearing Nos.7 and 8 in S.No.96 of 2003 comprising of 311 square yards situated at Nagole village in Uppal Mandal was brought to sale in E.P.No.8 of 2014 and the warrant amount was Rs.16,59,783/- as on 31-10-2014. The J.Drs. in their application filed under Order 20 Rule 90 C.P.C. specifically pleaded that the court below did not take independent opinion as to the value of the property and the auction was conducted contrary to the provisions under Order 21 C.P.C. They also specifically contended that sale is in contravention of Rule 276 of Civil Rules of Practice and Rule 66 of Order 21 C.P.C. It is also contended by the J.Drs. that the sale proclamation did not show the place of sale, time of sale and value of J.Dr. which are mandatory under Order 21 Rule 66 (2) of C.P.C. In the application, the appellants have also referred to rulings of this court supporting the grounds taken for setting aside the sale. The trial court has not answered any of these grounds and dismissed the application on the sole ground that

J.Dr. has not paid decretal amount though he was liberally granted time to make the payment. When the sale was challenged on the ground of material irregularity or fraud in publishing or conducting sale, it is incumbent on the court below to examine those aspects with reference to material on record, particularly the court proceedings and shall give a finding as to the correctness of the grounds that was urged in the petition. But court below without giving any finding on the grounds taken particularly non-compliance of Rule 276 of Civil Rules of Practice Rule 66 of Order 21 C.P.C. etc., decided the matter in cryptic way.

On a scrutiny of entire material including impugned order, I am of the considered view that this is a fit case where the impugned order dated 19-8-2015 is liable to be set aside and matter shall be remitted back to the court below with a direction to decide the same with reference to the specific grounds that are taken in respect of material irregularity or fraud in publishing or conducting sale etc., and the decisions cited in support of those points.

For these reasons, the impugned order dated 19-8-2015 is set aside and the matter is remitted back to the court below and the court below shall decide the application afresh in the light of the above observations and decide it as expeditiously as possible.

This appeal is allowed accordingly. No costs.

As a sequel to the disposal of this appeal, Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE
S.RAVI KUMAR

Dated 9-8-2016.
Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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Dvs