



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

107

**FAO-1014-1993 (O&M)
Reserved on : 12.11.2024
Pronounced on : 11.02.2025**

Narinder Kumar and another

..... Appellants

versus

Punjab National Bank and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Amit Jain, Senior Advocate with
Mr. Anupam Mathur, Advocate
for the appellants.

Mr. Ravinder Singh, Advocate
for respondent No.1-PNB.

Mr. Vivek Suri, Advocate
for respondent No.15(i) to (iv).

PANKAJ JAIN, J. (Oral)

1. Present appeal is directed against order dated 12.06.1993 passed by Sub-Judge, 1st Class Patiala, whereby objections filed by the appellants to the sale conducted by way of auction by Receiver dated 24.04.1993 have been rejected. Sale has been confirmed and issuance of the sale certificate has been ordered.

2. The instant *lis* is borne out of a civil suit filed by respondent No.1-Bank against appellants No.1 and 2 and respondents No.2 to 14. Bank filed suit for recovery of Rs.5,45,719.59 and future interest at the contractual rate of 13.5% per annum and further sought recovery against hypothicated and mortgaged properties as mentioned in the head note of the plaint.



3. Defendants No.10 and 11-the present appellants filed an application seeking appointment of Receiver. In the written statement also, they pleaded as under:-

“That the land sought to be sold which is said to have been hypothecated with the Bank is total 178 Kanals 8 Marlas and the Khasra nos. has been shown in the plaint. Smt. Kamla Devi and Kishan Chand were the owners to the extent of half share each in the total land i.e. 178 Kanals and 8 Marlas. 16 Kanals 4 Marlas which have been mentioned at head note F and G of the plaint were sold by Kamla Devi from her share. Further Partition took place between the said Kamla Devi and Kishan Chand and both become owners in possession of specific khasra nos. Further a partition took place between Kamla Devi and defendant no. 2 to 5 and LR of Sham Lal and Khasra nos. 54//3 measuring 6-16 and khasra no. 54//4 measuring 9-8 fell to the share of defendants no.2 to 5 and sham Lal. Thus all the parties came in possession of specific khasra nos. including defendant no, 2 to 5 and L.Rs. of Sham Lal. Mutation was also incorporated in the Revenue record which is a numbered as 1118 and the leave of the Hon'ble court is sought to produce the same at the time of hearing of case. Thus if at all the court comes to the conclusion that land mentioned at Serial no. F and G is to be sold then only specific khasra numbers 54//3 measuring 6-16 and 54//4 measuring 9-8 totalling 16 kanals 4 marlas can be sold.

There is no merit in the prayer clause of the plaint.

It is therefore prayed that the suit of the plaintiff may kindly be dismissed with costs qua the replying defendants.”

The said application was allowed by the Civil Judge vide order dated 08.01.1992.

4. On 23.07.1992, another application was moved by defendant No.1 for effecting sale of the sheller. On 27.08.1992, the appellants further moved application that the sheller was suffering from heavy losses and delay in auction shall only lead to multiplicity of loss

as it was requested that the Receiver be directed to put the sheller to the



auction immediately. The Court acting upon the repeated requests made by the defendants, authorized Receiver to auction the sheller. Receiver issued public notice for auction of the land as well as the machinery. The property was sold in favour of respondent No.15 for an amount of Rs.9 lakhs.

5. After the sale was conducted on 24.04.1993, the instant objections were filed praying that the sale be set aside as the Receiver has not only acted against the mandate, but has also acted against the interest of the objectors. The objection by the objectors was that the Receiver acted in violation of Order 34 Code of Civil Procedure. The mortgage property cannot be put to auction in the absence of preliminary decree. Mortgage property has been put to auction while the suit is still pending. Receiver was appointed on an application filed under Order 40 CPC. His job was to preserve property and to realize, manage and to improve upon the same and to account for rents and profits, if any, collected. However, he proceeded on to sell the property in violation of the bare provisions contained in the statute. He acted under influence of one Randir Chand without seeking any clarification from the Court.

6. It was claimed that in terms of Order XXI Rule 66, Receiver was required to move an application before the Court. The property has been sold without there being any compliance of Order XLI Rule 66 CPC. Conditions of auction were published on 24.04.1993. In terms of condition No.3, 25% of the amount of final bid was to be deposited at the spot. Receiver bifurcated the property into machinery/tools/ building and proceeded on to sell the property without



proper munadi. Conditions were laid down only for 08 kanals, 04 marlas of land, whereas the land measuring 16 Kanal, 04 marlas has been sold. It is only sale of 08 kanals, 02 marlas of land as mentioned at item No.F in the head note of the plaint which can be sold. Even though, Receiver received an amount of Rs.2,25,000/, but he has not deposited the same with the Court.

7. The objections stand rejected vide impugned order against which the objectors have filed the present appeal.

8. Learned Senior counsel appearing for the objectors has drawn attention of this Court to the provision contained under Order XXI Rule 64 and Rule 66 CPC to submit that prior to putting land to auction, Receiver was required to ascertain as to which part of the property was necessary to satisfy the claim of the plaintiff. The Court as well as the Receiver having failed to ascertain whether it is the share of the property alone or it is the whole property which needs to be sold to satisfy the claim of the plaintiff, erred in law and thus, the impugned order as well as the sale being in teeth of law cannot be sustained. Mr. Jain further submits that the auction purchaser was being represented through son of the Receiver and thus, the collusion being evident, the whole action of the Receiver has come under cloud and thus, cannot be sustained. He has drawn attention of this Court to the order dated 08.01.1992 and further to the clarification sought by receiver vide application dated 20.05.1992 and order passed by the Court thereupon dated 02.02.1993. He submits that once the Court clarified that the auction has to be conducted only in terms of order dated 08.01.1992, the auction could not have proceeded for any property, but the one



mentioned at item No.F.

9. *Per contra*, Mr. Suri submits that initially application dated 14.02.1991 was moved by the defendants for sale of property at item No.F, on which order dated 08.01.1992 was passed. Thereafter, another application was moved by the present objectors-appellants on 12.03.1991, wherein they prayed that if the Receiver is appointed, it needs to be appointed for both the lands and buildings marked F and G and not for F alone. If Receiver is appointed only qua property F and not qua G, it will cause financial loss to the defendants-applicants as well as plaintiffs and it will not be possible to have proceeds from its auctions according to the market value. Thereafter, another application was moved by the objectors only on 27.08.1992, claiming that the sheller is suffering from heavy loss and if it is not put to auction immediately, the loan of the defendants will keep on multiplying and thus, causing loss to the defendants. Thus, in order to save them from further loss, directions be issued to Receiver to put the sheller to auction immediately. Mr. Suri thus, submits that in view of the aforesaid requests made by the objectors themselves, they cannot be allowed to plead and it is only the land as mentioned at point F, which was required to be sold. He refers to law laid down by Supreme Court in the case of **Kanhaiyalal vs. Dr. D.R. Banaji and others**, reported as **1958 AIR (SC) 725** to submit that sale of property without leave of Court, cannot be held to be void *ab initio*. He further relies upon ratio of law laid down by Supreme Court in the case of **Industrial Credit and Investment Corporation of India Ltd. and others vs. Karnataka Ball Bearings Corpn. Ltd. and others** reported as **1999(7) SCC 488**, to



submit that the Receiver is well within his power to sell immovable property before passing of decree and there is no bar in exercise of such power. He submits that the sale was conducted in the year 1993, the auction purchaser deposited whole of the money. The sale cannot be annulled after more than 30 years at the instance of the objectors on whose request, the property was put to auction.

10. I have heard counsel for the parties and have carefully gone through the records of the case.

11. The bedrock of the argument raised by counsel for the objectors is order dated 08.01.1992 passed by the Court and order dated 02.02.1993 passed by the Court on the clarification sought by the Receiver. Operative part of the order dated 08.01.1992 reads as under:-

“In view of the above statement of Shri Vijay Mohan Gupta Advocate counsel for the plaintiff, Sh.M.M.Sayal Advocate Patiala is appointed as Local Commissioner/Receiver in this case to effect the sale under rules. His fee is fixed at Rs.2000/- payable by the plaintiff. The Receiver appointee to effect the sale as per the application.”

Operative part of order dated 02.02.1993 reads as under:-

“Heard. Receiver has sought clarification regarding the property which he was directed to put on sale. The property can be got demarcated after the sale by the vendee as in property ‘F’ it is the share which is to be auctioned. The Receiver will conduct the auction as per the order of my learned predecessor dated 8.1.92. After effecting the sale he will report to the court for further instructions.

On the request of Receiver, it is ordered that the Chowkidar to be appointed by him, the plaintiff will borne these expenses for the time being to be adjusted in the sale proceed.”



12. Mr. Jain wants to read the order to claim that it was only property as mentioned in part F which was put to auction. He is not in position to dispute that it was the objectors themselves who sought auction of property mentioned in part G and the machinery of the sheller by moving successive applications before the Court. It is also not in dispute that properties mentioned in F and G are joint lands and the sheller was commissioned on the said land only. Receiver was already managing the said property. In the considered opinion of this Court, the clarification sought was only with respect to demarcation of land mentioned at Item No.F, it nowhere limited the power of the Receiver from auctioning the land mentioned at item No.G and the machinery. Apart therefrom, once the objectors themselves were before the Court claiming that exclusion of the machinery as well as land mentioned at item No.G from the auction would cause them financial loss, they cannot be allowed to object to the auction of the same.

13. In view thereof, the plea raised with respect to exclusion of land mentioned at item No.G and the machinery sans merit and cannot be accepted.

14. The power of Receiver is concerned, the same is governed by Section 94 of the Code of Civil Procedure, which reads as under:-

“In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed,—

“ (a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;

(b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property;



(c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;

(d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;

(e) make such other interlocutory orders as may appear to the Court to be just and convenient.”

15. In terms of Section 94(d), the Court in order to prevent the ends of justice from being defeated, has power to appoint a Receiver of any property and enforce the performance of his duties by attaching and selling his property. From order dated 08.01.1992, it is evident that the Receiver was appointed to conduct sale of the property. It nowhere excluded any property.

16. I may hastenly add here that order dated 08.01.1992 has remained unchallenged till date. Thus, the objection with respect to the power of Receiver to sell the property also cannot be accepted and deserves to be rejected.

17. The issue with respect to non-compliance of Order XXI Rule 64 and Order XXI Rule 66, is purely based upon good economics. Interpreting the provision as contained Order XXI Rule 64 and Order XXI Rule 66, Supreme Court in the case of ***Takkaseela Pedda Subba Reddi vs. Pujari Padmavathamma and other, (1977) 3 SCC 337*** observed as under:-

“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 Order 21, Rule 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. 16,880/- 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 Order 21, Rule 64 of the Code was sufficient to vitiate the same so far as the properties situated in village Gudipadu were concerned. For these reasons, the contentions raised by counsel for the appellant must be overruled."

18. Ratio of law laid down in ***Takkaseela Pedd Subaa Reddi's*** case (supra) when read with ratio of law laid down in the case of ***Kayjay Industries (P) Ltd. vs. Aanow Drums (P) Ltd.*** (supra) and that



in *Chilamkurti Bala Subrahmanyam vs. Samanthapudi Vijaya Lakshmi* (supra), it is evident that mere irregularity is not enough to set aside sale of property by auction. Objector needs to show injury caused by material irregularity claimed. Under Order XXI, Rule 64, Executing Court has to be governed by real economics. The action of the Executing Court has to be tested on the touchstone of economic prudence.

19. In the present case, the suit was filed for recovery of an amount of Rs.5,45,719.59 alongwith interest pendente lite at the contractaul rate of 13.5%. The objectors themselves apprehended that the loan amount due was increasing exponentially. They were before Court claiming that the auction of the properties may not be enough to satisfy the claim of the plaintiff. Thus, non-compliance of Order XXI Rule 64 of CPC, when the whole property has fetched Rs.9 lakhs, cannot be held to be an irregularity which has caused injury to the defendants-objectors. No such injury has been pleaded. It needs to be mentioned here that the auction purchaser specifically claimed before the Executing Court that in case the objectors are ready to pay back Rs.15 lacs, he is ready to give up his claim. The said offer remained without response. This itself shows that there was no injury cause to the objectors by the irregularity as claimed. The third objection raised by Mr. Jain regarding professional relationship between son of the Receiver and the auction purchaser, also sans merit, as the relation shown is not prior to sale auction, but thereafter.

20. In view of above, this Court does not find any reason to accept the present appeal. Trial Court has rightly dismissed the



objections raised by the objectors.

21. Finding no merit in the present appeal, the same is order to be dismissed.

(PANKAJ JAIN)
JUDGE

11.02.2025
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes