

(2018) 09 CHH CK 0078

**Chhattisgarh High Court****Case No:** First Appeal No. 117, 122 Of 1997

Jagdish Prasad Mehar And Ors

APPELLANT

Vs

Amichand And Ors

RESPONDENT

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**Date of Decision:** Sept. 6, 2018**Acts Referred:**

- Code Of Civil Procedure 1908 - Section 96, Order 21 Rule 90(2)

**Hon'ble Judges:** Ram Prasanna Sharma, J**Bench:** Single Bench**Advocate:** Sharmila Singhai, Sanjay Agrawal, B.P. Gupta, Ramakant Mishra**Final Decision:** Allowed

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**Judgement**

Ram Prasanna Sharma, J

1. Since both the first appeals are preferred against the same decree/judgment, they are heard analogously and are being disposed of by this common

judgment.

2. These first appeals are preferred under Section 96 of the Code of Civil Procedure, 1908 against judgment/ decree dated 01.02.1997 & 05.02.1997

passed by First Additional District Judge, Raigarh (M.P.) (Now C.G.) in Civil Suit No. 8-A/1985, wherein the said court canceled public auction dated

19.03.1980 and consequently, ordered Jagdish Prasad Mehar, the appellant/auction purchaser delivery of possession of land/house No. 203 of Ward

No. 12, Nizul plot No. 237, Sheet No. 57 area 4032 sq.ft. situated at Raigarh city to respondents- Amichand Agrawal & Dulichand Agrawal.

3. As per appellants, property in question was owned by respondents- Amichand Agrawal and Dulichand Agrawal and they were partners of M/s

Laxmi Oil and Flour Mill, Raigarh. The said firm was registered as dealer under the provisions of M.P. General Sales Tax Act, 1958. Registration of the firm was canceled on 21.10.1979 and the firm was dissolved on 07.11.1980. Admittedly, an amount of Rs. 74,482.74 was due on the firm as sales tax. As the dues were recoverable as land revenue, proceeding for recovery of the aforesaid amount were initiated and suit property was attached vide order dated 23.10.1975 and 06.04.1978 for recovery as Land Revenue. Rules have been framed, as per Rule 29, if the sale of the property which is attached is adjourned for 15 days after proclamation then fresh proclamation is required. In the present case, proclamation of sale of suit property was issued on 24.01.1980 and date of sale was fixed as 26.02.1980. It was adjourned for 10.03.1980, 11.03.1980, 16.03.1980 and finally on 19.03.1980 property was sold. After issuance of proclamation for first time, it was never adjourned for more than 15 days and therefore, no proclamation was required. For date of auction on 19.03.1980, publication about the date of auction was made by loud speaker which is clear from Ex. D/13 to D/15. On 19.03.1980, the bid was knock- down in favour of Jagdish Prasad Mehar (appellant in FA No. 117 of 1997) and thereafter, on depositing the amount of bid, same was duly confirmed on 23.04.1980.

4. Learned counsel for the appellants in both the appeals submit as under:-

(i) Claim in suit filed by respondents was based on allegation that suit property was self acquired property of respondents No. 1 & 2 (in FA No. 117 of 1997), but the property is not self acquired property which is clear from document Ex. D/4 which is sale deed of the property in question in favour of said respondents, which shows that name of the firm was shown as buyer of the suit property.

(ii) It is stated that the said property was earlier attached by forest department and bid of Rs. 46,000/- was offered for the auction holding on 15.06.1978 for the property in question, but purchaser did not deposit the amount of bid. The said bid has no bearing with subsequent auction.

(iii) Though, the sales tax department has evaluated the property to the tune of Rs. 50,000/- but, as per evidence of Sales Tax Officer, V.D. Sharma

(DW-2 of Defendant No. 2) (Para 8), it is established that auction price is always kept higher than actual value of the property, therefore, auction

price has no bearing with valuation of the property.

(iv) Finding of the trial court that illegality or irregularity was committed while holding that auction is perverse and erroneous. Again finding of the trial court is perverse that sale deed certificate was issued without there being confirmation of sale.

(v) As the said respondents have failed to show as to how the auction resulted in causing substantial injury to them, the sale cannot be set aside.

(vi) As the property is of a firm, the firm ought to have been made party and suit was liable to be dismissed on this count alone for want of necessary party.

5. On the other hand, learned counsel for the said respondents submits as under:-

(i) Public auction of 19.03.1980 is without proclamation and the same is illegal therefore, auction is void.

(ii) Looking to the previous bid of Rs. 46,000/- for the same property and looking to the auction price of Rs. 50,000/- by Sales Tax Department,

auctioning the property in lesser price of Rs. 35,500/- shows that there is illegality/irregularity in the said auction and therefore, auction is void.

(iii) As per proclamation, only house was auctioned on 19.03.1980 and land was not auctioned therefore, auction for the property in question is incomplete and sale is illegal.

6. The first question for consideration of this Court is whether the proclamation for sale dated 19.03.1980 is proper in all respect. Ex-D/5 is

proclamation dated 23.01.1980 for sale of the property in question on 19.02.1980.

7. Though, the auction was not held on 19.02.1980, it was extended for 26.02.1980, 11.03.1980 and 19.03.1980. From the order sheet of auction

proceeding, it is clear that date of auction was never extended for more than 15 days. Again, proclamation as per Ex. D/13 and general notice Ex.

D/14 were issued for auction dated 19.03.1980 and from the evidence, it is clear that public notice was issued for action dated 19.03.1980 and on that

date, a number of bidders were present as per record and Jagdish Prasad Mehar was the highest bidder. No one remain present on behalf of

judgment-debtors and they have not brought any one to participate in bidding process. On the date of auction, the said respondents did not participate

in the auction nor they brought any bidders to purchase the property for a higher price than highest bid therefore, arguments on behalf of said

respondents that value of the property would have gone high is nothing but imagination. As the market is always fluctuated in ups and down and

therefore, the highest bid cannot be challenged on imagination. Now point is whether the sale can be set aside on the basis of any irregularities.

8. In the matter of Chilamkurti Bala Subrahmanyam Vs. Samanthapudi Vijaya Lakshmi & another reported in (2017) 6 SCC 770, it is held as under:-

24. The law on the question involved herein is clear. It is not the material irregularity that alone is sufficient for setting aside of the sale. The

judgment-debtor has to go further and establish to the satisfaction of the Court that the material irregularity or fraud, as the case may be, has resulted

in causing substantial injury to the judgment-debtor in conducting the sale. It is only then the sale so conducted could be set aside under Order 21 Rule

90(2) of the Code.

Such is not the case here.

9. From the evidence, it is clear that the recovery proceeding was started in the year 1973 against the balance sales tax which was due for year 1966

to 1973. No amount partial is deposited upto 19.03.1980 i.e. for a period of 7 years.

10. It is contended on the behalf of the said respondents that earlier in auction by forest department, there was the highest bid of Rs. 46,000/- by one

Bhuneshwar Prasad and again, the department has evaluated the price of property for Rs. 50,000/- and therefore, auctioning in lesser amount shows

irregularities in auction.

11. Bhuneshwar Prasad, who participated in earlier bid entered into witness box before the trial court as witness No. 5 of defendant No. 1. He clearly

stated (Para 1) that he did not deposit 1/4th of bid offered by him as he later on realized that he has offered higher amount. He further deposed (Para

3) that on the date of auction i.e. on 19.03.1980, he also present for bidding and estimated to bid upto Rs. 20,000 - 22,000.

12. From the evidence of Bhuneshwar Prasad, it is clear that he was not actual purchaser of the property in earlier auction. Again from the statement

of V.D. Sharma, Sales Tax Officer (witness No. 2 of defendant No. 2) (Para 8) that price of auction is always higher to the actual value of the

property, therefore, price of Rs. 50,000/- was not real price of the property.

13. In view of the above evidence, It is clear that no irregularity was committed by authorities during the auction. If property would have been valued

higher to what is bid amount, no one prevented the said respondents to sale their property in higher price and deposit the amount due to Sales Tax

department. They did not come forward for 7 years and therefore, argument is based on imagination which must fail.

14. Ex. D/4 is the documents by which the property in question was purchased by respondents - Amichand Agrawal & Dulichand Agrawal as partner

of M/s Laxmi Oil and Flour Mill shows that property is purchased by firm. Even otherwise, as they are partners of the firm, they have to clear the

dues against the firm, therefore, firm is necessary party or not is not significant for just decision of the case.

15. Learned counsel for the said respondents submits that only house was sold in the auction and land was not sold in the said auction. After the

auction of house proceeding, note-sheets were written for auction of land which shows that sale is not complete.

16. V.D. Sharma (witness No. 2 of defendant No. 2) who was Sales Tax Officer at the time of auction and as per version of this witness, house was

embedded in land and property is one and same. Though some order-sheets were written for auction of land, but as per statement of this witness, the

same is wrongly written by one clerk. From the document Ex. D/4, it is clear that house is embedded in earth and area is 4032 sq.ft. which is only one

property. When property is one and same is auctioned, it cannot be auctioned twice. Arguments on this count is not sustainable.

17. Arguments advanced on behalf of the said respondents is without substance that sale certificate was issued without there being confirmation of

sale. As 1/4th amount was deposited on the date of auction as per rule and remaining amount was deposited on 3 rd April, 1980, sale was confirmed

and sale certificate was issued to Jagdish Prasad Mehar, therefore, arguments on this count is without substance.

18. All the grounds raised by the said respondents/plaintiffs before the trial court were not sustainable. Looking to the oral and documentary evidence

and facts and circumstances of the case, finding of the trial court is not sustainable.

19. Accordingly, the judgment and decree passed by the trial court is set aside. Allowing the appeals, the decree is passed in favour of the appellants

and against the said respondents- Amichand Agrawal & Dulichand Agrawal on the following terms and conditions:

(i) The appeals are allowed. The suit filed by the respondents/ plaintiffs- Amichand Agrawal & Dulichand Agrawal is dismissed with cost.

(ii) Parties to bear their own costs.

(iii) Pleaders' fee, if certified be calculated as per certificate or as per schedule whichever is less.

(iv) A decree be drawn accordingly.