
Satya Devi and Another Vs United Commercial Bank

O.M.P. No. 242 of 1990 in Ex. Petition No. 35 of 1986

Court: High Court of Himachal Pradesh

Date of Decision: Aug. 17, 1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Order 21 Rule 54, Order 21 Rule 54(3), Order 21 Rule 90

Citation: (1990) 2 ILR HP 1550

Hon'ble Judges: D.P. Sood, J

Bench: Single Bench

Advocate: K.D. Sood, for the Appellant; G.D. Verma and Bhupender Gupta, for the Respondent

Final Decision: Allowed

Judgement

D.P. Sood, J.

The objectors are the judgment-debtors. They have approached this Court through this application under Order 21, Rule

90 read with Section CPC for setting the sale and thereafter to hold the auction afresh of the land in dispute.

2. The land in question measuring 30 bighas 10 biswas is a revenue paying land and forms part of khasra No. 304 located at Mauja Sua, Tehsil

Arki, District Solan. The judgment-debtors had consented to the sale of 31 bighas 16 biswas of land standing in the name of Smt. Satya Devi in

the revenue record. The major portion thereof is classified as ""barani-doem"". About 13 bighas of land is ""ghasani"". There is ""gair-mumkin-abadi"" to

the extent of 1 bigha 6 biswas whereupon the residential house of the judgment-debtors is standing. The quinquennial sale price statement as

placed on the record indicated the rate as Rs. 639/- per bigha. Thus, in that view of the matter and keeping in view the trend of the latest price, the

upset price of the land referred to above had been quantified in the sum of Rs. 50,000/-. Consequent to the issuance of proclamation, the sale was

effected on May 16, 1990 at the spot.

3. A bare perusal of the auction pursuant to the warrants of sale qua the immovable property referred to above shows that the highest bid was

given by Karan Singh for consideration of Rs. 1,14,000/-. He was required to deposit a sum of Rs. 28,500/- being 1/4th share of the bid money.

As per the report, he failed to deposit the said sum and the concerned revenue official put the property to auction again and then the highest bid as

recorded was given by Vipin Singh for a consideration of Rs. 60,000/-. The auction-purchaser having deposited the remaining balance amount,

prays for the confirmation of the sale.

4. I have heard the learned Counsel for the parties at length and I am firmly of the view that this application seeking setting aside of the sale must be

allowed. In order to show that there has been a material irregularity in this case, the learned Counsel for the judgment-debtors-applicants drew my

attention to (i) that no sufficient publicity was done in regard to the sale in question; and (ii) that the revenue official concerned conducted the sale in

a great hurry with the result that a number of prospective bidders could not make their bid and the property in question did not fetch adequate

price.

5. Sub-rule (3) of Rule 54, Order 21 CPC Envisages that:

The order shall be proclaimed at same place on or adjacent to such property by beat of drum or other customary mode and a copy of the order

shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the Court house, and also, where the property is land-

paying revenue to the Government, in the office of the Collector of the district in which the land is situate and also, where the property is situate

within cantonment limits, in the office of the Local cantonment Board and the Military Estates Officer, concerned, and where the property is land

situate in a village also in the office of the Gram Panchayat if any, having jurisdiction over that village.

(Emphasis mine).

6. The first point that falls for answer in this case is whether the revenue official did give sufficient publicity to the auction sale with the result that the

land in dispute did not fetch adequate price. To my mind, this contention has much substance in it.

7. The record shows that the warrants of sale of immovable property of judgment-debtors were sent to the Collector, Solan to get the sale

effected. He, in turn, directed the Naib Tehsildar, Arki to conduct the sale according to the time schedule and in accordance with law. The record

does not show that the publicity was done by affixing a copy of the proclamation of sale on the office of the Gram Panchayat in which Village Sua

is located. Apart from it, the record also does not show whether the bidders who were present at the initial auction were or were not present in the

second auction conducted by the auctioning authority i.e. Naib Tehsildar, Arki consequent to the failure of Karan Singh to deposit 1/4th of the

auction price. The record further does not clarify whether wide publicity by issuance of hand bills was or was not given as per the order of the

Registrar (Vigilance) which is reflected from his forwarding letter dated May 28/29, 1990 addressed to the Collector, Solan. Even the

proclamation of sale bearing the report of the process-server on its reverse does not indicate the compliance of the aforesaid order. Rather, the

learned Counsel on the opposite side has stated at the bar that the auction sale in question has not properly been conducted in the first instance.

8. The next point advanced for assailing the sale is that Naib Tehsildar, Arki had conducted the second sale in a great hurry and in connivance with

the auction-purchaser. Apart from it, he having arrived in Village Sua at about 4.15 P.M. where after auction proceedings were started. According

to the time schedule the sale was to be conducted on May 16, 1990 and it was to start at 10 A.M. The report does not state at what time the first

auction started and when it was concluded. Nor does it show the timing with respect to the conducting of the second sale. Apart from it, the report

by itself shows that only 4 persons took part in the second sale and they were S/Shri Ghanshyam Sharma, Vipin Singh, Mahesh Chopra and Prem

Kumar. The close perusal of the first sale shows that Prem Kumar, aforesaid, did not take part in the first Auction. The remaining three persons

had given bid with respect to the property in question at a much higher price as shown in the table below:

Sr. No. Name of the First auction with Second auction with

Bidder Sr. No. in the report Sr. No. in the report

1 2 3 4

1. Ghanshyam 2. Rs. 52,000/- 1. Rs. 52,000/-

Sharma 6. Rs. 57,000/- 5.Rs. 56,000/-

8. Rs. 58,000/- 8.Rs. 59,000/-

11. Rs. 61,000/-

2. Vinpin Singh 1. Rs. 51,000/- 2.Rs. 54,000/-

13. Rs. 63,000/- 6.Rs. 57,000/-

17. Rs. 72,000/-9.Rs. 60,000/-

23. Rs. 81,000/-

27. Rs. 93,000/-

32. Rs. 1,00,000/-

34. Rs. 1,02,000/-

36. Rs. 1,04,000/-

41. Rs. 1,09,000/-

44. Rs. 1,12,000/-

47. Rs. 1,13,000/-

3. Mahesh Chopra 37. Rs. 1,13,000/- 3.Rs. 55,000/-

39. Rs. 1,07,000/-

4. Prem Kumar did not participate 4.Rs. 56,000/-

9. It is clear from the aforesaid comparative statement that there is a huge difference in the auction price as a result of the bids given by one and the

same person at two occasions. The highest amount of bid given in the second bid is Rs. 60,000/- given by Vipin Singh. Vipin Singh was ready to

purchase the disputed land for Rs. 1,13,000/- at the time of first bid. How and under what circumstances, the Naib Tehsildar, Arki had agreed to

Rs. 60,000/- as highest bid remain a mystery for the reason best known to the persons referred to above. The manner in which both the auction

proceedings one after another has been conducted also do not inspire confidence.

10. Thus, without going into the question of connivance in between the auctioning authority and the bidders in the second auction, to my mind, the

application is liable to be allowed. I order accordingly. Consequently, the auction sale conducted on May 29, 1990 is set aside. Fresh

proclamation of sale be drawn in the presence of the parties or through their counsel in accordance with law. As a sequel, warrants of sale be

issued and the highest bid money already deposited be released to the auction-purchaser. Announced.