
(2006) 07 GAU CK 0013

Gauhati High Court

Case No: None

Faizur Rahman and
Others

APPELLANT

Vs

Chandra Kanta Modi

RESPONDENT

Date of Decision: July 21, 2006

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 47

Citation: AIR 2006 Guw 179

Hon'ble Judges: P.G. Agarwal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P.G. Agarwal, J.

Heard Mr. B.K. Goswami, learned senior Advocate assisted by Mrs. T. Goswami appearing on behalf of the petitioners and Mr. N. Choudhury, learned Counsel for the respondent.

2. The brief facts, leading to the present revision, are that the O.P. Chandra Kanta Modi, hereinafter, referred to as the plaintiff, for the convenience sake, instituted M. S. No. 23/93 for recovery of Rs. 40,000/-being the loan taken by Mafizuddin Ahmed. The present petitioners who are defendants in the said suit were arrayed as parties being the legal heirs of Late Mafizuddin Ahmed. The suit was decreed ex parte on 13-6-94 and thereafter, the plaintiff instituted Money Execution Case No. 24/95 for execution of the decree passed in Money Suit No. 23/93. In the said execution case, total land measuring 4-1/2 Lechas covered by Dag Nos. 1579 and 1602 was attached and thereafter in the consequent sale, the plaintiffs after obtaining necessary permission, purchased the said land in auction on 6-12-95 and the sale was confirmed on 9-1-96 and the sale certificate

was issued on 18-1-96. The plaintiff, thereafter, filed a petition for delivery of possession.

3. The present petitioners, thereafter, filed an application, being Misc. (J) Case No. 9/96 for setting aside the sale under Order 21, Rule 19, CPC. Another application u/s 47, CPC was also filed by another defendant Sultana Begum and the same was registered as Misc. (J) Case No. 11/96. Both the cases were heard together and the learned trial Court/Executing Court dismissed the petition vide common order dated 8-1 -99. Thereafter, Money Appeal No. 4/99 was preferred before the Addl. District Judge, Nagaon who vide impugned order dated 15-7-05 dismissed the appeal. It may be mentioned here that the present petitioners are the legal heirs of the original defendant-cum-judgment-debtor Sultana Begum, who died during the pendency of the appeal.

4. The present revision has been filed on the ground that no notice of attachment of the land was served on the judgment-debtor, Sultana Begum and that the sale proclamation was not in accordance with the provisions of Order 21, Rule 66(2), CPC as the time, place and the name of the officer who was to conduct the sale was not mentioned. It is also submitted that the petitioners have suffered substantial loss/injury as because although the land in question is situated in the prime business locality of Nagaon town, no bidders came in the absence of any proper proclamation.

5. Order 21, Rule 66 (1)(2) reads as follows:

(1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale be made in the language of such Court.

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly as accurately as possible--

(a) the property to be sold (or, where a part of the property would be sufficient to satisfy the decree, such part);

(b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government;

(c) any incumbrance to which the property is liable;

(d) the amount for the recovery of which the sale is ordered; and

(e) every other thing which the Court considers material for a purchaser to know in order to judge the nature and value of the property:

(Provided that where notice of the date for settling the terms of the proclamation has been given to the judgment-debtor by means of an order under Rule 54, it shall not be necessary to give notice under this rule to the judgment-debtor unless the Court otherwise directs:

Provided further that nothing in this rule shall be construed as requiring the Court to enter in the proclamation of sale its own estimate of the value of the property, but the proclamation shall include the estimate, if any, given, by either or both of the parties.)

6. In the case of [Desh Bandhu Gupta Vs. N.L. Anand and Rajinder Singh](#), the Apex Court held that the service of notice on the judgment-debtor is mandatory and sale without notice is a nullity. As stated above, the petitioner has alleged that no notice of attachment nor warrant of attachment of the land and no notice with time of sale by proclamation was served on the judgment-debtor/applicant personally. The executing Court in the impugned judgment has recorded a definite finding that the notice was served on the judgment-debtor on 4-5-95 and the subsequent notice for settlement of sale and proclamation were also served on the judgment-debtor including the present applicant, but none of them appeared before the executing Court. On consideration of the materials available on record, the appellate Court has also recorded a concurrent finding to that effect. When notices have been duly served as required under the law, the sale cannot be said to be nullity.

7. Mr. B.K. Goswami, learned senior counsel has further submitted that sale proclamation notice is bad in law for want of time, place and the name of the officer who will conduct the sale. We have perused the copy of the original sale proclamation available on record and find that the date, time and place has been specifically mentioned in the said proclamation of sale by stating that the auction will commence at 10 a.m. on 27-11-95 at the Court premises of the Assistant District Judge, Nagaon.

8. In view of the above, we find that there is no force in the above submission that sale proclamation is bad in law for want of information regarding the date, time and place of sale. However, we find that the name of the officer who will conduct the sale has not been mentioned. Learned Counsel for the plaintiff has, however, submitted that this may be mere irregularity and the sale can not be set aside on that count. In support of the above submission, the learned Counsel has referred to a decision of the Apex Court in the case of [S.A. Sundararajan Vs. A.P.V. Rajendran](#), In this case, we find that the present petitioner in spite of receipt of notice for sale, did not appear and allowed the proceeding to continue. In the case of [Dhirendra Nath Gorai and Subal Chandra Shaw and Others Vs. Sudhir Chandra Ghosh and Others](#), the Apex Court held that the irregularities which do not go to the root of the case are mere irregularities which do not vitiate the same and this Court relied on the same in the case of Soklatinga Tea Company reported in (1982) 1 GLR 316 (Para 39).

9. Learned Counsel for the petitioner has, however, submitted that the petitioner has suffered loss and injury as the prime land situated in Nagaon town has been sold for a peanut for want of bidder, which occasioned due to absence of proper publicity and holding of auction sale. In support of the above submission the learned Counsel has referred to the decision of the Apex Court in the case of Desh Bandhu Gupta (supra) wherein it was observed as follows:

This Court held that if there was any material irregularities in the conduct of sale and if it causes sufficient injury to the judgment-debtor the same could be set aside where the Court mechanically conducts the sale not bothering to see that the offer is too low and the better price could have been obtained. If, in fact, the price is substantially inadequate there is both material irregularity and injury. At the same time the Court should not go on adjourning the sale till a good price is got as otherwise the decree-holder would never get the property of the judgment debtor sold. This Court further held there is always considerable difference between the Court sale price and the market price. The Court sale is a forced sale and notwithstanding the competitive element of a public auction, the best price is not always forthcoming. The valuer's report though good as a basis, is not as good as an actual offer and there are bound to be variations within limits between such an estimate, however careful, and the real bids by the seasoned businessman. Mere inadequacy of price cannot demolish a Court sale. Further, if the Court sales are too frequently adjourned with a view to obtaining a still higher price, prospective bidders will lose faith in the actual sale taking place and may not attend the auction. What is expected of the Court is to make a realistic appraisal of the factors in a pragmatic way and if satisfied that in the given circumstances the bid is acceptable it should conclude the sale. The Court may consider the fair value of the property, the general economic trend, the large sum required to be produced by the bidder, the formation of a syndicate, the futility of postponements and the possibility of litigation and several other factors depending on facts of each case. If the Court has fairly applied its mind to the relevant considerations while accepting the final bid, it is not necessary to give a speaking order nor can its order be examined meticulously.

10. Learned Counsel for the plaintiff Mr. N. Choudhury has submitted that this objection was never raised by the petitioner before the executing Court or even before the appellate Court and as such the petitioner cannot be allowed to raise such objection in the revision petition. It is further submitted that the land in question is only 4½ Lechas and in view of the above, no outsider was even interested in such a tiny plot of land except the neighbours. The sale was postponed/adjourned for want of bidders and thereafter the plaintiff after obtaining necessary permission made bid for the same.

11. On consideration of the entire facts as stated above, we hold that there was no material irregularity in conducting the sale and the petitioner is not entitled to any relief. The revision is devoid of merit and it is accordingly dismissed. Send down the records.