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(1960) 06 KL CK 0044  
High Court Of Kerala  
Case No: C.M.A. No. 238 of 1958

Ismail Sheriff Sahib

APPELLANT

Vs

Sankara Panicker

RESPONDENT

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Date of Decision: June 21, 1960

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 90

Citation: (1960) KLJ 833

Hon'ble Judges: S. Velu Pillai, J; P. Govinda Menon, J

Bench: Division Bench

Advocate: K.C. John, for the Appellant; T. S. Krsihnamoorthy Iyer, for the Respondent

Final Decision: Dismissed

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### Judgement

@JUDGMENTTAG-ORDER

S. Velu Pillai, J.

This is an appeal by the decree-holder-auction-purchaser against the order passed on an application under Order XXI, Rule 90, C.P.C, setting aside a court sale, on the ground, that the property sold was grossly under-valued in the sale proclamation, and that the sale was held without a fresh proclamation on the date to which it was adjourned, resulting in substantial loss. The applicant was the fifth defendant in the case, and was a subsequent encumbrancer of the property in question, which consisted of land, buildings, Equipments and a running cinema business. The valuation in the proclamation was only Rs. 1,071-4-0, but the purchase by the decree-holder was for a sum of Rs. 20,000/-. On this circumstance alone, we agree with the learned Judge in holding, that there was gross under-valuation in the sale proclamation. It was not disputed before us, that the sale was held on the date in question without a fresh proclamation, and that this constituted a material irregularity. Though the account books adduced in evidence by the fifth defendant to establish that the property was more valuable, were not acted upon by the

learned Judge, the circumstance that the property fetched an annual rent of Rs. 2,400/-, shows indubitably, that it was really of much greater value than what the decree-holder had paid for it. We cannot accept the argument of the learned counsel, that in the case of a building and a running business, the ascertainment of their market value must be upon capitalization of the rental for a period of ten years, as in the case of cocoanut gardens formerly in the Travancore area. We therefore agree with the learned Judge in holding, that the sale had resulted in substantial loss. In this view, it is unnecessary to consider *Bhagavathi Piliai v Sankara Pillai*, 1953 K. L. T. 557 and *Aiikunju Pathummal Kunju v Aiyappan Sanku Panicker*, 1956 K. L. T. 954, which have laid down, that in order to set aside a court sale, there should not only be material irregularity, but also substantial loss. One possible result of gross under-valuation in the sale proclamation is, as observed by the Madras High Court in *Rangaswami Iyengar v K, Maruda-nayagam Pillai* (A. I. R. 1938 Mad 720), that:

any likely bidder who looks at the sale proclamation would consider that having regard to the smallness of the value fixed for the several items of property, they are really of very inferior quality and not worth going in for, at high prices.

The learned Judge below has inferred, that the under-valuation in the sale proclamation had the effect of scaring away intending bidders. There were competing bidders on prior occasions when the sale came on, but on the date on which it was actually held, the decree-holder was the only bidder. It is only a reasonable inference to make, that the two irregularities had operated to keep away intending bidders at the sale. The connection between material irregularity and resulting loss is not always capable of direct proof, nor do we think such proof is always necessary, for, as observed by the Privy Council in AIR 1945 178 (Privy Council) :

this burden may be discharged not only by direct evidence connecting the material irregularity or fraud with the substantial injury, but also by circumstantial evidence, that is, evidence from which a reasonable inference may be drawn that the substantial injury was the result of the material irregularity or fraud.

We hold, that the order passed by the learned Judge is proper, and must be affirmed.

2. The learned counsel for the decree-holder-auction-purchaser agreed, that the sale may be set aside upon payment to the decree-holder of the sale amount by the fifth defendant; but the learned counsel stated to us, that being a subsequent encumbrancer of the property, the fifth defendant is not in a position to accept the offer. It seems to us, that the only remedy for the decree-holder is to proceed to sell the properties again, in compliance with the requirements of law.

The appeal is therefore dismissed, but without costs.