

IN THE HIGH COURT OF KARNATAKA

April 15, 1994

C. Shivappa , J.

ANNAPPAREDDY

v

S. SURESH

Civil Revision Petition No. 4207 of 1992.

JUDGMENT

The Court, made the following:

This petition is directed against the order dated 20-10-1992 passed by the XI Additional City Civil Judge, Bangalore on I.A. No. VII in Execution Case No. 624 of 1975 on his file, dismissing the application filed by the petitioner under Section 151, CPC, for recalling the delivery warrant.

2. The facts in brief are:

The petitioner suffered a decree and the property bearing Sy. No. 46/3 and 46/2 of Sarakki village, Bangalore South Taluk, measuring 1 acre 30 guntas with an R.C.C. house was brought to sale and the sale proclamation was issued on 3/10-3-1976. Spot sale was conducted on 3-3-1976. In view of Rule 138 of the Karnataka Civil Rules of Practice the court has to conduct the sale as per the sale notice in court on 10-3-1976, but no sale was held on that date. An application was filed under Order 21, Rule 90 of the CPC on 10-3-1976 which was numbered as I.A. IV, not to accept the bid and challenging the spot sale. It was posted for objection. The court advanced the case and accepted the spot sale and passed an order to raise the question regarding irregularity in the sale proceedings before confirmation. The decree-holder got the case advanced to 15-3-1976. Then I.A. VI was filed under Section 151, CPC, seeking the court to accept the final bid for a sum of Rs. 75,000/-. No opportunity was provided to file objections before acceptance of the final bid. But, objections were filed to I.A. VI on 17-3-1976. Court passed an order that judgment-debtor can make his submission before acceptance of the bid. I.A. No. IV, complaining irregularity in the conduct of sale proceedings was dismissed on 19-2-1979. The proceedings ended and entered full satisfaction of the decree. Till 19-2-1979 he had no notice of the proceedings. Decree-holder filed an application for sale certificate in the execution proceedings under Order 21, Rule 94, CPC, on 4-3-1991 and the same was brought before the court on 14-3-1991. This application was not served on the judgment-debtor. He produced the stamp paper on 30-3-1991 and sale certificate was issued on 1-4-1991. The decree-holder received the sale certificate on 3-4-1991. MFA 493 of 1979 was filed by the judgment-debtor against the order on I.A. IV questioning the sale. That was dismissed on 5-4-1984.

3. The case of the petitioner is that the decree-holder/auction purchaser is not entitled to possession on the basis of the sale certificate obtained by him on 1-4-1991, rather the starting point of limitation to claim possession started on 5-4-1984 when the sale was confirmed or at any rate when the miscellaneous appeal challenging confirmation of sale was dismissed on 5-4-1984. The sale certificate is only an evidence of title and possession has to be claimed within one year from the date when the sale became absolute. However the application I.A. VI seeking possession was filed on 29-11-1991 *i.e.*, clearly after 6 years 7 months and such a claim was barred by time having regard to the provisions of Article 134 of the Limitation Act.

4. It is further contended that the court has failed to notice that the auction purchaser did not deposit the sale price at all. It should have noticed that the decretal amount was Rs. 31,943/- on the date of sale; that the decree-holder was required to deposit Rs. 44,057/- on or before 18-3-1976 but that he actually deposited only Rs. 30,307/- on 17-3-1976. Thus the decree-holder violated the mandatory provisions and consequently the sale was a nullity. It is also contended that the observations of the court below that the petitioner participated in the proceeding is incorrect and it is true that he challenged the order confirming the sale by filing an appeal in

the High Court. But after dismissal of the appeal, which was also done without the knowledge of the petitioner or his counsel, he has been kept ignorant of the proceedings that took place thereafter in the execution case, and that he had no notice of any kind that took place after dismissal of the said appeal after nearly 12 years and hence the impression of the court below that the petitioner participated in the proceedings is entirely unfounded. There is intrinsic evidence that after disposal of MFA 493 of 1979 no notice has been issued to the judgment-debtor/petitioner as the court was bound to do so.

5. It is the contention of the judgment-debtor that as per the sale proclamation on 10-3-1976, there was no court sale. There might have been several persons to bid on 10-3-1976. For noncompliance of Rules 138 and 139 of CPC, the sale is liable to be set aside and in fact there was no sale in the eye of law. In support of his contention he relied on *Channabasappa v. Nanjundappa*¹.

6. Thereafter the decree-holder kept quiet for a considerable time and applied for sale certificate on 4-3-1991 and the sale certificate was issued on 1-4-1991. Rule 152, CPC, contemplates production of requisite stamp paper and then the sale certificate shall be drawn up and that has to be given by the decree-holder within the time contemplated in the rule. Whenever there is a corresponding duty on the decree-holder to furnish the stamp paper within the time stipulated, non-supply of stamp paper is a lapse on his part and he cannot claim the benefit of that period lapsed to compute the period of limitation. Under Article 134 of the Limitation Act, a decree-holder has to seek delivery of possession within one year from the date when the sale becomes absolute. The learned counsel for the respondent contended that after confirmation of the sale, none of the objections exists on which the validity of the sale could have been questioned and after the disposal of MFA the judgment-debtor is not entitled to question the sale and this Court in revisional jurisdiction should not go into the question of validity of the sale. He further contended that Article 134 of the Limitation Act has no application.

7. In view of these rival contentions, the points for consideration in this revision petition are:
(a) for not conducting the court sale and for non-compliance of Rule 85 of Order 21, CPC, whether the sale becomes nullity?

(b) Whether the auction purchaser is entitled for delivery of possession on the face of Article 134 of the Limitation Act?

(8) **Re: Point (a).** The property was brought to sale and the sale proclamation was issued on 3/10-3-1976 and the spot sale was conducted on 3-3-1976, but no court sale was conducted as per the sale proclamation on 10-3-1976.

Rule 138 of the Karnataka Civil Rules of Practice reads thus:

“The sale of immovable property shall ordinarily take place at the spot, subject to the condition that the final bid shall be offered before the presiding officer at the court house.”

This rule came up for interpretation before this Court in *Krishnappa K.P. v. B. Gangappa by L.Rs. and Others*², and this Court held as follows:

“In this case, the proclamation of sale also does not state that the final bid shall take place on 29-11-1971 before the presiding officer at the court house. Rule 138 of the rules referred to above is mandatory. It is intended to safeguard the interest of the judgment-debtor whose immovable property is brought for sale. It is also intended to eliminate all possible malpractices which are likely to be adopted so as to knock down the property put up for sale by public auction at lower price. If the final bid is offered before the presiding officer at the court house, even those persons who could not offer their bids at the spot for some reason or the other, will be able to offer their bids before the presiding officer of the court at the court house. There is solemnity attached to the proceeding before the court and it is open for all those who are interested in purchasing the property put up for sale to offer their bids. Thus, the conduct of final bid before the presiding officer at the court house ensured not only the proper conduct of the sale in a free and solemn atmosphere, but it also enables to secure proper

¹ 1987(2) Kar. L.J. Sh. N. 203(B): ILR 1986 Kar. 3536.

² 1982(1) Kar. L.J. 356.

value to the property put up for sale. That being the object of the aforesaid rule, the sale has to be conducted in accordance with the said rule. Failure to conduct the sale in accordance with the aforesaid rule, vitiates the sale proceedings. If the final bid is not offered before the presiding officer at the court house, the auction sale of the immovable property is not complete. For the auction sale of the immovable property to be complete, the final bid must be offered before, and must be accepted by, the presiding officer at the court house. In the instant case, the final bid has not been offered before the presiding officer at the court house. Therefore, there is no sale held in accordance with Rule 138 of the Rules. Hence, the question of confirmation of such a sale which is not complete does not arise. That being the position merely because the judgment-debtor (petitioner), under an erroneous impression that the sale has taken place has filed an application for setting aside the sale and during the course of enquiry of that application, he remains absent and fails to deposit the balance of the decretal amount and the *solatium* as ordered, does not enable the court to confirm the sale which is not complete.”

This view was affirmed by this Court in *Channabasappa v. Nanjundappa (supra)*, and has held that the sale in contravention of Rule 138 of the Karnataka Civil Rules of Practice is not a sale and that the rule is mandatory and non-compliance of the same would result in no sale at all in the eye of law.

9. It is also the specific case of the petitioner that the auction purchaser failed to deposit the full sale price and non-deposit renders the sale a nullity. The decretal amount is Rs. 44,641-48. The decree-holder was required to deposit Rs. 44,057/- on or before 18-3-1976, but actually he deposited only Rs. 30,307/- on 17-3-1976 and according to the memo of calculation filed by the learned Advocate for the petitioner there is a non-payment of the full amount. The memo reads thus:

“MEMO
CRP 4207 of 1993

I. Decretal amount		Rs. 44,641-48
Less: Amount paid by the court deposit as well as by cash before filing of Ex. No. 624/75 along with interest		13,372-00
Balance Decretal amount		----- 31,269-48
Add: Interest upto the date of sale proclamation		673-52
Decretal amount payable as on 3-3-1976		----- 31,943-00 -----
II. Auction Bid		75,000-00
Less: Balance Decretal amount	Rs. 31,943-00	
Less: Amount deposited by DHR on 17-3-1976	Rs. 30,307-00 ----- ---	62,250-00
Shortfall in payment of Auction bid (within 15 days as required under Order 21, Rule 85)		----- 12,750-00 -----
Bangalore: Date: 23-10-1993		Sd/- Advocate for Petitioner.“

10. Under Rule 85 of Order 21, CPC, the auction purchaser has to deposit full purchase money within 15 days and in the event of non-deposit the court has no discretion than to forfeit the deposit and there is no obligation to resell the property. Order 21, Rule 85, CPC, reads thus: “85. The full amount of purchase-money payable shall be paid by the purchaser into court before the court closes on the fifteenth day from the sale of the property ...:

Provided that, in calculating the amount to be so paid into court the purchaser shall have the advantage of any set-off to which he may be entitled under Rule 72.”

The Supreme Court has held that the provisions of Rule 85, CPC, as to payment of money within the time are mandatory and if there is default in such a payment it is a case of material illegality but of no sale at all. The rule makes it incumbent on the court to resell the property in case of default irrespective of no application has been made by any party the proceeding to challenge the sale. The court, therefore, has no power to extend the time for payment. In *Manilal Mohanlal Shah and Others v. Sardar Sayed Mahmud and Another*³, the Supreme Court has held thus:

“11. Having examined the language of the relevant rules and the judicial decisions bearing upon the subject we are of opinion that the provisions of the rules requiring the deposit of 25 per cent of the purchase money immediately, on the person being declared as a purchaser and the payment of the balance within

15 days of the sale are mandatory and upon non-compliance with these provisions there is no sale at all. The rules do not contemplate that there can be any sale in favour of a purchaser without depositing 25 per cent of the purchase money in the first instance and the balance within 15 days. When there is no sale within the contemplation of these rules, there can be no question of material irregularity in the conduct of the sale. Non-payment of the price on the part of the defaulting purchaser renders the sale proceedings as a complete nullity. The very fact that the court is bound to resell the property in the event of a default shows that the previous proceedings for sale are completely wiped out as if they do not exist in the eye of law. We hold, therefore, that in the circumstances of the present case there was no sale and the purchasers acquired no right at all.”

In *Annapurna Dasi v. Bazley Karim Fazley Moula*⁴, the Supreme Court has held that the purchaser defaulting to pay the balance, the sale becomes a nullity. Whether the deposit made under Rule 85 be forfeited or not, the purchaser forfeits all claim to the property if he makes default of payment of the balance of the purchase money as required under Rule 85, CPC. It is not the case of the subsequent payment, but it is a case whether the party defaulted in making payment on the closure of 15th day as required under Rule 85. In the instant case the memo set out earlier shows that the sale price was not deposited as required under Rule 85 of Order 1, CPC.

11. Rule 138 of the rules referred to above is mandatory. It is intended to safeguard the interests of the judgment-debtor whose immovable property is brought for sale. It is also intended to eliminate all possible malpractices which are likely to be adopted so as to knock down the property put up for sale by public auction at lower price. There is solemnity attached to the proceeding before the court and it is open for all those who are interested in purchasing the property put up for sale to offer their bids. The court sale ward off all means of irregularities on public sale. Not conducting it is a serious illegality and the defect goes to the root of the matter and the illegality in conducting the sale renders the sale void and vitiates the sale proceedings. If the final bid in the court sale is not offered by the purchaser the auction of immovable property is not complete. In the instant case there is no such conduct of a court sale as published and it cannot be said to be a mere irregularity and there is infraction of Rule 138 of the Karnataka Civil Rules of Practice and non-compliance of the same vitiates the sale proceedings.

12. As set out in the memo of calculations referred to above there is non-compliance of the mandatory requirements of Rule 85 of Order 21, CPC and for non-depositing, the purchaser

³ AIR 1954 SC 349 at 351.

⁴ AIR 1941 Calcutta 85.

forfeits all claim to the property if he makes default in payment of the balance purchase money the sale becomes nullity. In my opinion, there could not be more material irregularity than what has taken place in the present case to the great detriment and injury to the petitioner. For the above reasons the sale is bad for non-compliance of Rule 138 of the Karnataka Civil Rules of Practice and for non-compliance of Rule 85 of Order 21 of CPC and there was no sale in the eye of law and the purchaser acquires no right at all.

13. Having decided the validity or otherwise of the court sale, there is no need to decide the second point, namely, whether the auction purchaser is entitled for delivery of possession. The learned counsel for respondent contended, it is Article 136 of the Limitation Act applies and not Article 134 of the Act. Since the question has been raised and argued I thought it just and proper to decide the second point regarding Limitation Act.

13(a). The petitioner resisted the delivery of possession on the ground of limitation alleging that the application I.A. VI seeking possession was filed on 29-11-1991, *i.e.*, clearly after 6 years 7 months and such a claim is time barred, having regard to the provisions of Article 134 of the Limitation Act. To decide the point regarding limitation, it is necessary to find out “when the sale becomes absolute”. Having regard to the provisions of Order 21, Rule 92(1), CPC, where there is an appeal from the order of the Judge disallowing the application to set aside the sale, the sale will not become absolute within the meaning of Article 180 until the disposal of the appeal even though the Subordinate Judge may have affirmed the sale as he was bound to do so when he decided to disallow the above-mentioned application. Existence of cause of action on that application for delivery of possession is suspended during the pendency of the proceeding.

Even in a case reported in *Chandra Mani Saha and Others v. Amarjan Bibi and Others*⁵, their Lordships have held that the sale does not become absolute until the disposal of the application questioning the validity of the sale. In *Sukh Lal v. Khasiram*⁶, the court considered the words “when the sale becomes absolute” and gave wider meaning holding that even when the sale is called in question by means of objection the sale does not become absolute till the final termination of the proceeding commenced by the parties.

Article 134 of the Limitation Act, 1963 reads thus:

	<i>“Description of application</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
134.	For delivery of possession by a purchaser of immovable property at a sale in execution of a decree	One year	When the sale becomes absolute.”

In view of the above decision the sale became absolute on 5-4-1984 when the MFA 493 of 1979 came to be dismissed. On termination of the proceeding when the sale becomes absolute, the period of limitation has to be computed from then onwards.

14. The learned counsel for the respondents invited my attention to a decision reported in *Perumal and Others v. Ramachandra Padayachi and Others*⁷. That is a case where the order for delivery of possession had already been made and that order was sought to be executed. But, that is not the same case here. In such a situation the court held that the application filed by the decree-holder/auction purchaser for delivery of possession is not time barred. The learned counsel urged that dismissal of MFA disentitles the petitioner to question the validity of sale. Insofar as MFA is concerned, non-deposit of the sale consideration was not a ground urged nor infraction of Rule 138 of the Rules urged or discussed or decided. When such points were not raised, debated and decision rendered there is no bar to raise the validity

⁵ AIR 1934 PC 135.

⁶ AIR 1979 All. 411.

⁷ 1982(1) Mad. L.J. 65.

of sale before the executing court. In the case of *Channabasappa (supra)*, the same was the situation. This Court took the view that dismissal of miscellaneous appeal does not bar the judgment-debtor from resorting to question the validity of sale when there is no sale at all in the eye of law. Therefore, there is no merit in the contention of the learned counsel that dismissal of MFA disentitles the petitioner to question the sale.

15. The learned counsel urged that this Court in revisional jurisdiction need not interfere with the auction sale. When subordinate court illegally and with material irregularity in not noticing the mandatory provisions in conducting the sale and in confirmation of the sale, the High Court in its revisional jurisdiction, in aid of justice, can exercise revisional powers. In a situation where interference will bring about any injustice, the High Court need not interfere in revision. In the instant case when the auction sale was not conducted as notified by the presiding officer and there is non-deposit of money as required under Rule 85, Order 21, CPC and if these aspects are not adverted to and mechanically an order for delivery had been passed, it amounts to exercise of the jurisdiction illegally with material irregularity. In such a situation the High Court in revisional jurisdiction has to correct such errors and illegalities. Thus, there is no bar for this Court to interfere with the impugned order.

16. The learned counsel for the auction purchaser referred to various decisions on the point when the sale becomes absolute either on confirmation of sale or on issuance of sale certificate. On confirmation of the sale the auction purchaser is entitled for sale certificate. The Supreme Court in *Municipal Corporation of Delhi v. Pramod Kumar Gupta*⁸, has considered the sale when it becomes absolute and has held that the object of issuance of sale certificate is to avoid any controversy with respect to the identity of the property sold and of the purchaser thereof as also the date when the sale becomes absolute. Issuance of sale certificate has nothing to do with “when the sale becomes absolute”. The sale becomes absolute when the proceedings originated questioning the sale is terminated. On 5-4-1984 when the MFA was dismissed the proceeding terminated and limitation has to be computed from that date since the sale has become absolute as held by the Supreme Court in *Ganpatsingh by L.Rs. v. Kailash Shankar and Others*⁹. The Supreme Court at para 11 has held that there is no ground for holding that Article 136 of the Limitation Act would apply to an application for delivery of possession. Under the Limitation Act, 1908 an application for delivery of possession can be made within 3 years from the date on which the sale became absolute as prescribed by Article 180 of the Act. But under Article 134 of the Limitation Act, 1963 such an application can be made within one year from the date on which the sale becomes absolute. This period of limitation for delivery of possession purchased at court sale has been reduced to considerable extent. But that also cannot be taken into consideration for the purpose of interpretation of the provisions of the Limitation Act. It is for the Legislature to prescribe the period and the court is only to see whether any particular application has been filed within that period. In the instant case, as already stated, the sale became absolute after the termination of the proceeding in the MFA on 5-4-1984. The decree-holder kept quiet for considerable time and applied for sale certificate on 4-3-1991 and the sale certificate was issued on 1-4-1991 and thereafter he filed an application for delivery of possession which is beyond the period of limitation prescribed under Article 134 of the Limitation Act. When the remedy is barred in law the party loses his right. In the instant case the application for delivery of possession is beyond the period stipulated under Article 134 and disentitles the decree-holder to claim possession.

Therefore, none of the points raised by the learned counsel merits consideration and they are rejected as untenable.

17. For reasons aforesaid, the court auction sale is set aside. The auction purchaser has deposited a sum of Rs. 62,250/- as per the memo and the proceedings originated by the sale proclamation issued on 3/10-3-1976 and the deposit of Rs. 62,250/- was made on 17-3-1976. In order to prevent any injustice to the decree-holder keeping in view that he would have earned considerable amount by way of interest, I direct the judgment-debtor to deposit the auction sale price with 15% interest per annum from the date of deposit of sale price before the

⁸ AIR 1991 SC 401.

⁹ AIR 1987 SC 1443.

executing court within 3 months so that the purchaser shall not be put to any financial loss for the delayed proceedings. In the event of non-deposit of the auction sale price with interest as ordered, the execution proceedings shall continue afresh reselling the property in accordance with law.

18. The petition is allowed. Parties to bear their own costs.
