

NANI GOPAL PAUL  
v.  
T. PRASAD SINGH AND ORS.

MARCH 6, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

*Code of Civil Procedure, 1908: Order 21 Rules 89 and 90.*

*Court Decree—Execution of—Auction sale for—Illegality in conduct of—Sale held vitiated.*

In an auction sale conducted by a court receiver in execution of a Court decree, the appellant was the highest bidder and the sale was confirmed in his favour. Thereafter respondents were sought to be impleaded to the suit but a single judge of the High Court denied the same. On appeal a Division Bench while impleading the respondents pointed out that the sale was vitiated due to the manner in which the single judge dealt with the matter and passed orders relating to sale of the property in favour of the appellant when there were other higher offers.

In appeal to this Court, taking *suo motu* judicial notice of the illegality pointed out by the Division Bench and setting aside the sale and confirmation thereof, this Court

**HELD : 1.** Normally an application under Order 21 Rule 89 or 90 or under section 48 CPC need to be filed within limitation to have the sale conducted by the court set aside and that procedure need to be insisted upon; but this Court or appellate court would not remain a mute or helpless spectator to obvious and manifest illegality committed in conducting court sales. [523-D]

**2.** In this case the circumstances are sufficient to vitiate the validity of the sale conducted by the court Receiver as approved by the Single Judge. Confirmation of sale was illegal. The appeal is remanded to the High Court and the appropriate Single Judge would proceed to conduct the sale in accordance with law by open auction after due publication of the sale so that all the intending bidders would have opportunity to participate in the sale. [523-C, F]

**A** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4007 of 1995.

From the Judgment and Order dated 2.3.94 of the Calcutta High Court in A.No. 572/91 in (T.C. Suit No. 2 of 1966).

**B** H.N. Salve, S. Ganesh, Pratap Venugopal and K.J. John for the Appellants.

Soli J. Sorabjee and Ranjit Kumar for the Respondents.

**C** G.L. Sanghi, Anand Agarwalla and Ms. Radha Rangaswamy for the Respondent in No. 4.

The following Order of the Court was delivered :

Leave granted.

**D** In Suit No. 2 of 1966 filed by United Bank of India against Hanuman Foundries Ltd. for foreclosure and sale of hypothicated property, pursuant to a preliminary decree, the court receiver sold the hypothica at which the appellant became highest bidder for Rs. 60 lakhs and he paid a sum of Rs. 5 lakhs. The sale was confirmed in his favour on August 29, 1990. Thereafter respondents No. 1 and 2 were sought to be impleaded to the suit but **E** denied by the single Judge. On appeal, while impleading them, the Division Bench directed the single Judge to hear the respondents before they are ejected from the property in question by order dated 2.3.92 which is the subject-matter of this appeal.

**F** While disposing of the appeal, the Division Bench has pointed out that the sale was vitiated due to the manner in which the single Judge dealing with Company Law matters, passed the orders in his Chamber by observing thus:

**G** "It would be sufficient for this court, if we make our observations to deprecate the way His Lordship took up the matter on various dates subsequent to the passing of the decree and sought to pass various orders relating to sale of the property in favour of the intending purchaser Nani Gopal Paul and others at a price of Rs. 60 lakhs, when there were other offers on the field of a higher denomination and magnitude. Judicial property prevents us from **H** making further comments in respect of the manner. His Lordship

directed Mr. Gour Roychoudhury, the Receiver to make the choice relating to the intending purchaser with full rights to make a contract with the intending purchaser in the manner it was so done. If there were other offers on the field, the court would have been vigilant enough to scrutinise such offers whatever they were worth and there ought to have been a due application of mind in this particular perspective.

Sadly enough that was not so done in the present case."

We are of the view that we can take *suo motu* judicial notice of the illegality pointed out by the Division Bench, committed by the single Judge of the High Court in bringing the properties to sale. Accordingly, we are of the view that the circumstances are sufficient to vitiate the validity of the sale conducted by the court Receiver as approved by the learned single Judge. Confirmation of sale was illegal. Though, as contended by Sri. Ganesh that normally an application under Order 21 Rule 89 or 90 or under s.48 CPC need to be filed within limitation to have the sale conducted by the court set aside and that procedure need to be insisted upon, we are of the view that this court or appellate court would not remain a mute or helpless spectator to obvious and manifest illegality committed in conducting court sales. We are informed and it is not disputed that the appellant had deposited only Rs. 5 lakhs and balance amount was assured to be deposited only after delivery of possession. That also would be illegal.

Accordingly, the sale and confirmation thereof on 29.8.90 are set aside. The appeal is remanded to the High Court and the appropriate single Judge would proceed to conduct the sale in accordance with law by open auction after due publication of the sale so that all the intending bidders would have opportunity to participate in the sale. Thereafter, it would take action according to law. Since it is a suit for foreclosure and the preliminary decree has become final, it is not open to any party to widen the scope of the suit or sale made pursuant to the preliminary decree. If any party has got any other right or remedy, the same has to be worked out elsewhere, according to law and not in this suit. We are not expressing any opinion with regard to the rights, if any, of respondent Nos. 1 and 2 in the property.

The appeal is allowed with no orders as to costs.

T.N.A.

Appeals allowed.