

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No.5935 OF 2005

RAJA RAM

.....APPELLANT

VERSUS

SHEO GOPAL & ORS.

.....RESPONDENTS

O R D E R

This appeal is directed against judgment dated 12.09.2003 of the learned Single Judge of the Allahabad High Court whereby he dismissed the petition filed by the appellant under Articles 226 and 227 of the Constitution for setting aside order dated 24.07.1995 passed by the 7th Additional District Judge, Kanpur Dehat in Civil Revision No.53/93.

The suit filed by Bhairo Prasad and Ghanshyam for specific performance of the agreement for sale dated 13.6.1968 was disposed of by the trial Court vide ex-parte judgment dated 4.4.1979 with a direction to the appellant to pay Rs.4,140/- to the plaintiffs.

After about three years, a petition was filed under Order XXI Rule 6 for the execution of decree dated 4.4.1979. By an order dated 22.8.1985, the Executing Court directed attachment of land measuring 2 bighas 18 biswas 5 biswansis belonging to the appellant.

During the pendency the Execution Petition, the appellant filed an application for grant of permission to deposit of Rs.2,000/- with the prayer that he may be allowed to deposit the balance amount in two installments. The Executing Court accepted the prayer of the appellant. However, the appellant failed to deposit the balance amount. Therefore, the attached property was sold by auction for a sum of Rs.26,000/-. The sale was confirmed by the Court.

After nine months, the appellant filed application for cancellation of the auction on the ground that the notice issued by the Court had not been served upon him and the auction purchaser was none other than the brother of Shiv Narain, who is son of the Pairokar of Ghanshyam. The appellant also claimed that he had given the balance amount to Shri Moti Ram, Advocate but the same could not be deposited because of the latter's demise. Respondent No.1 contested the application by asserting that the appellant had deliberately avoided payment of the decretal amount and the cause shown by him for non-deposit of the amount was unsatisfactory. The same was allowed by the Executing Court vide order dated 30.10.1993 and the auction was cancelled subject to the condition that the appellant shall deposit a sum of Rs.8,850/-.

The revision filed by respondent No.1 was allowed by 7th Additional District Judge, Kanpur and the order passed by the Executing Court was set aside by recording the following reasons:

"Raja Ram the Judgment debtor has shown to have the knowledge of the Purchaser of the land in dispute the revisionist in the extract of the khatauni, which he has gone to take it from Lekhpal on 5.10.93, in his objections 58 Ga, filed by him before the Subordinate. In the mutation case, the Affidavit which has been filed by Raja Ram the Vendor in the Court of Tehsildar, the revisionist has field its true copy in Para 1 and 2 of which, this information has been shown to have been received on 18.8.93. In this manner there is difference of one month 17

days between the two. In this manner, no application has also been given for condoning the delay. The Subordinate Court has neither taken any evidence of the parties on the objections 58 Ga, dated 8.12.93 and cross objection 64 Ga, dated 22.10.93 filed by the replying defendant the judgment debtor nor any date for evidence was fixed by the Subordinate Court. In this manner, the statement of the replying defendant Raja Ram is not confirmed from any evidence.

It is provided under Order 21 Rule 89 the sale amount for the cancellation of the sale be deposited within thirty days of the sale. In this manner this amount has been deposited within time and the discussion can be held on the application of the judgment debtor. Once the sale is complete the sale cannot be cancelled and the judgment debtor cannot get back such a sold property. In this regard the Hon'ble High Court of Allahabad has held the above facts in the case law of 1993 A.W.C. page 595. And this is also clear from the perusal of the facts of the Revision that though sale certificate has been issued on 6.1.92 in the name of the Revisionist. The name of the Revisionist has also been mutated in the Khatauni also the information of which was given to the Replying Defendant Raja Ram the judgment debtor on 18.8.93 but he while not giving any application for condonation of delay before the Subordinate Court. In this manner, the above facts are corroborated from the above evidences stated before the Hon'ble High Court.

Under Rule 159, A.U.P.Z. A Act the valuation of the agricultural land is 400 times of the annual lagan. The annual lagan of the land in dispute has been stated to be 5.57 paise. In this manner the valuation of the land in dispute is Rs.2288/- while the land in dispute has been auctioned for Rs.26000/-. This land has been stated to be sold to a person of killan for lifting the earth by six feet for Rs.3920/- in the year 1958 and this has also been stated that after lifting the earth up to the depth of six feet this land has been formed just like a tank the copy of the agreement of which has been filed in this revision. On which no objection has been filed. In this manner, to say that the price of the land in dispute is tow lakhs instead of Rs.26000/- is not at all fit to be considered.

This is clear from the above analysts is that the auction has been confirmed and the name of the revisionist has also been mutated against the land in dispute. No objection has been filed within the period and nor any application for condonation of delay has been filed by reason of which the court has erred in its decision."

The learned Single Judge dismissed the petition filed by the appellant. He relied upon the judgment of this Court in Dadi Jagannadham v. Jammulu Ramulu and others (2001) 7 SCC 71 and held that the application filed by the appellant was not maintainable and that the revisional Court did not commit any error by setting aside the order of the Executing Court.

Ms. V.Mohana, learned counsel appearing for the appellant vehemently argued that the auction of the appellant's property was vitiated by fraud and misrepresentation and the learned 7th Additional District Judge committed serious error by setting aside the order of the Executing Court, which had annulled the auction. She extensively referred to the documents filed with the memo of appeal and argued that even though the application filed by the appellant did not specify the particular rule of Order XXI, the same could be treated as filed under Order XXI Rule 90 and the Executing Court did not commit any error by setting aside auction.

We have considered the arguments of the learned counsel but have not felt persuaded to accept the same. Although, the appellant had alleged that the auction was irregular and the auction purchaser had cheated the Court, no evidence was produced to substantiate this allegation. The application filed by him for cancellation of the auction sale did not specify the provision under which it was filed. The trial Court referred to Order XXI Rules 100, 101 and 106 CPC for taking the view that the suit property could not have been sold for recovery of a paltry amount of Rs.2,159.50. The 7th Additional District Judge opined that the application filed by the appellant could be treated as an application under Order XXI Rule 89 and held that the same was liable to be rejected because of non-fulfillment of the conditions specified therein. The learned Single Judge approved the order of the 7th Additional District Judge and dismissed the petition filed by the appellant by recording the following observations:

"Thus one thing is clear that amount in question has to be deposited within 60 days from the date of sale and if no amount is deposited, then application moved under Order XXI, Rule 89 have not at all competent and maintainable. Herein the present case sale has been made on 6.9.1991, confirmed on 23.10.1991 and sale certificate issued on 26.2.1992. In view of the fact as the application has been moved without fulfilling pre-requisite terms and conditions, the same was not maintainable and the revision Court has committed no error whatsoever in allowing the same. As the application moved on behalf of the Petitioner was not under Order XXI Rule 89 C.P.C. and as pre-requisite terms and condition was not fulfilled as such other issue raised by the Petitioner is of no consequences and no relief can be granted for the reasons stated above."

In our view, the reasons assigned by the 7th Additional District Judge for setting aside the order of the Executing Court were legally correct and the High Court rightly refused to interfere with the same.

In the result, the appeal is dismissed.

While doing so, we take cognizance of the statement made by Shri Vikram Mahajan, learned senior counsel for the respondents that his clients will pay Rs.5,00,000/- (Rupees five lacs) to the appellant in lieu of the suit property and direct the respondent to pay Rs.5,00,000/- (Rupees five lacs) to the appellant within a period of four weeks from today.

.....J.
(G.S.SINGHVI)

.....J.
(RANJANA PRAKASH

DESAI)

.....J.
(KURIAN

JOSEPH)
NEW DELHI;
MARCH 13, 2013.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 5935 OF 2005

RAJA RAM

Appellant (s)

VERSUS

SHEO GOPAL & ORS.

Respondent(s)

(With appln(s) for exemption from filing O.T. and permission to file additional documents and exemption from filing O.T. and with prayer for interim relief and office report)

Date: 13/03/2013 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MRS. JUSTICE RANJANA PRAKASH DESAI
HON'BLE MR JUSTICE KURIAN JOSEPH

For Appellant(s) Ms. V. Mohana, Adv.
Ms.Udaya P.S.Menon, Adv.
Mr.Unnikrishnan, Adv.

For Respondent(s) Mr.Vikram Mahajan, Sr.Adv.
Mr. P.D. Sharma, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master

(Signed order is placed on the file)