Privy Council Appeal No. 8 of 1942

Sri Raja Bommadevara Naganna Naidu Bahadur Zamindar Garu – – - - - - - - - *Appellant*

v.

Sri Raja Bommadevara Venkatrayulu Naidu Bahadur Zamindar Garu and another - - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 30TH JULY, 1945

Present at the Hearing:

LORD PORTER
LORD GODDARD
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by* SIR MADHAVAN NAIR]

This appeal arises out of an application by the appellant who is a judgment debtor to set aside a Court sale of six items of property belonging to him which were sold in execution of the decree in Original Suit No. 38 of 1919 in the Court of the Subordinate Judge of Ellore, obtained against him by the first respondent, the decree holder. This appeal relates only to three items of the properties; these being items 4, 5, and 6, specified in the sale proclamation. At the sale the properties were purchased by the decree holder himself. The application to set aside the sale was made under Order XXI, r. 90, of the Code of Civil Procedure which empowers the Court to set aside a sale "on the ground of material irregularity or fraud in publishing or conducting it." This power of the Court is subject to the proviso "that no such sale be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the appellant has sustained substantial injury by reason of such irregularity or fraud."

The subordinate judge of Ellore to whom the application had been made, set aside the sale on the grounds that the sale proclamation did not mention the revenue assessed on the properties as required by Order XXI, r. 66 (2) (*b*), and that the sale proclamation was not published in the collector's office as required by Order XXI, r. 54, read with rule 67, of the Code of Civil Procedure; and that as a result of these irregularities the appellant had suffered substantial injury in that the sale prices were unreasonably low. The High Court of Madras reversed this decision by its Order dated 23rd January, 1940, holding that in the circumstances of the case the omission to mention the government revenue was not a material irregularity; and that the failure to affix the sale proclamation in the collector's office, though it was an irregularity, caused no substantial injury to the appellant. This appeal has been brought against the above decision of the High Court. Besides the irregularities referred to, the appellant had alleged also fraud in his petition, but both the Courts in India have found that no fraud had been committed.

The question for determination in this appeal is whether or not the appellant is entitled to set aside the Court sale by reason of the above mentioned irregularities.

In order to set aside a sale under Order XXI, r. 90, it should be proved (1) that there was material irregularity or fraud in publishing or conducting the sale, and (2) that the applicant had sustained substantial injury by reason of such irregularity or fraud. Mere irregularity or fraud in publishing or conducting the sale will not entitle the Court to set it aside, unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud. The words in the proviso " unless upon the facts proved, the Court is satisfied " have been substituted in the present Code for the words " unless the applicant proves to the satisfaction of the Court " in the proviso to Section 311 of the Code of 1882. In the course of the arguments the question was raised in connection with the High Courts' observation " Nor is there any evidence to connect this irregularity (failure to affix the notice in hte collector's office) with any defect in price," as to whether the substantial injury sustained by the applicant by reason of the material irregularity or fraud complained of could be proved only by " direct evidence " as stated in the judgment of the Board in *Tassaduck Rasul Khan* v. *Ahmad Husain* (1893 L.R. 20 I.A. 176) or if it could be proved also by evidence from which it might be reasonably inferred that the substantial injury was the result of the material irregularity or fraud. It appears to their Lordships that upon the language of the proviso as it now stands, what is required is that the Court should be satisfied that the applicant has suffered substantial injury by reason of material irregularity or fraud, and if the Court is so satisfied from the facts proved then the applicant may be said to have discharged his burden. Their Lordships think that 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 as pointed out in *Ramasesha Iyer* v. *Ramanujachariar,* reported in (1935) A.I.R. Madras 458, where all the relevant decisions have been considered. The Madras and Calcutta High Courts have always been of this opinion. Sir Dinshaw Mullah says in his commentary on the rule that the amendment of the language of the proviso was made to give effect to the Madras and Calcutta decisions. The High Court of Allahabad which followed the rigid construction has now adopted the new rule. (See *Rajendra Behari Lal* v. *Gulzari Lal* (1933) I.L.R. 55 All. 182.)

Turning now to the essential facts of the case, the appellant is the proprietor of the North West Vallur estate consisting of about 34 villages in Kistna and West Godavari districts paying an annual peshkash (revenue) of Rs.42,000. The first respondent is his brother. In the partition of the main estate between himself and his brother, the appellant got 20 villages as his share and he has since purchased 14 villages in the two districts for which he had borrowed considerable sums of money. As he had failed to discharge those debts his creditors brought suits against him and obtained decrees. In enforcement of the decree obtained by the first respondent in the partition suit (Original Suit No. 38 of 1919) for about Rs.46,000 he brought the properties in dispute for sale and, as mentioned before, purchased them himself. The first irregularity alleged is the failure to mention in the sale proclamation the revenue assessed on the properties as required by Order XXI r. 66 (2) (*b*). This rule lays down that the proclamation for sale shall specify " as fairly and accurately as possible " " the revenue assessed upon the estate or part of the estate where the property to be sold is an interest in an estate or part of an estate paying revenue to the government." The allegation that the revenue due on each of the properties has not been specified is not denied by the first respondent his case being that in those cases where the proclamations do not specify the revenue payable it was impossible in the circumstances of the case to specify the revenue as the revenue due on the properties had not been separately fixed. The learned judges of the High Court state in their judgment " So far as we can ascertain in all these

sales wherever the proclamations do not specify the revenue payable, the property to be sold consists of either a village or part of a village with reference to which no one can say with any certainty what would have been the proportionate peshkash payable if and when the procedure laid down for the separate registry of those portions is carried out." It is not disputed that no steps had been taken to effect separate registration of the properties and their separate assessment by resorting to the procedure prescribed by law. The learned judges point out that even in the case of whole villages put up for sale (as in the connected C.M.A. 378 before them) where a rough approximation of the revenue might possibly have been made they found three different estimates of the proportionate peshkash in the evidence varying to a very considerable extent. It would seem that the appellant himself who stated that the peshkash for a group of villages in another connected C.M.A. was a certain amount was unable to say how much was due on each village. Their Lordships have no doubt that omission to state the revenue on an estate or part of an estate paying revenue to the government, where it is possible to state the amount accurately or even approximately, is a material irregularity within the meaning of the rule, but in their view the rule can have no application to a case like the present in which the property sold is a portion of an estate upon which no separate revenue has been fixed. They agree with the High Court in holding that in the circumstances of the present case the failure of the decree holder to state the revenue payable on the lands cannot be treated as a material irregularity. The question whether it has been proved that the appellant has sustained any substantial injury by reason of the irregularity does not therefore arise for consideration.

The next irregularity alleged is the omission to affix the sale proclamation in the collector's office as prescribed in Order XXI, r. 54 read with r. 67 of the Code of Civil Procedure. Ordinarily, the omission to affix the proclamation in the collector's office would indeed be a material irregularity as it is a non-compliance with the procedure prescribed by law, but in the circumstances of the present case the breach of the rule can hardly be called a material irregularity. It is stated in the judgment of the High Court that the collector's office and the district judge's court are situated in the same compound and it is not denied that a copy of the proclamation was duly affixed in the district judge's court. Further, evidence shows that the sale was widely advertised in various daily papers. The object of the rule requiring affixture of the sale proclamation in the collector's office is to give sufficient publicity to the sale; where such publicity has been given to the sale as in the present case the irregularity complained of can hardly amount to a material irregularity. Assuming however that the omission amounts to a material irregularity it has not been proved by evidence direct or circumstantial that the inadequate price which the properties fetched at the sale as found by the subordinate judge, was by reason of this irregularity. Their Lordships have been taken through the material portions of the evidence bearing on the point but are not satisfied that the defect in price could be attributed to this irregularity.

For the above reasons their Lordships would humbly advise His Majesty that the appeal fails and should be dismissed with the costs of the first respondent.

[illegible] Wt. 8077—36 '60 4/53 D.L. [illegible]

In the Privy Council

SRI RAJA BOMMADEVARA NAGANNA NAIDU BAHADUR ZAMINDAR GARU

v.

SRI RAJA BOMMADEVARA VENKATRAYULU NAIDU BAHADUR ZAMINDAR GARU AND ANOTHER

DELIVERED BY SIR MADHAVAN NAIR

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