

P. Udayani Devi vs V.V. Rajeshwara Prasad Rao & Anr on 24 February, 1995

Equivalent citations: 1995 AIR 1357, 1995 SCC (3) 252, AIR 1995 SUPREME COURT 1357, 1995 (3) SCC 252, 1995 AIR SCW 1314, (1995) 2 SCR 332 (SC), 1995 ALL CJ 1 399, 1995 ALL CJ 2 781, (1995) 3 JT 523 (SC), (1995) 2 CURLJ(CCR) 297, (1995) 1 CURCC 612, (1995) 2 LANDLR 156, (1995) 3 CIVLJ 115

Author: S.C. Agrawal

Bench: S.C. Agrawal

PETITIONER:

P. UDAYANI DEVI

Vs.

RESPONDENT:

V.V. RAJESHWARA PRASAD RAO & ANR.

DATE OF JUDGMENT 24/02/1995

BENCH:

AGRAWAL, S.C. (J)

BENCH:

AGRAWAL, S.C. (J)

FAIZAN UDDIN (J)

CITATION:

1995 AIR 1357

1995 SCC (3) 252

JT 1995 (3) 523

1995 SCALE (2) 43

ACT:

HEADNOTE:

JUDGMENT:

S.C. AGRAWAL, J.:

1.leave granted.

2. We have heard learned counsel for the parties.

3. These appeals are by the auction purchaser of a property sold to him in execution proceedings. A money decree was passed against respondent No. 1 in O.S. No. 148 of 1970 filed by respondent No. 2. In execution of the said decree the property of respondent No. 1 was sold by auction on March 26, 1985 to the appellant whose bid of Rs. 3,01,000/-

was the highest. In the sale certificate dated April 8, 1987 the property that was sold was thus described in the Schedule:

"East Godavari District, Rajahmundry Taluk, Gandhi-nagaram. Block No. 11, Rajahmundry Belonging to the judgment debtors and named as "Chandrika Nilayam" in S.S. No. 67 and present No. 21-6 terraced house, situated within the following boundaries -

East : House of M.V. Reddy South : Main Road West : Park North : House of Mullapudi Satyanaranayam

4. The same description was given in the sale proclamation. Before issuance of the sale certificate respondent No. 1 had filed petitions, E.A. Nos. 397 of 1985 and 506 of 1985 under Order 21 Rules 90 and 91, C.P.C., for setting aside the sale which was held on March 26, 1985. One of the grounds that was urged for setting aside the sale in the said petitions was that respondent No. 1 had only 1/4th share in the property and further that the property was worth Rs. 5 lakhs and the bid was too low. Along with the said petitions respondent No. 1 also filed a schedule which gave the description of the property in the same terms as mentioned in the sale proclamation and sale certificate. The said petitions were dismissed by the executing court by order dated April 21, 1986 and the sale was confirmed on April 8, 1987 and the sale certificate was granted to the appellant. In pursuance of the sale certificate the appellant obtained possession of the entire property within the boundaries as mentioned in the sale certificate on April 22, 1987. After the delivery of the possession respondent No. 1 filed a suit, O.S. No. 107/87, in the court of Subordinate Judge, Rajahmundry for a declaration that the sale certificate dated April 8, 1987 issued in favour of the appellant does not pass title to the property bearing Door No. 14/7 and relates only to the terraced building and for a permanent injunction restraining the appellant from interfering with the peaceful possession and enjoyment of respondent No. 1 in respect of the other building. During the pendency of the said suit respondent No. 1 filed a petition, F.A. No 478 of 1990, in the execution proceedings, under Section 47 read with Section 151 C.P.C. wherein he prayed for a declaration that the sale certificate does not pass title to the appellant in respect of the property mentioned in the schedule to the said application, hereinafter referred to as "the petition schedule property", on the ground that even though there was no attachment and sale of the said property and even though the appellant did not purchase the same and even

though the sale certificate does not contain it the appellant had taken the delivery of possession of the said property in the execution proceedings. The boundaries of the petition schedule property are thus described by respondent No. 1 in the said pension

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East : House belonging to M.V. Reddy West : Terraced building now taken de livery by the first respondent (appellant herein) South : Main Road North : House belonging, to Mullapudi Satyanarayana

5. The said petition was contested by the appellant as well as by the decree holder (respondent No. 2.) who asserted that the petition schedule property was also brought to sale after attachment and was in fact sold by, the court and it is also covered by the sale certificate. The Subordinate Judge, by order dated November 5, 1991, dismissed the said petition of respondent No. 1. It was held that the petition schedule property is located within the boundaries mentioned in the schedule to the execution-

tion petition as well as in the schedule attached to the sale certificate. The Subordinate Judge rejected the contention that there were two buildings, the terraced building and the upstairs building, and held that there is only one structure on the terrace which looks like a stair- case room and there is absolutely no upstairs building at all and that the major portion of the building is a terraced one and that in spite of the location of a small room on the terrace the building remains a terraced building only. According to the Subordinate Judge the sale proclamation and sale certificate clearly go to show that the property purchased by the appellant extends upto the park on the west and upto the house of M.V. Reddy on the east and that the petition schedule property is part and parcel of the property within the said boundaries and, therefore, the petition schedule property was also purchased by the appellant under the sale certificate and the appellant was entitled for the entire property including the petition schedule property under the sale certificate and is entitled to take the delivery of the entire property including the petition schedule property. Feeling aggrieved by the said order of the Subordinate Judge respondent No. 1 filed a revision petition, C.R.P. No. 3998 of 1991, in the Andhra Pradesh High Court. The said revision petition was allowed by the High Court by judgment dated March 29, 1994. The High Court was of the view that when respondent No. 1 raised the contention that within the boundaries there is other upstairs building with vacant site of 300 and odd sq. yards and that the property that was sold pursuant to the auction and delivered was only the terraced building, the lower court ought to have appointed a Commissioner in order to find whether in fact there is any upstairs building in the said site and that if there is also upstairs building and vacant site within the boundaries the appellant is not entitled to take delivery of the upstairs building as the only property that was brought to sale was the terraced building within the boundaries mentioned therein and further that the sale certificate does not refer to the upstairs building and the vacant site. The High Court, therefore, remitted the matter to the executing court

with the direction to appoint a Commissioner to make local inspection of the petition schedule property and if, within the boundaries mentioned in the sale certificate, there is an upstairs building which is not included in the sale certificate and the vacant site adjacent to it he may direct redelivery of that property and if there is no upstairs building and the vacant site within the boundaries mentioned in the sale certificate, the Subordinate Judge may dispose of the execution application in accordance with law. The appellant filed a review petition for the review of the said order of the High Court but the same was dismissed by order dated November 23, 1994. These appeals are filed against the said orders of the High Court dated March 29, 1994 and November 23, 1994.

6. Shri R.F. Nariman, the learned senior counsel appearing for the appellant, has submitted that the High Court, in exercise of its revisional jurisdiction under Section 115 C.P.C., was in error in interfering with the order passed by the Subordinate Judge dismissing the application filed by respondent No. 1 under Section 47 read with Section 151 C.P.C. The submission of Shri Nariman was that the boundaries of the property which was sold in the auction sale are clearly indicated in the sale certificate and they are the same boundaries as are mentioned in the sale proclamation and that in view of the said description in the sale certificate the entire property lying within those boundaries was the subject-matter of sale in favour of the appellant. The submission of Shri Nariman was that the sale certificate issued in favour of the appellant is conclusive and that the Subordinate Judge had correctly construed it and that there was no infirmity in the order passed by the Subordinate Judge which could justify interference by the High Court in exercise of its revisional jurisdiction.

7. We find considerable substance in this contention. The position in law is wellsettled that "certificates of sale are documents of title which ought not to be lightly regarded or loosely construed." [See : Rambhadra Naidu v. Kadiriyasami Naicker, (1921) LR 48 IA 1551. In Sheodhyan Singh & Ors. v. Musammatt Sanichara Kuer & Ors., 1962 (2) SCR 753, in the sale certificate the boundaries as well as the plot number were mentioned but there was a mistake in mentioning the plot number. It was held :

"The matter may have been different if no boundaries had been given in the final decree for sale as well as in the sale certificate and only the plot number was mentioned. But where we have both the boundaries and the plot number and the circumstances are as in this case, the mistake in the plot number must be treated as mere misdescription which does not affect the identity of the property sold. [p. 759]

8. In the instant case, we find that in the sale certificate the boundaries of the property that was sold have been clearly indicated. In addition, the sale certificate also gives the description of the property as "Chandrika Nilayam" bearing the number "S.S. No. 67 and present No. 21-6". The mention of the words "terraced house" in the description cannot be construed to mean that only a part of the

property falling within the boundaries was sold and a part of the said property was left out. The expression "terraced house" is not an expression of precise connotation as pointed out by the Subordinate Judge. The main building having the terrace and a room on the first floor can properly be described as the terraced house and other structures and land within the boundaries are part of the said property. There is no dispute that the possession of the entire property, including the house having a room on the first floor, was delivered to the appellant after the sale certificate has been issued in his favour. What respondent No. 1 wants is to divide the property mentioned in the sale certificate in two portions having the following boundaries (I) East : House of M.V. Reddy West : Terraced building mentioned in the sale certificate South : Main Road North : House of Mullapudi Satyanarayana (II) East : Building having a room on the first floor and open land West : Park South : Main Road North : House of Mullapudi Satyanarayana

9. According to respondent No- 1 only property (11) was sold in the auction sale and is covered by the sale certificate. The plain terms of the sale certificate do not lend support to this contention. Accord-

ing to the sale certificate the entire property falling within the boundaries was the subject-matter of the sale. In view of the said description in the sale certificate it is not possible to split up the property into two portions and confine the sale certificate to a part of the property and thereby alter the boundaries of the property that has been sold.

10. Moreover, it is settled law that the question as to what was sold in execution of the decree is a question of fact. [See :S.M. Jakati & Anr. v. S.M. Borkar & Ors., 1959 SCR 138, at p. 1401 1. In the present case, the Subordinate Judge, after an examination of the sale certificate and other documents, has recorded a finding that the entire property falling within the boundaries mentioned in the sale certificate has been sold. That was a finding of fact. The High Court, in exercise of its revisional jurisdiction, was not justified in reopening the finding of fact recorded by the Subordinate Judge. The judgment of the high Court cannot, therefore, be upheld and must be set aside.

11. The appeals are accordingly allowed, the judgment of the High Court dated March 29, 1994 as well as the order dated November 23, 1994 are set aside and the order dated November 5, 1991 passed by the Subordinate Judge is restored. The appellant will be entitled to his costs.