

Kerala High Court

K.C. Rajan vs State Bank Of Travancore on 4 February, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

CRP No. 1419 of 2004()

1. K.C. RAJAN, S/O. CHERIYAN,
... Petitioner
2. LALI JOHN, W/O. JOHN,

Vs

1. STATE BANK OF TRAVANCORE,
... Respondent

For Petitioner :SRI.DILIP J. AKKARA

For Respondent :SRI.M.PATHROSE MATTHAI (SR.)

The Hon'ble MR. Justice K.T.SANKARAN

Dated :04/02/2008

O R D E R

K.T. SANKARAN, J.

.....
C.R.P. No. 1419 OF 2004
.....

Dated this the 4th February, 2008

O R D E R

The petitioners are judgment debtors. They challenge the order dated 21st October, 2004, by which the draft sale proclamation was approved and reserve price for the property was fixed at Rs.6.5 lakhs.

2. The amount claimed in the Execution Petition was Rs.4,86,723/-. The Execution Petition was filed in the year 2001. At the time of settling the proclamation, the amount sought to be realised was Rs. 6,35,176/-. A copy of the proclamation was made available to me for perusal and it would indicate that three items of property are sought to be sold. The decree holder has valued item No.1 at Rs.2 lakhs, item No.2 at Rs.50,000/- and item No.3 at Rs.1.50 lakhs. In the proclamation, objections raised by the judgment debtors have been incorporated as to the valuation of the properties. As per the objections raised by the judgment debtors, item Nos.1 to 3 respectively would fetch a value of Rs. 9 lakhs, Rs.3 lakhs and Rs. 5,70,000/-. The proclamation does not mention any upset price fixed by the court below as it is not necessary for the court to fix the upset price and it is sufficient if the valuation as given by the decree holder and the judgment debtors are shown in the proclamation.

3. It would appear that the decree holder applied for leave to bid which necessitated fixing of reserve price under Rule 72-A of Order XXI of the Code of Civil Procedure. By the order impugned, the court below fixed the reserve price at Rs. 6.5 lakhs. The order does not indicate as to how the court below has arrived at the value C.R.P. No. 1419 OF 2004 of Rs.6.5 lakhs. Going by the sale proclamation, it would appear that the property could be sold in lots. Clause (b) of sub rule (2) of Rule 72-A of Order XXI of the Code of Civil Procedure mandates that in case the property is sold in lots. the reserve price shall not be less than such as shall appear to the court to be properly attributable to each lot in relation to the amount then due for principal, interest and costs on the mortgage. The court below has not fixed the reserve price in respect of each lot. I am of the view that the court below should have fixed the reserve price in respect of each lot .

4. For the aforesaid reasons, the order impugned is set aside. The court below shall fix the reserve price after taking into account all the materials available on record.

Since three items are sought to be sold and since proclamation would indicate that the value of each item has been separately shown and it is most likely that the property would be sold in lots, the court below shall fix the reserve price in respect of each item.

The proclamation shall be settled in accordance with law, as expeditiously as possible.

The Civil Revision Petition is disposed of as above.

K.T. SANKARAN, JUDGE.

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