

SEETHAMMAL

v.

SENTHIL FINANCE AND ANR.

MARCH 15, 1996

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

*Code of Civil Procedure, 1908 : Order 21—Rule 97.*

*Decree—Execution of—Auction sale for—Challenge to validity of auction sale by judgment debtor—Rejection of by Execution Court—Confirmation by High Court—Appeal—Property for Rs. 40,000 mortgaged with respondent—Property originally valued for Rs. 75,000 but subsequently reduced to Rs. 50,000 Respondent's bid for Rs. 15,000 accepted subject to discharge of mortgage sum—Nobody coming forward to purchase the property—Respondent-mortgagee himself purchasing for Rs. 15,100—Sale conducted by Executing Court held illegal—Entire decretal amount deposited by Judgment Debtor already withdrawn by decree holder—Judgment debtor directed further to deposit 18% interest from the date of sale till date of deposit of Rs. 15,000 as well as Rs. 2,000 towards poundage fee.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5092 of 1996.

From the Judgment and Order dated 26.9.95 of the Madras High Court in C.R.P. No. 1895 of 1993.

R. Sundaravardhan, C. Balasubramaniam and K. Ram Kumar for the Appellant.

A.T.M. Sampath and T. Srinivasadhnan for the Respondents.

The following Order of the Court was delivered :

Leave granted.

Heard counsel for both the parties.

In execution of money decree in O.S. No 67/87, the property, i.e., 1053 sq. feet of land with built-in house was sold for a sum of Rs. 15,100 subject to discharge of the mortgage sum of Rs. 40,000 encumbered on the

property. The appellant/judgment-debtor questioned the validity of the sale under Order 21, Rule 97, CPC. The executing Court rejected the same which was confirmed in C.R.P. No. 1895/93 by the impugned order dated September 26, 1993 of the High Court of Madras. Thus this appeal.

Having heard the learned counsel on both sides, we are of the view that the sale is in excess of the execution. It is not in dispute that the property sold consists of a built-up house in a portion measuring 1053 sq. ft. The property was originally valued for a sum of Rs. 75,000. But subsequently, it was reduced to Rs. 50,000. At an auction, it was sold for a mere sum of Rs. 15,000. The upset price was Rs. 15,000. The respondent's bid was for Rs. 15,100 and the sale was knocked down as stated earlier, subject to discharge of the mortgage for a sum of Rs. 40,000. It is now stated by Mr. A.T.M. Sampath, the learned counsel for the second respondent that the respondent himself is a mortgagee of that property for a sum of Rs. 40,000. It is, therefore, clear that nobody was coming forward to purchase the property and the respondent himself had purchased it for a sum of Rs. 15,100. Under these circumstances, we are of the view that the sale conducted by the executing Court was obviously illegal. It is stated that the appellant had already deposited the entire decretal amount and it was withdrawn by the decree-holder also. In addition, the appellant is directed to deposit interest @ 18% from the date of the sale, namely, January 20, 1992 till date on the amount of Rs. 15,100 deposited by the respondent and the respondent shall be at liberty to withdraw the same. In addition, the appellant shall also pay a sum of Rs. 2,000 towards poundage fee. The amount shall be deposited within a period of six months from today.

The appeal is accordingly allowed subject to the above terms. No costs.

Appeal allowed.