

Supreme Court of India

S.S. Dayananda vs K.S. Nagesh Rao & Ors on 19 February, 1997

Bench: K. Ramaswamy, S. Saghir Ahmad

PETITIONER:

S. S. DAYANANDA

Vs.

RESPONDENT:

K. S. NAGESH RAO & ORS.

DATE OF JUDGMENT: 19/02/1997

BENCH:

K. RAMASWAMY, S. SAGHIR AHMAD

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Delay condoned.

This special leave petition arises from the judgment and order dated July 16, 1996 passed by the learned Single Judge of the Karnataka High Court in C.R.P. no. 5643.

The first respondent suffered a decree in sum of Rs.. 2,400/- for recovery of which, obviously included interest and costs in a sum of Rs.4,000/-/-, his property was brought to sale on October 25, 1978 and the petitioner purchased the same for a sum of Rs.. 67,000/-. An application was filed by the respondent under Order XXI, Rule 90 of the Code of Civil Procedure (CPC) impugning the legality of the sale conducted. The executing Court dismissed the application by order dated August 16, 1990. On appeal the appellate court set aside the order of the executing Court and allowed the petition declaring that the sale was illegal. On revision, the High Court by the order has confirmed the same. The finding recorded by the appellate Court and the High Court is that non-compliance of the procedure required under Order XXI, Rule 64, CPC had vitiated the sale.

It is contended for the petitioner that the executing Court having found that the adequacy of consideration is not a ground for setting aside the sale but the appellate Court and the High Court have not gone into that respect of the matter. The appellant having purchased the property valued in the proclamation at Rs. 85,000/-, The sale could not be set aside. We find no force in the

contention. IT is seen that the High Court has noted that the procedural compliance of Order XXI, Rule 64, CPC was not adhered to which is a mandatory requirement as held by this Court in *Desh Bandhu Gupta v/s N.L. Anand & Rajinder Singh* [(1991) 1 SCC 131]. Equally the sale consideration of the property was in excess of the execution. Under these circumstances, the High Court is justified in confirming the order of the appellate Court setting aside the sale.

The Special Leave Petition is accordingly dismissed.