
(2007) 09 AP CK 0039
In the Andhra Pradesh High Court
Case No : C.M.S.A. No. 32 of 2007

Achi Ramulu (Died) Per LRs.	Vs	APPELLANT
Kunapareddy Vijaya Kumar (Died) per LRs.		RESPONDENT

Date of Decision : 27-09-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 100, Order 21 Rule 101, Order 21 Rule 58, Order 21 Rule 97, Order 21 Rule 98

Citation : (2008) 1 ALD 765 : (2008) 1 ALT 437

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : S. Ramachandra Prasad, for the Appellant; Sai Gangadhar Chamarthi, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—This Civil Miscellaneous Second Appeal, u/s 100 of C.P.C., is filed against the concurrent judgments, rendered in an application filed under Rules 97, 98, 99 and 101 of Order 21 C.P.C., and in an appeal filed against the same. The respondents 1 to 4 filed O.S. No. 213 of 1984 in the Court of Principal Junior Civil Judge, Machilipatnam, against respondents 5 to 12, for recovery of possession of the suit schedule property.

2. The suit was decreed, and A.S. No. 165 of 1990, filed by the respondents 5 to 12, against the judgment and decree of the trial Court, was dismissed. After the decree in the suit became final, respondents 1 to 4 filed E.P. No. 93 of 1999, at a time, when the delivery of possession of the property was being effected. The deceased-1st appellant filed E.A. No. 412 of 1999, under Rules 97, 98, 99 and 101 of Order 21 C.P.C. During the pendency of the application, he died. His legal representatives, being appellants 1 and 2, were brought on record. It was pleaded that the father of the deceased-1st appellant, acquired the suit schedule property in the year 1960, and after his death, the deceased-1st appellant enjoyed the rights of possession over it. He is said to have accorded permission

to respondents 5 to 12, to put huts on the land.

3. He pleaded that the decree, between respondents 1 to 4, on the one hand, and respondents 5 to 12, on the other hand, is collusive, and it cannot effect his rights. The E.A was resisted on several grounds. It was urged that the third party cannot maintain applications under the provisions, referred to above, and an application under Rule 99 of 21 C.P.C. can be filed only by a party, who is dispossessed in the execution proceedings. The Executing Court dismissed the E.A., through its order dated 20-02-2001. Thereupon, the appellants filed A.S. No. 23 of 2001 before the VI Additional District and Sessions Judge, Krishna, at Machilipatnam. The appeal was dismissed on 28-12-2006. Hence, this second appeal.

4. Sri S. Ramachandra Prasad, learned Counsel for the appellants submits, that the view taken by the Courts below, as to the purport of Rules 97 to 101 of Order 21 C.P.C., cannot be sustained in law. He places reliance upon the judgments of the Supreme Court in *Silverline Forum Pvt. Ltd. v. Rajiv Trust and Anr.* AIR 1998 SCW 1544 and *Brahmdeo Chaudhary, Adv. Vs. Rishikesh Prasad Jaiswal and another*, Sri Sai Gangadhar Chamarthy, learned Counsel for the respondents, on the other hand, submits that even assuming that the application is maintainable, the appellants did not adduce any evidence, in support of the claim, and failed to establish their rights.

5. The appellants are third parties to O.S. No. 213 of 1984, and the resultant E.P. No. 93 of 1999. Basically, objections to the execution proceedings, by third parties, have to be presented under Rule 58 of Order 21 C.P.C. The appellants, however, have chosen to invoke Rules 97 to 101 C.P.C., in their applications. They claimed independent rights in the suit schedule property. On their part, they examined PWs 1 to 3, and filed Exs.A-1 to A-3. Out of them, Exs.A-1 and A-2 are identity cards, issued by the Election Commission of India. They do not have any bearing on the title to any property. Ex.A-3 is a certificate, issued by the Municipality, to the effect that the deceased-1st appellant was a resident of premises bearing No. 4/160/1. The E.P. schedule property is some-what different. The 1st respondent was examined as RW-1.

6. It is no doubt true, that the Courts below took the view that an application under Rules 97 to 101 of Order 21 C.P.C., cannot be maintained by third parties, and that it can be filed, if at all, only after the possession of the property in question is delivered.

7. On both these points, the contentions of the appellants is supported by the judgments of the Supreme Court.

8. In *Silverline Forum Pvt. Ltd. v. Rajiv Trust and Anr.* AIR 1998 SCW 1544, the Supreme Court held that resistance offered by third parties can be subject-matter of a petition, filed under Rule 97 of Order 21 C.P.C. Similarly, in *Brahmdeo Chaudhary, Adv. Vs. Rishikesh Prasad Jaiswal and another*, , the Supreme Court held that such applications are maintainable. In addition, it was

pointed out that the application can be filed before the party loses the possession to the decree-holder. Therefore, the view taken by the Courts below, in this regard, cannot be said to be correct. The matter, however, does not end there.

9. The Executing Court had examined the claim of the appellants, with reference to the evidence on record. The application filed by the respondents, is almost similar to the one, under Rule 58 of Order 21, which, in turn, is equated to a suit. Heavy burden rested upon the appellants, to prove their title to the suit property, as though it was a suit for declaration of title. The oral evidence is hardly of any use. Exs.A-1 and A-2 are the identity cards issued by the Election Commission of India. Apart from providing identify, those documents do not have any other purpose to serve. The house number mentioned in it, at the most, would reflect the place of residence. By no stretch of imagination, it confers title upon the persons, over the property. Ex.A-3 is equally inadequate, if not irrelevant. Further, the house number mentioned therein, was totally different from the suit schedule property. Therefore, assuming that the application filed by the appellants was maintainable in law, the record discloses that they failed to prove their title to the property.

10. Hence, the C.M.S.A. is dismissed. There shall be no order as to costs.