(1966) 08 AP CK 0012

In the Andhra Pradesh High Court

Case No : Referred Case No. 17 of 1962

Anantha Sambaiah APPELLANT

Vs

V. Venkoba Rao RESPONDENT

Date of Decision : 03-08-1966

Acts Referred:

Andhra Pradesh Civil Rules of Practice and Circular Orders, 1980 — Rule 200
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 83, Order 40 Rule 1, Order 46 Rule 1

Citation : AIR 1968 AP 91

Hon'ble Judges : P. Jaganmohan Reddy, C.J;Obul Reddy, J

Bench : Division Bench

Advocate : A. Bhujanga Rao, for the Respondent

Judgement

Jaganmohan Reddy, C.J.—This is a reference from the learned District Munsiff, Kurnool, under Order 46, R. 1, C.P.C., for decision on the following question, viz., "Whether in a sale held by a Receiver appointed under Order 40, R. 1 of the Civil Procedure Code, poundage as required under Rule 200, Civil Rules of Practice, is payable on the sale amount"? It may be stated that there are two petitioners and twenty-nine respondents in the petition filed by plaintiffs, petitioners herein, for appointment of a Receiver to sell a Ginning Factory involved in the litigation. Evidently, certain respondents were not served. This reference has been pending since 1962, and even at this stage except respondents 1 to 4, 6, 7 and 10 represented By their counsel Mr. Bhujanga Rao, the other respondents did not appear.

Mr. Bhujanga Rao has drawn our attention to a decision of one of us in Company Appln. No. 68 of 1963, D/-11-9-1964 (Andh. Pra.), which deals with this particular question referred to us. In that matter, it was held that poundage need not be collected in sales by persons who are not officers of the Court. The principle upon which poundage has to be collected has been laid down in Parvati Ammal v. Govindaswami Pillai ILR Mad 803 at p. 807 :AIR 1916.Mad 290. This principle has been followed by a Bench of this Court in Asis Khatoon Vs. Suraya Begum, . In Parvati Animal''s case ILR 39 Mad 803 : AIR 1910 Mad 290 the principle has been stated thus :--

"Poundage is the lee which is levied in England by the Sheriff as remuneration for his service. In this country, as the officers of the Court conducting the sales are paid a fixed salary, a certain percentage of the purchase money is taken for purchasing stamps".

In Asis Khatoon Vs. Suraya Begum, , the sale was by a private auctioneer under Order 21, Rule 83, C. P. C. It was not a case governed by Rule 200 of the Civil Rules of Practice as it was a sale effected with the permission of the Court, as a private sale. The Bench consisting of Chandra Reddy, C. J. and Gopal Rao Ekbote, J., in Asis Khatoon Vs. Suraya Begum, , following the decision in Parvati Ammal''s case ILR 39 Mad 803 :AIR 1916 Mad 290 assented to the proposition as set out therein. Chandra Ready, C. J., observed at page 186:--

"When the judgment debtor gets his property sold through a private auctioneer, no service is rendered by the Court to entitle it to collect a fee as commission which is described as the poundage".

It is implicit in this case that if a sale is effected by Court through any person who is not an employee of the Court receiving a fixed salary, no poundage is leviable because the Court has not rendered any service as such for which it is entitled to charge.

In this case, the Court appointed an Advocate Receiver with a direction to sell certain properties, which the Advocate Receiver sold, but had not collected the poundage. The office having taken objection that poundage was not collected, this reference has been made to us to determine the question as to whether the office is right. Rule 200 of the Civil Rules of Practice which deals with this matter may be read as follows :--

"The person appointed to sell the property shall conduct the sale in the manner prescribed by the Code for the sale of attached property and shall, out of the deposit or sale moneys, so soon as the same are received by him, purchase court-fee stamps, to the amount of the poundage, if any, payable on the sale and shall bring the same into Court forthwith together with the balance of the deposit or sale moneys. If the applicant purchased the property with the leave of the Court, and is allowed to set off the purchase money against any sum due to him, he shall pay the amount chargeable for poundage to the person appointed to sell the property so soon as he is declared to be the purchaser. The amount deducted or paid on account of poundage shall form part of the costs and expenses of the sale"

The above rule no doubt applies to sales held by the Court and is not applicable to sales effected under Order 21, Rule 83 C, P. C. Reading the rule unfettered by any decisions, it would appear that a person appointed by the Court to conduct a sale has to deduct poundage and deposit the same by purchase of Court-fee stamps. The person appointed by the Court can either be a Commissioner or an officer of the Court as such, but having regard to the proposition laid down in ILR 39 Mad 803: AIR 1916 Mad 290, as assented to by a Bench decision of this Court in Asis Khatoon Vs. Suraya Begum, , the person who is authorised to deduct poundage is a person who is an officer of the Court conducting the sale on a fixed salary and the deduction is in view of the services rendered by him in order to reimburse a portion of his salary. This being the principle, the Advocate Receiver not being an officer of the Court on a fixed salary there is no need to collect poundage. This being our view, the reference may be answered accordingly. It is answered accordingly.