
(1962) 07 AP CK 0016

In the Andhra Pradesh High Court

Case No : Case Referred No. 31 of 1958

Asis Khatoon

APPELLANT

Vs

Suraya Begum

RESPONDENT

Date of Decision : 06-07-1962

Acts Referred:

Andhra Pradesh Civil Rules of Practice and Circular Orders, 1990 — Rule 200
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 83, Order 21 Rule 83(1)

Citation : AIR 1963 AP 13

Hon'ble Judges : P. Chandra Reddy, C.J.;Gopalrao Ekbote, J

Bench : Division Bench

Advocate : Advocate General for Referring Officer of A. Satguru Prasad, for Abdul Khair Siddiqui, for the Appellant;

Judgement

P. Chandra Reddy, C.J.—The question raised by this reference is whether poundage could be collected even in respect of sales effected by private treaty under Order 21, Rule 83 Civil Procedure Code.

2. In the instant case, the house of the judgment-debtor was attached on 4-7-1952 in E. P, No. 41/3/52-53. Subsequently, the judgment-debtor applied to the executing Court for permission to sell the attached property through private auctioneers. Permission was accorded in the following words:

"Permission is given to effect private sale within one month. The sale amount to the extent of the decree should be deposited in the Court. Certificate be issued accordingly."

3. Pursuant to this permission, auction was held privately and the sale amount was deposited into Court. Out of this, a sum of Rs. 903-3-3 was deducted and credited to the Government as the sale commission. The application giving rise to this reference was made by the judgment-debtor for refund of this amount on the ground that the deduction was unwarranted.

4. In our opinion, the answer to this reference must be in favour of the judgment-

debtor.

5. Order 31, Rule 83 Civil Procedure Code, which enables a Court to grant permission to a judgment-debtor to raise the amount of decree, runs as follows: -

"(I) Where an order for the sale of immovable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of such property or some part thereof, or of any other immovable property of the judgment-debtor, the Court may, on his application, postpone the sale of the property comprised in the Order for sale on such terms and for such period as it thinks proper, to enable him to raise the amount."

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6. It is manifest that sale under this provision of law cannot be regarded as having been held by Court. The point for determination is whether in such a situation Rule 200 of the Civil Rules of Practice, which contemplates the levy of poundage, is attracted.

7. Rule 200 says:-

"(I) 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 of 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."

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8. It is plain from the language of this rule that it governs only sales held by the Court and it is not applicable to a sale effected under Order 21, Rule 83 Civil Procedure Code.

9. The poundage is a fee charged by the Court for the services rendered by it. It was pointed out in *Parvathi Ammal v. Govindasami Pillai* ILR Mad 803 : AIR 1916 Mad 290:

"Poundage is the fee 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."

With great respect, we assent to the proposition contained in these observations.

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. There is no other rule which authorises the collection of poundage out of the sale proceeds deposited under Order 21, Rule 83 Civil Procedure Code. We, are therefore, not persuaded that there is any warrant for deduction of any amount towards poundage when property is sold under Order 21, Rule 83 Civil Procedure Code. Hence the judgment-debtor is entitled to refund of this amount."

10. The reference is answered accordingly.