

(2010) 08 AP CK 0127
In the Andhra Pradesh High Court
Case No : C.M.A. No. 2386 of 2000

Atkuru Sathyanarayana Died and Others	APPELLANT
Vs	
Mullapudi Mangamma, Raidu Atchutaramaiah and Mullapudi Gopalam	RESPONDENT

Date of Decision : 05-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58

Citation : (2011) 1 ALD 468

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : K. Sarva Bhouma Rao, for the Appellant; T. Durga Prasad Rao, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—Appellant No. 1 filed O.S. No. 34 of 1996 against Respondent No. 3 in the Court of the Senior Civil Judge, Tadepalligudem for recovery of certain amount. The suit was decreed. After the decree became final, Appellant No. 1 filed E.P. No. 57 of 1996 for execution thereof. An item of immovable property was attached.

2. Respondent No. 3 died and is represented by his legal representatives, Respondent Nos. 1 and 2.

3. Respondent Nos. 1 and 2, the wife and foster son respectively of Respondent No. 3, filed E.A. No. 427 of 1997 under Rule 58 of Order 21 Code of Civil Procedure. They pleaded that the attached item of property was settled in their favour by Respondent No. 3, through a registered settlement deed, dated 15.03.1962. It was pleaded that though Respondent No. 3 retained life estate in him, the title to the property passed on to them and it is not at all available for being proceeded against in execution of the decree. The executing Court allowed the E.A., through its order, dated 19.06.2000. Hence, this appeal.

4. The learned Counsel for the Appellants submits that the attached property was absolutely owned by Respondent No. 3 and even if there existed a settlement deed, it would take effect only after the death of Respondent No. 3. He contends that the executing Court committed error in allowing the E.A.

5. The learned Counsel for the Respondents, on the other hand, submits that the settlement deed was executed way back in the year 1962 long prior to the filing of the suit and with that, the title in the property stood transferred in favour of Respondent Nos. 1 and 2 subject to the life estate of Respondent No. 3. He places reliance upon certain decided cases.

6. Respondent Nos. 1 and 2 laid a claim to the property that is attached in E.P. No. 57 of 1996. The basis for their claim was a deed of settlement, dated 15.03.1962. The Appellant opposed the claim petition. Since Rule 58 of Order 21 mandates that a claim petition shall be decided as though it is a suit, a full-fledged trial was undertaken.

7. On behalf of the Respondents, P.W.1 was examined and Exs.A1 and A2 were marked. Ex.A1 is the deed of settlement, dated 15.03.1962, executed by Respondent No. 3 in favour of Respondent No. 1 and Ex.A2 is another deed of settlement, dated 30.10.1985, through which Respondent No. 3 settled the property in favour of Respondent No. 2. Appellant No. 1 deposed as D.W.1 and no documentary evidence was adduced.

8. The settlement of immovable property is a typical transaction. It partakes the character of a gift, since it is not supported by any consideration. In certain cases, it resembles a Will in case the property is to pass on, on the death of settler. In yet other cases, it is admixture of both.

9. In the instant case, Respondent No. 3 settled the property in favour of his wife, Respondent No. 1, way back in the year 1962. He settled the property in her favour by retaining life interest. The life interest, in turn, is circumscribed by many conditions. He disabled himself from transferring or otherwise alienating the property. He was entitled to enjoy the usufruct thereof. Hence, notwithstanding such a condition, the property passed on to Respondent No. 1 by operation of the deed of settlement. While the title in her favour is conditional during the life time of Respondent No. 3, it would be absolute after his death. So is the case with the deed of settlement executed by Respondent No. 1 in favour of Respondent No. 2.

10. Once Respondent Nos. 1 and 2 have acquired title to the property and what Respondent No. 3 had in his favour is only a life interest, the property was not at all available for being sold. The executing Court has taken the correct view of the matter and this Court is not inclined to interfere with the same. The Appellants can proceed with the life interest over the estate, if any, of Respondent No. 3 against his legal heirs.

11. The appeal is accordingly dismissed. There shall be no order as to costs.