
(1996) 08 AP CK 0025

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 582 of 1995

B. Sambasiva Reddy

APPELLANT

Vs

Kayagurla Kondanna

RESPONDENT

Date of Decision : 08-08-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Specific Relief Act, 1963 — Section 28

Citation : (1996) 3 ALT 818 : (1996) 2 APLJ 426 : (1996) 1 APLJ 426

Hon'ble Judges : K.B. Siddappa, J

Bench : Single Bench

Advocate : T. Bali Reddy, for the Appellant; S. Siva Prasad, for the Respondent

Final Decision : Allowed

Judgement

K.B. Siddappa, J.—This Revision is directed against the order passed in I.A. No. 1227 of 1993 in O.S. No. 364/83 on the file of Principal District Munsif, Anantapur.

2. The plaintiff filed the suit O.S. No. 364/83 for specific performance of the agreement of sale. The suit was decreed on 31-3-1986 directing the defendant to execute a sale deed in favour of the plaintiff within one month and the plaintiff was directed to pay the balance of sale consideration to the defendant. However, the defendant failed to execute the sale deed. Thereupon, the plaintiff was constrained to file Execution Petition. He also deposited the balance sale consideration. The Court executed the sale deed in favour of the plaintiff on 29-7-1987 and there was a notice to the defendant in the Execution Petition. The Execution Petition was closed on 31-7-1987; Subsequently the defendant filed OS. No. 31/89 to declare the sale deed executed by the Court on 29-7-1987 as not enforceable etc. That suit was dismissed on 15-2-1993. Against that the defendant preferred A.S. No. 74/93 and it is pending. Now, the defendant filed I. A. No. 1227/93 u/s 28 of the Specific Relief Act to declare that there is rescission of contract in view of the failure on the part of the respondent to act upto the mandatory direction resulting in coming into existence of a registered sale deed

executed by the Court followed by delivery of possession and for restoration of possession etc. This petition which was filed in 1993 was allowed, by the lower Court.

3. Aggrieved by the said order the present Revision is filed.

4. Sri T. Bali Reddy, senior counsel appearing on behalf of the Revision petitioner submitted that the sale deed was executed on 29-7-1987. The Execution Petition was closed on 31-7-1987. That has become final. In the Execution Petition there was a notice to the defendant and he contested the petition. Not only that, he also filed O.S. No. 31/89 which ended in dismissal. Now, in the year 1993, i.e., after about 6 years, the defendant cannot file an Interlocutory Application in the suit which was already decreed. Therefore, the Application itself is time barred. He also submitted that when the suit is decreed the Court passing the decree becomes functus-officio and the application cannot be filed u/s 28 of Specific Relief Act.

5. In support of his contention he relied upon the judgment of this Court in Kantamaneni Venkateswara Rao and Another Vs. Meka Venkateswara Rao and Another, . In the said case, the Court, in similar circumstances, held that an application for rescission of contract has to be filed within three years from the date when the right to apply for rescission accrues. The learned Judge also relied upon the judgment of the Supreme Court in The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, .

6. The ratio of that judgment, in all force, applies to the facts of this case. It is not the case of the defendant that he does not know the execution of the registered sale deed in favour of the plaintiff. He also contested the Execution Petition. Therefore, the Interlocutory Application is certainly filed beyond the period of limitation and it is not maintainable. Further, the suit was already decreed. There is no appeal against the decree passed in O.S. No. 364 /83. In such a case, the Application u/s 28 of the Specific Relief Act cannot be filed. The reasons given in the impugned order are not correct.

7. In the result, the impugned order is set-aside and the revision is allowed, without costs.