
(2005) 08 AP CK 0046
In the Andhra Pradesh High Court
Case No : CRP No. 2147 of 2005

Bullard Grace Manoramma and Another	APPELLANT
Vs	
Telugu Baptist Church	RESPONDENT

Date of Decision : 04-08-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 22, Order 21 Rule 22(1)

Citation : AIR 2005 AP 506 : (2005) 5 ALD 822 : (2005) 6 ALT 341

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : C. Ramachandra Raju, for the Appellant; M. Ravindranath Reddy, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—Petitioners, who were brought on record as the legal representatives of the deceased-judgment-debtor in an E.P. in a decree for recovery of possession, filed this revision petition questioning the order directing delivery of possession of the decree schedule property to the Decree Holder (respondent).

2. The admitted facts are, respondent obtained a decree against B. Anandam and others for delivery of possession of the plaint schedule property, on 26-8-1967. Appeal and second appeal against that decree were dismissed on 5-4-1971 and 28-8-1973 respectively. Thereafter, decree-holder filed E.P. No. 40 of 1975 on 29-8-1975, seeking delivery of possession of the plaint schedule property. When the wife of B. Anandam, the judgment-debtor, caused obstruction, decree-holder filed E.A. No. 321 of 1979 for removal of the obstruction, which was allowed on 21-3-1990. Questioning the said order, B. Anandam, the judgment-debtor, filed A.S. No. 66 of 1990, which was dismissed on 12-4-1996, whereupon he preferred CMS A No. 21 of 1996 to this Court. During the pendency of the said CMSA, B. Anandam, the judgment-debtor, died on 26-8-2001. So his wife came on record as his legal representative in CMP No. 22342 of 2001, dated

28-11-2001. Thereafter she died on 28-8-2002. Hence, revision petitioners came on record as her legal representatives. Thereafter, the said CMSA No. 21 of 1996 was dismissed on 5-2-2004. Petition seeking a review of the said order also was dismissed on 19-6-2005. In view of the death of the judgment-debtor, B. Anandam, respondent decree-holder filed E.A.No. 46 of 2005 in E.P. No. 40 of 1975 to implead the revision petitioners as respondents 5 and 6 in the E.P. as the legal representatives of the deceased-B. Anandam, which was allowed on 16-3-2005. After the revision petitioners were so brought on record the executing Court ordered delivery of possession of the decree schedule property to the respondent, by the order impugned.

3. The main contention of the learned Counsel for the revision petitioners is that after the revision petitioners were brought on record as legal representatives of B. Anandam, the deceased-judgment-debtor, since no notice under Order XXI Rule 22 CPC which is mandatory, was issued, the order impugned is liable to be set aside. The contention of the learned Counsel for the respondent is that since revision petitioners came on record in C.M.S.A. No. 21 of 1996, which arose out of an E.A. in the E.P., as the legal representatives of the deceased judgment-debtor, no further notice under Rule 22 of Order XXI CPC is necessary to them, after they were impleaded as the legal representatives of the deceased judgment-debtor in the E.P. and contended that in any event in view of proviso to Rule 22 of Order XXI CPC, the order under revision needs no interference. In reply, the contention of the learned Counsel for the revision petitioners is that proviso to Rule 22 of Order XXI CPC has no application to the facts of this case.

4. Rule 22 of Order XXI CPC reads:

22. (1) Where an application for execution is made--

(a) more than two years after the date of the decree,

(b) against the legal representative of a party to the decree or where an application is made for execution of a decree filed under the provisions of Section 44A, or

(c) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent,

the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show-cause, on a date to be fixed, why the decree should not be executed against him:

Provided that no such notice shall be necessary in consequence of more than two years having elapsed between the date of the decree and the application for execution if the application is made within two years from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered

execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

A close and careful reading of the above Rule shows that notice of filing of the E.P., under that rule is necessary only if the E.P. is not filed within two years of the date of decree filed either against the original judgment-debtor, or his legal representatives. The main object of such notice is to afford an opportunity either to the judgment-debtor or his legal representatives to raise objections, if any, with regard to the maintainability of the execution petition. No such notice is necessary if a fresh application for execution is made within two years from the date of last order against the judgment-debtor or his legal representatives, if upon a previous application for execution against the same persons the Court ordered execution to issue against him/them.

5. The decree in this case is for delivery of possession. E.P. was filed against the original judgment-debtor. When delivery of possession was ordered, his wife caused obstruction. On a petition for removal of the obstruction filed by the respondent, the executing Court ordered removal of obstruction. Against the order of removal of obstruction, surprisingly, the judgment-debtor, but not his wife, who caused obstruction, preferred an appeal and second appeal, wherein revision petitioners were brought on record as the legal representatives of the wife of the judgment-debtor, who brought herself on record as the legal representative of the deceased judgment-debtor, B. Anandam, consequent to his death. So, it is clear that revision petitioners are aware of the pendency of the E.P. proceedings before the executing Court against their father. So petitioners would not suffer any prejudice for want of a separate notice under Rule 22 of Order XXI CPC, after they are brought on record in the E.P. as the legal representatives of the deceased judgment-debtor.

6. The contention of the learned Counsel for the revision petitioners that after the revision petitioners are brought on record as legal representatives of the deceased judgment-debtor they have to be given a separate notice under Rule 22 of Order XXI CPC has no force; because such notice is not contemplated by Rule 22 of Order XXI CPC in a pending E.P. filed against the original judgment-debtor. Issuance of such notice in the pending E.P. after the legal representatives of a judgment-debtor are brought on record, would be a useless and unnecessary formality. To clarify the position let me give an example. During the pendency of an E.P. when the judgment-debtor dies, if his legal representatives are brought on record they would be deemed to be parties to the E.P. So the decree holder may not press the E.P. immediately after bringing on record the legal representatives of the deceased judgment-debtor and file a fresh E.P. on the very same day or the next day seeking delivery of possession of the property. In such an E.P. Court can direct delivery of possession without any

notice under Rule 22 of Order 21 CPC because in such second E.P. filed within two years of dismissal of the earlier E.P. no notice under Rule 22 of Order XXI CPC would be necessary, as per the proviso to Rule 22(1) of Order XXI CPC.

7. Apart for the above position of law since it is well known that legal representatives of a deceased party in a suit cannot take a plea not open to the party whose estate they are representing, legal representatives of a deceased judgment-debtor also cannot take a plea not open to the judgment-debtor.

8. Revision petitioners who were brought on record both in the C.M.S.A. and in the E.P., as the legal representatives of the judgment-debtor, cannot have better rights than the judgment-debtor. In fact notice under Rule 22 of Order XXI CPC is necessary, only when the decree holder files an E.P. for the first time against the legal representatives of a deceased judgment-debtor, and no separate notice under Rule 22 of Order XXI CPC is necessary if in a pending E.P., filed against the judgment-debtor, his legal representatives are brought on record.

9. In view thereof, I find no merits in this revision petition and hence the same is dismissed with costs. Petitioners are directed to deliver possession of the decree schedule property to the respondent within one month from today.