
(2014) 12 AP CK 0113

In the Andhra Pradesh High Court

Case No : Civil Revision Petition 5156 of 2014

Buragommula Anjaneyulu

APPELLANT

Vs

Katragadda Seetha Ramanjaneyulu and Others

RESPONDENT

Date of Decision : 30-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 101, Order 21 Rule 104, Order 21 Rule 105, Order 21 Rule 35, Order 21 Rule 58

Citation : (2015) 6 ALT 252

Hon'ble Judges : Vilas V. Afzulpurkar, J

Bench : Single Bench

Advocate : M.S.N. Prasad, Advocates for the Appellant; N. Ravi Prasad for Yeka Balasubrahmanyam, Advocates for the Respondent

Judgement

Vilas V. Afzulpurkar, J.—This revision was filed along with an application, CRPMP No. 3819 of 2014, seeking leave to file the revision. On 22.08.2014, while issuing notice on the said application and notice before admission in the revision petition, in view of the urgency involved, an interim direction was issued staying all further proceedings in E.P. No. 79 of 2014 in O.S. No. 117 of 2009 on the file of the Principal Senior Civil Judge, Ongole.

2. Since the respondent is served and as learned senior counsel appears for the respondent/decreed holder, I have heard the revision petition on merits. In the circumstances, CRPMP No. 3819 of 2014 is ordered and the revision petition is being disposed of by this order.

3. Petitioner herein claims to be a third party to the suit, O.S. No. 117 of 2009 as well as E.P. No. 79 of 2014 on the file of the Principal Senior Civil Judge, Ongole. The said suit, filed by first respondent herein, was decreed on 12.03.2014 declaring that the first respondent/plaintiff is the owner of the suit schedule property and defendants 1 to 12 were directed to deliver possession of the suit schedule property to the plaintiff and injunction was also granted restraining the defendants from making any construction or changing the physical features of

the suit schedule property. The said decree was put into execution by the first respondent/plaintiff in E.P. No. 79 of 2014 before the Court below.

4. Petitioner herein filed E.A. No. 283 of 2014 under Section 47 read with Order 21 Rule 97 of the Code of Civil Procedure. The said claim petition is filed alleging that the first respondent/decreed holder visited the plaint schedule property along with a proclainer and threatened to take forcible possession on the basis of the decree. Petitioner states that he came to know of the decree only at that stage. Petitioner claims that he purchased Items 1 and 2 of the plaint schedule property under two separate registered sale deeds dated 16.04.2011 from one Kollipalli Haritha (defendant No. 10) and Chaluvadi Lakshmi (defendant No. 11) respectively. Petitioner claims to be in possession and states that the first respondent at whose instance the transaction has taken place was also paid commission at 1% on the total consideration amount. Petitioner, however, states that the first respondent neither informed nor petitioner was aware of the pendency of the suit and as such, is a purchaser in good faith for valuable consideration and alleges that the first respondent has misrepresented and misguided the petitioner and alleges that the decree obtained by the first respondent itself as fraudulent. The aforesaid claim petition was, accordingly, filed requesting the executing Court to determine the right, title and interest of the petitioner over items 1 and 2 of the plaint schedule property and to set aside the order directing delivery of possession dated 16.04.2014.

5. Learned counsel for the petitioner has filed a copy of the docket proceedings of the executing Court to substantiate that E.A. No. 283 of 2014 is coming up for enquiry and hearing since 22.07.2014. However, while the said claim petition is pending, the Court below directed re-entrustment of delivery warrant to the bailiff on 06.08.2014. Learned counsel for the petitioner, therefore, states that pending adjudication of his claim petition, if the execution is taken out, the very claim petition would be rendered infructuous. Learned counsel for the petitioner, therefore, submits that the executing Court being aware of the pendency of the claim petition, filed by the petitioner, which is coming up for enquiry since 22.07.2014, could not have directed re-entrustment of delivery warrant on 06.08.2014 and thereby, if the execution is allowed to take place, nothing further remains for adjudication in the claim petition. Learned counsel for the petitioner submits that the petitioner being a bona fide purchaser for valuable consideration from defendants 10 and 11, he is entitled to be heard in his claim petition before ordering delivery of possession under the E.P.

6. Mr. N. Ravi Prasad, learned senior counsel for the first respondent/plaintiff, however, submits that the delivery was ordered by the Court below on 16.04.2014 in the EP itself and that since the bailiff could not deliver possession, further directions were issued by the executing Court on 06.08.2014 directing re-entrustment of delivery warrant to the bailiff. Learned senior counsel would also submit that the claim of the petitioner is apparently through defendants 10 and 11 and in the strict sense, petitioner cannot be said to be a third party and that

there is no impediment in ordering delivery, pending claim petition.

7. Whether the petitioner is an independent claimant or claims through defendants 10 and 11 and whether the petitioner's claim petition can be entertained under Section 47 or under Order 21 Rule 97 CPC is, however, a matter, which is required to be adjudicated by the learned Senior Civil Judge, Ongole, where the said claim petition is pending. The scope of the present revision petition, being only limited to the extent of execution proceedings taken up pending the claim petition of the petitioner, this Court had already granted stay of all further proceedings in E.P.

8. Under Order 21 Rule 58 CPC claim petition against attachment can be filed by third party and under Order 21 Rule 59 CPC when the executing Court proposes to sell the property of the Judgment Debtor and if claim petition is pending, it is specifically provided that pending adjudication on the claim petition the sale of movable property shall not be made and with respect to immovable property, pending adjudication the property shall not be sold or the property may be sold but the sale shall not be confirmed till the claim petition is adjudicated. Prior to amendment to CPC in 1976, orders on the claim petition were subject to adjudication under Order 21 Rule 63 CPC by filing, what is described as claim suit. After 1976 amendment to CPC under CPC Amendment Act 104 of 1976, Rules 60 to 63 were omitted and a separate procedure for adjudication of the claim petition is provided by the same Amendment Act by appropriately amending Order 21 Rules 97 to 104 CPC. By the aforesaid amendment, elaborate scheme for adjudication on claim petition is provided and a separate suit is barred. However, a provision similar to Order 21 Rule 59 CPC is not specifically provided under the scheme of Order 21 Rules 97 to 104. Keeping in view the intent and purpose of the providing a remedy to third party by way of claim petition and for adjudication thereof, the intent and purpose of the Legislature akin to Order 21 Rule 59 CPC is required to be followed otherwise, on the one hand, the claim petition made remains un-adjudicated while the execution proceedings would be completed, on the other hand, leaving the third party, who has filed claim petition, remediless.

9. It is in these circumstances that various pronouncements of the Supreme Court, interpreting the whole scheme under Order 21 Rules 97 to 104, are required to be kept in mind. It is, therefore, apt to notice the decision of the Supreme Court in *Brahmdeo Chaudhary, Adv. Vs. Rishikesh Prasad Jaiswal and another*, and the relevant portions whereof are extracted hereunder for the sake of convenience:

"5.... We are concerned with the situation in which the appellant resisted the execution proceedings on the ground that he was a stranger to the decree and claimed an independent interest in the suit immovable property possession of which was decreed in favour of respondent No. 1 decree-holder. The Nazir in his report dated 28th April 1991 has noted that the warrant for possession could not be executed on spot on account of the resistance and obstruction offered by the

appellant, amongst others...

6.... The Court had to proceed to adjudicate upon the application in accordance with the subsequent provisions contained in the said order..

8. A conjoint reading of Order XXI Rules 97, 98, 99 and 101 projects the following picture:

(1) If a decree-holder is resisted or obstructed in execution of the decree for possession with the result that the decree for possession could not be executed in the normal manner by obtaining warrant for possession of 11 under Order XXI Rule 35, then the decree-holder has to move an application under Order XXI Rule 97 for removal of such obstruction and after hearing the decree-holder and the obstructionist the Court can pass appropriate orders after adjudicating upon the controversy between the parties as enjoined by Order XXI Rule 97 sub-rule (2) read with Order XXI Rule 98. It is obvious that after such adjudication if it is found that the resistance or obstruction was occasioned without just cause by the judgment-debtor or by some other person at his instigation or on his behalf then such obstruction or resistance would be removed as per Order XXI Rule 98 sub-rule (2) and the decree-holder would be permitted to be put in possession...

9.... Once such an obstruction is on the record of the Executing Court it is difficult to appreciate how the Executing Court can tell such obstructionist that he must first lose possession and then only his remedy is to move an application under Order XXI Rule 99, CPC and pray for restoration of possession...

10. In this connection we may also profitably refer to a judgment of a Bench of three learned of this Court in the case of Bhanwar Lal Vs. Satyanarain and another, . In that case the Bench consisting of K. Ramaswamy, S.C. Agrawal, and N. Venkatachala, JJ., had to consider a parallel fact-situation. One Satyanarain had obstructed to the delivery of possession of the suit immovable property which was sought to be obtained in execution by the appellant decree-holder. After such an obstruction was offered by Satyanarain the decree-holder moved an application under Order XXI Rule 35 for police assistance to remove obstruction caused by Satyanarain. The Executing Court directed the decree-holder to make an application under Order XXI Rule 97. This Court took the view that the very application under Order XXI Rule 35 sub-rule (3) for police assistance for removal of obstruction caused by Satyanarain had to be treated to be an application under Order XXI Rule 97 and such an application was maintainable and could not be said to be beyond limitation...

11. In view of the aforesaid settled legal position, therefore, and in the light of the statutory scheme discussed by us earlier it must be held that Respondent 1 decree-holder's application dated 6th May 1991 praying for issuance of warrant for delivery of possession with the aid of armed force, was in substance for removal of obstruction offered by the appellant and others under Order XXI Rule 97 CPC and had to be adjudicated upon as enjoined by Order XXI Rule 97 sub-rule (2) read with Order XXI Rule 101 and Order XXI Rule 98. In this connection

the Court had also to follow the procedure laid down by Order XXI Rule 105 which enjoins the Executing Court to which an application is made under any of the foregoing Rules of the Order to fix a date of hearing of the application. As the Executing Court refused to adjudicate upon the obstruction and the claim of the appellant who obstructed to the execution proceedings it had clearly failed to exercise jurisdiction vested in it by law..."

10. In my view, therefore, it would be appropriate and would be in the interest of justice to direct the Court below to hear and decide the said claim petition, E.A. No. 283 of 2014, after hearing the petitioner as well as the first respondent and subject to the orders that would be passed by the Court below in the said EA, the Court below shall pass appropriate direction in E.P. No. 79 of 2014.

The civil revision petition is accordingly disposed with the aforesaid directions. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.