
(2004) 03 AP CK 0119
In the Andhra Pradesh High Court
Case No : CRP No. 4524 of 2002

Dairapu Satyanarayana and Others	Vs	APPELLANT
Omni Appala Naidu and Others		RESPONDENT

Date of Decision : 18-03-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 97, Order 21 Rule 97(2), 151

Citation : AIR 2004 AP 520 : (2004) 3 ALD 728 : (2004) 4 ALT 418 : (2004) 3 CivCC 505 : (2005) 1 RCR(Civil) 188

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : B. Adinarayana Rao, for the Appellant; Pidikiti Satyanarayana, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—O.S. No. 72 of 1959 on the file of I Additional District Munsif was filed for the relief of declaration of title and recovery of possession of the suit schedule property therein. The suit was decreed. Thereafter, the matter under went several rounds of adjudication. The decree ultimately became final. The plaintiff died and his legal representatives, being Respondents 1 to 6 were brought on record. Execution Petition (E.P.) 38 of 1968 was filed in the Court of IV Additional District Munsif, Visakhapatnam. Much progress could not be made in the E.P., on account of subsequent proceedings initiated in different Courts, or obstruction caused in the process of delivery of possession.

2. The respondents filed an application in the year 1994, with a prayer to order police protection to assist the officers of the Court in effecting delivery of vacant possession, removal of obstructions and demolition of any structures on the suit schedule property. As many as 21 persons were shown as respondents therein. The application was kept pending almost for eight years. It was numbered only in the year 2002 as Execution Application (E.A.) 1279 of 2002. On 3.8.2002, the E.A. was allowed as prayed for.

3. The Respondents 10, 11, 14, 15, 18 and 20 in the said E.A have filed this CRP. It is their case that they constructed houses on a land, which is different from the suit schedule land, and despite the same, on the basis of an ex parte order they were sought to be dispossessed. They allege that they were taken to the Police Station and only after obtaining their signatures on certain documents stating that they shall be treated as tenants of decree holders-respondents herein, they were let off. They challenge the orders passed by the Executing Court on various grounds.

4. Sri B. Adinarayana Rao, learned Counsel for the petitioners submits that though the respondents filed E.A. u/s 151 C.P.C., having regard to the contents of the affidavit and nature of prayer, it has to be treated as the one under Rule 97 of Order XXI and the Executing Court ought to have under taken enquiry as provided for under Sub-rule (2) thereof. He submits that there was absolutely no justification for the Executing Court in ordering the application as prayed for, without even ordering notice to the affected parties, much less, considering their objections.

5. Sri Satyanarayana, learned Counsel for the respondents submits that though the E.P. was filed in the year 1968, it could not be proceeded with, on account of one factor or the other. He submits that the respondents in the E.A. were either judgment debtors or persons claiming through them and in that view of the matter, they cannot be treated as obstructers referred to in, under Rule 97 of Order XXI and that it was for this reason that the application was filed u/s 151 C.P.C.

6. This revision is directed against the order, dated 3.8.2002 passed by the Executing Court referred to above in E.A. 1279 of 2002. As observed earlier, the application was presented in the year 1994. It was not even numbered till the year 2002. The prayer in the E.A is as under:

"I therefore pray that the Hon"ble Court may be pleased to order police aid by directing the Commissioner of Police Visakhapatnam to assist and aid the officers of the Court in affecting the delivery of vacant possession of the decree schedule property to DHRs in removing any obstruction by the respondents or any person claiming under them or any person causing obstruction at their instigation and on their behalf or removing or demolishing any construction in the decree schedule property or in detaining any such person in civil prison in the ends of justice."

7. In the affidavit filed in support of the E.A. respondents categorically stated that the officer of the Court went to the suit schedule property on 2.8.1994 and 3.8.1994 and when he was verifying the boundaries, some of the judgment debtors supported by the petitioners high-handedly and illegally obstructed the officer of the Court. The relevant portion of the affidavit reads as under:

"In execution of the warrant, the officer of the Court Sri Ch.Subbarao went to decree schedule property with DHRs on 3.8.1994 at 9.00 a.m when he was being

taken through the boundaries of the property the 2nd JDR assisted by other JDRs and Respondents 9 to 20 abated by them the Respondents 9 to 20 high-handedly and illegally obstructed the officer of the court and resisted the delivery representing that the property is different and distinct from the decree schedule property and they are in possession and enjoyment by construction of houses purchasing the land from Respondents 2 to 8."

8. From this, it is evident that the occasion arose for the respondents to seek the help of the Court, in view of the obstruction caused by some of the judgment debtors and the petitioners herein, who are not judgment debtors.

9. Order XXI provides for various stages and steps in the process of execution of decrees in suits and other proceedings. Removal of obstruction during the course of delivery of suit schedule properties, is one of the important steps contemplated under Order XXI. Whenever, an obstruction is perceived or felt, the decree holder has to make an application under Rule 97. Sub-rule (2) thereof, mandates that the Executing Court shall adjudicate upon the application in accordance with the procedure provided for under Rule 105, which reads as under:

Rule 105(1) The Court, before which an application under any of the foregoing rules of this Order is pending, may fix a day for the hearing of the application.

(2) Where on the day fixed or on any other day to which the hearing maybe adjourned the applicant does not appear when the case is called on for hearing, the Court may make an order that the application be dismissed.

(3) Where the applicant appears and the opposite party to whom the notice has been issued by the Court does not appear, the Court may hear the application ex parte and pass such order as it thinks fit.

Explanation :--An application referred to in Sub-rule (1) includes a claim or objection made under Rule 58.

10. Similar facility is provided to the persons who expect threat or dispossession during the course of examination. Such persons can submit an application before the Executing Court under Rule 58 or 99, depending on the stage. Such applications are also required to be adjudicated in the same manner, as those presented under Rule 97. The significance of adjudication of such applications is evident from the very fact that, the outcome thereof is treated as a decree.

11. Though, the E.A. is filed by the respondents u/s 151 C.P.C., the purport thereof squarely fits into the one contemplated under Rule 97 of Order XXI. The Executing Court was expected to verify the nature of relief in application and ought to have examined whether it was being mislead by quoting a wrong provision. Little care, exhibited by the Executing Court in this regard, would have made it to realize that the application which it was considering, was the one under Rule 97, and adjudication upon the same was mandatory. Once the application was required to be adjudicated, it was mandatory on its part, to have

heard the respondents.

12. It is true that initiation of various steps against the judgment debtors does not contemplate issuance of notices to them. The reason is that they already suffered a decree and they are supposed to respect and comply with it. Where, however, persons other than the judgment debtors are impleaded, it is mandatory on the part of the Executing Court to issue notice to such persons. Under no circumstances any step can be taken against a person other than a judgment debtor, but shown as a party to the application in the execution proceedings. Such a course of action would be subversive of Sub-rule (2) of Rule 97 of Order XXI. Even if the application were to have been treated as the one u/s 151 C.P.C., there did not exist any legal basis or justification for the executing Court, to have ordered steps against persons other than judgment debtors, without hearing them.

13. The Executing Court did not take the trouble of discussing the matter with reference to the nature of allegations and relevant provisions of law. The fact that the decree in the suit was of the year 1959, or that the E.P. was filed in 1968, hardly provides any justification, to circumvent the mandatory procedure prescribed by law. When compliance with principles of natural justice runs all through the scheme under Order XXI, violation thereof cannot be permitted by citing a wrong provision.

14. Under these circumstances, the order under revision is set aside. The Executing Court is directed to treat the E.A. No. 1279 of 2002 as the one under Rule 97 of Order XXI and decide the same in accordance with law, within a period of three months from the receipt of a copy of this order.

15. While taking up the CRP for admission, this Court passed interim orders staying the demolition of the structures belonging to the petitioners herein. The same shall continue to be in force till the disposal of E.A. as directed.

16. Accordingly, the civil revision petition is allowed. No costs.