(2012) 11 AP CK 0052

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No: 1599 of 2009

Dasina Venkata Ramana APPELLANT

Vs

Setti Rambabu Naidu (Died per L. Rs) and Others RESPONDENT

Date of Decision : 15-11-2012

Acts Referred:

Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 — Section 50B
Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 — Section 5A
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 72, Order 21 Rule 92, Order 21 Rule 94, Order 21 Rule 95
Transfer of Property Act, 1882 — Section 53A

Citation : (2013) 3 ALT 609 : (2013) 3 ALT 605

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : N. Ravi Prasad, for the Appellant;

Judgement

L. Narasimha Reddy

1. The petitioner filed O.S. No. 150 of 1997 in the Court of Junior Civil Judge, Narsipatnam, Visakhapatnam District, for recovery of certain amount. The suit was decreed, and after the decree became final, he filed E.P. No. 3 of 2001. An item of immovable property was attached. The petitioner obtained permission of the Executing Court under Rule 72 of Order XXI C.P.C., and participated in the auction. He emerged as the highest bidder, and the sale was confirmed on 27-12-2002. He obtained the sale certificate dated 31-07-2003. Thereafter, he filed an application on 23-03-2004 for delivery of possession. The Executing Court refused to receive the application and passed a reasoned order dated 17-12-2008. The only ground on which the Executing Court refused to receive the application was that, it is filed beyond the period of limitation, stipulated under Article 134 of the Schedule to the Limitation Act, 1963 (Henceforth, the expression Schedule to the Limitation Act, shall be referred to as ''the Act''). The said order is challenged in this revision. Sri N. Vidya Prasad, learned counsel for

the petitioner submits that the starting point for computation of limitation under Article 134 of the Act is the date on which, the sale became final, and a sale can be said to have become final, only when a sale certificate is issued. He contends that in the absence of the sale certificate, an auction-purchaser does not derive any rights, and unless the sale certificate is in his hand, he cannot seek delivery of possession of the property. Learned counsel further submits that the application for delivery of possession was submitted within one year from the date on which, the sale certificate was issued. He submits that the delay in issuing sale certificate was on the part of the Court, and that the petitioner cannot be made to suffer on this account.

2. None appears for the respondents.

3. The petitioner obtained a decree in O.S. No. 150 of 1997 and filed E.P. No. 3 of 2001, after the decree became final. An item of immovable property, viz., a residential house of the respondents was initially attached and thereafter, it was brought to sale. The sale took place on 01-07-2002, and it was confirmed on 27-12-2002, after the required formalities were completed. For one reason or the other, the sale certificate was obtained by the petitioner only on 31-07-2003. He presented the application for delivery of possession of the property on 23-03-2004.

4. The Executing Court refused to number the application by observing that it was barred by limitation. Therefore, it needs to be seen as to whether the view taken by the Executing Court is correct.

5. The provision, that prescribes the limitation for applications for delivery of possession is Article 134 of the Act. It reads,

6. The provision clearly states that the starting point for computation of limitation is, the date on which, the sale becomes absolute.

7. If the sale is between two private individuals, there may be some scope for undertaking a discussion, as to the stage at which, the sale can be said to have become final. The stages may include, the dates on which the payment of entire consideration made, and possession of the property was delivered, (if one takes shelter u/s 53-A of the Transfer of Property Act), the sale deed was executed, the sale deed was registered, and finally, the date on which, the sale deed so registered was obtained by the purchaser, on completion of formalities. In addition to that, there may be occasions or instances of validation of sales under different enactments, such as u/s 5A of the A.P. Rights in Land and Pattadar Pass Books Act, 1971, Section 50-B of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950. Question may arise as to whether the sale, in such cases, can be said to have been completed, when the sale, though imperfect; has taken place, or when it was validated. However, no such uncertainty prevails, when the sale takes place in the execution proceedings.

8. Order XXI of C.P.C. contemplates different stages, in the matter of sale of an

item of property. It commences from the attachment and passes through the stages of proclamation, sale, confirmation, issuance of sale certificate, and delivery of possession. Each stage is dealt with under the respective Rules of Order XXI C.P.C. For the purpose of filing an application for delivery of possession, the law of limitation is very clear in its purport. It directs that, the period shall be reckoned from the date of confirmation of sale.

9. The confirmation of sale is a step, which is specifically provided for under Rule 92 of Order XXI C.P.C. It is a different matter that certain steps are contemplated, before a sale is confirmed, such as, filing of an application for setting aside the sale, under Rule 89, by depositing the stipulated amount, or an application under Rule 90, by pleading the grounds of irregularity, or similar application, by an auction-purchaser, under Rule 91, alleging that the judgment-debtor has no saleable interest in the property. Once the formalities are completed, and an order is passed under Rule 92 of Order XXI C.P.C., the sale becomes confirmed, and thereby absolute. As a matter of fact, the heading of Rule 92 employs the expression ''absolute''; and sub-rule (1) indicates when the sale becomes absolute. It reads,

Rule 92(1): Sale when to become absolute or be set aside:- (1) Where no application is made under Rules 89, Rule 90 or Rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute:

Provided that, where any property is sold in execution of a decree pending the final disposal of any claim to, or any objection to the attachment of, such property, the Court shall not confirm such sale until the final disposal of such claim or objection.

10. Issuance of sale certificate under Rule 94 of Order XXI is, no doubt, an important step, and reference thereto is made in Rule 95, which deals with the delivery of possession of such property. However, the date of certificate has no relevance, in the context of reckoning the period of limitation, under Article 134 of the Act. Further, once a sale is confirmed, it is the duty of the auction-purchaser to obtain a certificate, in case he feels that existence of such certificate is essential for filing an application for delivery of possession.

11. The question as to whether it is the date of confirmation of sale, or the date on which, the sale certificate was issued by the Executing Court; that would constitute the starting point for reckoning limitation under Article 138 of the Act; has been dealt with by the Hon''ble Supreme Court in several cases. In Pattam Khader Khan Vs. Pattam Sardar Khan and Another, , the Supreme Court held,

Para-12: Such being the state of law on the subject, we fail to see how the High Court could have come to the conclusion that even though the sale becomes absolute on confirmation under Order 21 Rule 92 CPC effectively passing title, the same can only be complete when evidenced by a sale certificate issued under Order 21 Rule 94, and that unless the sale certificate is issued, limitation cannot start for the purpose of an application under Order 21, Rule 95 CPC, vis-?-vis, Article 134 of the Limitation Act, 1963. The High Court, in our view erred in holding that it is only from the date when a sale certificate is issued, that the limitation starts running. Such view of the High Court would not only cause violence to the clear provisions of Article 134 of the Limitation Act but have the effect of unsettling the law already settled.

12. Similarly, in Balakrishnan Vs. Malaiyandi Konar, the Hon''ble Supreme Court held,

Para-13: The limitation for the purpose of Article 134 starts from the date of confirmation of sale. [See Ganpat Singh Vs. Kailash Shanker and Others, . In Pattam Khader Khan Vs. Pattam Sardar Khan and Another, , this Court held that it is not from the date when sale certificate is issued that the limitation starts running. The sale becomes absolute on confirmation under Order 21 Rule 92 of the Code effectively passing title. It cannot be said to attain finality only when sale certificate is issued under Order 21 Rule 94. There can be variety of factors conceivable for which delay can be caused in issuing a sale certificate. The period of one-year limitation now prescribed under Article 134 of the Limitation Act in substitution of a three-year period prescribed under Article 180 of the Limitation Act, 1908 is reflective of the legislative policy of finalizing proceedings in execution as quickly as possible by providing a quick forum to the auction-purchaser to ask for the delivery of possession of the property purchased within that period from the date of the sale becoming absolute rather than from the date of issuance of the sale certificate. On his failure to avail such a quick remedy the law relegates him to the remedy of a regular suit for possession based on title, subject again to limitation.

13. In P. Kuppan Vs. Jayarama Chetty and another, a learned single Judge of the Madras High Court extracted the content of Rule 95 of Order XXI C.P.C., took note of reference to the sale certificate, in that rule, and held that,

Even though Article 134 of the Limitation Act fixes the period as one year from the date when the sale becomes absolute, under Order 21, Rule 95, the sale becomes absolute only after the issue of the sale certificate. For the reason that the Court ordered for the issue of sale certificate on 1-10-91, it cannot be stated that the sale became absolute on that day itself. Therefore, Article 134 of the Act is subject to Order 21, Rule 95 Code of Civil Procedure

14. Whatever may have been the justification for the approach adopted by the Madras High Court, it can no longer be treated as good law, in view of the authoritative pronouncements of the Supreme Court, in the two judgments, referred to above.

15. Learned counsel has relied upon a judgment of this Court, in P. Govardhan Vs. J. Ramesh Babu and Others, The law laid down by the Supreme Court, in the two judgments referred to above, was taken note of. In that case, the sale was confirmed on 13-07-2004, the sale certificate was issued on 09-08-2004, but the

application for delivery of possession was filed on 27-01-2007. Dealing with the situation, this Court observed,

Para-17: The sale, in the instant case, was confirmed on 13-07-2004 and the sale certificate was issued on 09-08-2004. Either way, the application ought to have been filed by 9th of August, 2005. However, it was presented on 27-01-2007.

16. From this, the learned counsel draws an inference that the application for delivery of possession can be filed within one year from the date of the sale certificate. It is relevant to mention that in paragraph 15 of that judgment itself, it was clearly observed, as under:

Para-15: The three precedents referred to above were rendered in relation to the cases to which the 1908 Act (C.P.C. before it was amended in 2002) applied. Recently, the Hon''ble Supreme Court took note of the fact that the Parliament felt that There is adequate justification warranting reduction of period of limitation from three years, under Article 180 of 1908 Act, to one year, under Article 134 of the 1963 Act. It was also observed that the intervening circumstances, that may result in delay in issuance of sale certificate, cannot be taken as the basis for enlargement of limitation, or to relocate the starting point for computation of limitation.

It was also observed that the intervening circumstances, that may result in delay in issuance of sale certificate, cannot be taken as the basis for enlargement of limitation, or to relocate the starting point for computation of limitation.

17. The observation, which was made to demonstrate that, even if the plea of the petitioner in that case, viz., that the starting point should be the date, on which the sale certificate was issued is accepted, it is beyond limitation; cannot be construed as a proposition of law, that the starting point for computation of limitation is the date of sale certificate. For the foregoing reasons, the C.R.P. is dismissed. The miscellaneous petition filed in this C.R.P. shall also stand disposed of. There shall be no order as to costs.

