
(1997) 03 AP CK 0013

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2002 of 1992

Dittakavi Ramachandra Rao

APPELLANT

Vs

Padamata Bullaiah and Another

RESPONDENT

Date of Decision : 17-03-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90

Citation : (1997) 3 ALD 472 : (1997) 3 ALT 797

Hon'ble Judges : V. Bhaskara Rao, J

Bench : Single Bench

Advocate : A. Ramanarayana, for the Appellant; B. Adinarayana Rao, for the Respondent

Final Decision : Allowed

Judgement

V. Bhaskara Rao, J.—The judgment and decretal order in CMA. No. 190/1990 on the file of I Additional Subordinate Judge, Vijayawada, dated 15-6-1992 setting aside the order dated 20-11-1990 in E.A. No. 1478/1990 on the file of I Additional District Munsif, Vijayawada, who dismissed the petition for setting aside the sale under Order XXI Rule 90 read with Section 151 of the Code of Civil Procedure, is challenged in this revision petition.

2. The facts giving rise to this revision petition in brief are:

That the decree holder/respondent No. 2 herein obtained a decree against judgment debtor/respondent No. 1 herein and the property was sold in execution of the said decree. The revision petitioner herein is the auction purchaser. Respondent No. 1 filed E.A. No. 1478/1990 seeking setting aside of the said sale held on 29-8-1990 under Order XXI Rule 90 read with Section 151 of the Code of Civil Procedure. That petition was dismissed for default by the learned Munsif on 20-11-1990. Thereupon respondent No. 1 filed a restoration petition in the same Court and also preferred CM. A. No. 190/1990 in the Court of I Additional Subordinate Judge, Vijayawada. On a consideration of the contentions raised by

both sides, the learned I Additional Subordinate Judge, Vijayawada, allowed the appeal and set aside the dismissal order in E.A. No. 1478/1990 and accordingly E.A. No. 1478/1990 has been restored to file. The auction purchaser carried the matter in revision to this Court.

3. Mr. Ramanarayana, learned Counsel for the revision petitioner/auction purchaser contended that although respondent No. 1 is entitled for two remedies viz., (1) to file restoration petition in the Executing Court and (2) to prefer CM. A., to the appellate Court, he has to exercise the option and adopt only one remedy, whereas in this case he has adopted both the remedies and that has resulted in conflicting judgments. He asserted that the learned I Additional District Munsif had dismissed the restoration petition also on merits and that order has become final. He, therefore, contended that the impugned order in this revision petition will have to be set aside so as to fall in line with the order which has already become final. On the other hand Mr. Adinarayana Rao, learned Counsel for respondent No. 1 contended that this is only an order of remand and it has been held that opportunity should be given to both the parties before passing any order. He, therefore, urged that an opportunity may be given to respondent No. 1 by maintaining the impugned order. As regards the assertion of Mr. Ramanarayana that the learned I Additional District Munsif dismissed the restoration petition on merits he stated that he has no instructions in that regard and that he would verify the same.

4. On the representation of Mr. Adinarayana, learned Counsel for respondent No. 1, the matter has been adjourned several times and sufficient time has been granted, yet he is unable to controvert the contention of Mr. Ramanarayana that the restoration petition has been dismissed on merits. I find merit in the contention of Mr. Ramanarayana that a party who has an option to exercise one of two remedies, has to choose the same before adopting one of them, but he cannot adopt both the remedies and invite two conflicting orders. It is an elementary principle that a situation like this leading to conflicting orders/judgments cannot be allowed and hence it is necessary that respondent No. 1 should have adopted one of two remedies, which were open to him. When the dismissal order in the restoration petition has become final, there is no other alternative for this Court (except) to allow this C.R.F. and set aside the impugned order to resolve the conflict.

5. For the above reasons, the Civil Revision Petition is allowed and the impugned order is set aside. Consequently the order in E.A. No. 1478/1990 dismissing the petition under Order XXI Rule 90 read with Section 151 of the CPC passed by the I Additional District Munsif, Vijayawada stands restored. There will be no order as to costs.