**(1997) 08 AP CK 0036**

**In the Andhra Pradesh High Court**

**Case No :** Civil Revision Petition No. 1347 of 1997

Etkur Subrahmanyam APPELLANT

Vs

Andhra Pradesh State Financial Corporation RESPONDENT

**Date of Decision :** 13-08-1997

**Acts Referred:**

Andhra Pradesh State Financial Corporations Act, 1951 — Section 29
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 64, 29

**Citation :** (1997) 5 ALT 793 : (1998) 94 CompCas 843

**Hon'ble Judges :** S.V. Maruthi, J

**Bench :** Single Bench

## Judgement

S.V. Maruthi, J.—This civil revision petition is filed against the order in C.M.A. No. 3 of 1995, dated June 12, 1996, on the file of the Subordinate-Judge, Nandyal. C.M.A. No. 3 of 1995, is filed against the order in I.A. No. 446 of 1994, in O.S. No. 240 of 1994, on the file of the Principal District Munsif, Nandyal.

2. By the impugned order, the learned Subordinate-Judge while confirming the order of the District Munsif in I.A. No. 446 of 1994, dismissing the I.A., held that the petitioner/appellant-plaintiff purchased two cents of land under exhibit A-3 sale deed dated December 10, 1993, from the second defendant. But, prior to the said sale, the second defendant deposited his title deeds exhibits B-4 and B-5 and also executed hypothecation deeds exhibits B-6, B-7 and B-8, in favour of the first defendant and that the first defendant filed exhibits B-4 and B-5 registered sale deeds dated December 27, 1991, and May 20, 1991, respectively, under which the second defendant had purchased 23 cents of land in Survey Nos. 227 and 286 for the purpose of establishing an oil mill and he deposited with the first respondent-Corporation as security for the loan granted to him. The second defendant committed default in payment of the amount due to the first defendant-Corporation and so the first defendant-Corporation is proceeding against the machinery and the landed property of the second defendant for realisation of the amount due. In pursuance of that, they advertised for sale of the property, including the suit property in Enadu paper, vide exhibits A-1 and

A-2. As the purchase by the appellant-plaintiff was after the mortgage in favour of the first defendant-Corporation, the appellant-plaintiff does not have any right to protect his interest, because the suit property was also mortgaged to the first defendant. Therefore, the appellant-plaintiff failed to establish prima facie case and balance of convenience also in his favour. The sale in favour of the appellant is subject to the mortgage in favour of the respondent-Corporation. Therefore, the learned judge observed that the learned Munsiff is right in not granting injunction against the first defendant-Corporation restraining them for bringing to sale two cents of land purchased by him under exhibits A-3 dated December 10, 1993. Aggrieved by the same, the present revision petition is filed.

3. The main argument of learned counsel for the petitioner/appellant-plaintiff is that he purchased two cents of land under exhibit A-3 sale deed dated December 10, 1993, and the first defendant in order to realise the amount due from the second defendant intends to bring the property to sale. He further submits that the property which satisfies the requirement of the first defendant should be brought to sale and not the entire property. The extent of land of 0-23 cents, in which the second defendant is having an oil mill is sufficient to discharge the debt due to the first defendant. It is not the case of the first defendant that the extent of land over which the oil mill is situated is not sufficient to satisfy the dues to it. Hence, it should be prevented from bringing the property to sale. In support of his contentions, learned counsel for the revision petitioner relied on the decision of the Supreme Court in Ambati Narasayya Vs. M. Subba Rao and another, , while the counsel for the respondent submitted that the property of the second defendant is being sold to realise the dues advanced by the first defendant-Corporation, i.e., financial corporation, u/s 29 of the Andhra Pradesh State Financial Corporation Act, 1951 (in short "the Act") and a special provision is made, in the Act empowering the financial corporation to bring the property mortgaged to sale, in cases, where the borrower from the financial corporation committed default in payment of the amounts advanced to him and the provisions of the CPC are not made applicable to a sale u/s 29 of the Act. Therefore, learned counsel for the respondent submitted that the decision cited in Ambati Narasayya Vs. M. Subba Rao and another, , relied upon by learned counsel for the petitioner is not applicable to the facts of the present case.

4. The question, therefore, is whether the principle laid down under Order 21, rule 64 of the Civil Procedure Code, 1908, is applicable to a sale to be effected by the State financial corporation u/s 29 of the Act.

5. It is not disputed that the second defendant committed default in payment of the amounts advanced to it by the financial corporation and it is also not disputed that the financial corporation has put the property mortgaged to it for sale to realise the dues from the second defendant. It is also not disputed that the petitioner purchased two cents of land under exhibit A-3 in December, 1993, from the second defendant and the said sale is subsequent to the mortgage executed in favour of the first defendant.

 

6. The power of the Corporation to bring the property mortgaged to it for the loans advanced to the borrowers is conferred u/s 29 of the Act. It is a special enactment and a special provision is made enabling the Corporation to realise the amounts due to it by selling the property mortgaged or pledged to it. This being a special provision made in a special enactment, it prevails over the general provisions under the Civil Procedure Code, 1908. It is not disputed that the Civil Procedure Code, 1908, is a general law applicable to all sales. Therefore, when the first defendant brought the properties to sale, which is mortgaged to it, it has to exercise all the powers conferred on it u/s 29 of the Act. As pointed out earlier, this being a special provision, it prevails over the other general provisions. Further the judgment relied upon by learned counsel for the petitioner is relating to a case which arose under Order 21, rule 64 of the Civil Procedure Code, 1908. Order 21 is a provision regarding the procedure for execution of decree. Interpreting Order 21, rule 64, it was observed in the said decision that (headnote of AIR 1990 SC) :

"It is of importance to note from Order 21, rule 64 that in all execution proceedings, the court has to first decide whether it is necessary to bring the entire attached property to sale or such portion thereof as may seem necessary to satisfy the decree. If the property is large and the decree to be satisfied is small, the court must bring only such portion of the property, the proceeds of which would be sufficient to satisfy the claim of the decree-holder. It is immaterial whether the property is one or several. Even if the property is one, if a separate portion could be sold without violating any provision of law only such portion of the property should be sold. This is not just a discretion, but an obligation imposed on the court. Care must be taken to put only such portion of the property to sale the consideration of which is sufficient to meet the claim in the execution petition. The sale held without examining this aspect and not in conformity with the requirement would be illegal and without jurisdiction."

7. There cannot be any dispute about the proposition laid down by the Supreme Court in the above decision. When a decree is passed, in execution of the said decree the entire property should not be taken to sale, but only the property which satisfies the decree alone should be sold and before bringing the property to sale, it is incumbent on the part of the court to examine that aspect. In the absence of that, any sale would be illegal.

8. However, the principle laid down in that judgment has no application to a sale u/s 29 of the Act. u/s 29 of the Act, absolute power is conferred on financial corporation to bring the property of the defaulter to sale, to realise the dues from the defaulter. The section says that the financial corporation shall have a right to take over the management of the property. The Act also does not say that the provisions of the Civil Procedure Code, 1908, are applicable to sales effected u/s 29 of the Act. In addition, the sale in this case is not in execution of a decree, but in exercise of the power conferred u/s 29 of the Act.

9. Under these circumstances, the learned judge is right in refusing to grant

 

injunction to the petitioner. I do not see any error of jurisdiction. Accordingly, the civil revision petition is dismissed. There will be no order as to costs.