(1976) 07 AP CK 0003

In the Andhra Pradesh High Court

Case No : C.M.A. 15 of 1974

Fatima Sultana Begum — APPELLANT

Vs

J. Eswaraprasad and others — RESPONDENT

Date of Decision : 21-07-1976

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 115, 151, 47

Citation : AIR 1977 AP 55

Hon'ble Judges : Ramachandra Rao, J;Jeevan Reddy, J

Bench : Division Bench

Advocate : M. Rama Mohan Rao, for M.L. Ganu, for the Appellant; V.E. Ramanadham, for Respondent Nos. 1 and 2, Advocate General and B. Anjaneyulu, for Respondent Nos. 3 to 14, G. Haridatha Reddy for Respondent No. 37 and S.L. Chennakesava Rao, for Respondent Nos. 38 to 42, for the Respondent

Final Decision : Allowed

Judgement

Jeevan Reddy, J.—This Civil Miscellaneous Appeal is preferred by the 6th defendant in O.S. No. 18 of 1962 on the file of the learned Chief Judge, City Civil Court at Hyderabad, against the order dated 14-12-1973, dismissing I.A. No. 2179 of 1973 filed by the appellant, as not maintainable in law. It is necessary to state a few facts for appreciating the question at issue.

2. One Sajid Yar Jung died leaving a will, whereunder he bequeathed 1/3 interest in properties in favour of respondents 15 to 21 in this appeal. He had two sons, namely, (i) Kazim Nawaz Jung (respondent No. 22) and (ii) Askar Nawaz Jung (the predecessor-in-interest of respondents 23 to 34). Respondents 43 to 47 are the daughters of the deceased, while respondents 35 to 42 are his creditors. Respondents 1 and 2 are the joint Receivers'' appointed in the said suit by the court below, while respondents 3 to 14 are the purchasers of a building known as "Woodcock Hall" at Ooty. The appellant herein is one of the daughters of the deceased who was impleaded as defendant No. 6 in the suit.

3. O.S. No. 18/1962 was an administration suit filed under Order XX Rule 13,

C.P.C. A preliminary decree was passed on 11-3-1964 whereunder one Sri K. Niladri Raju, advocate was appointed as the Receiver to carry out the several directions given

thereunder. An appeal, C.C.C.A. No. 22/1964 was filed against the said preliminary decree in this court.

4. In appeal, there was a compromise between all the parties in the suit and an interim final decree was passed on 27-6-1964. Under this compromise interim final decree, Sri K. Niladhri Raju was discharged and the two sons of the deceased, namely, Kazim Nawaz Jung and Askar Nawaz Jung, as well as the 2nd plaintiff in the suit (Respondent No. 16 in this appeal) were appointed as Joint Receivers. Paragraphs 6 and 8 of the said decree are relevant for our purposes and may, therefore be extracted in full:-

Clause (6):- That, the Wood Cock Hall at Ooty shall be sold by the Receivers-cum-Commissioners either privately or by public auction or in any manner they think fit and shall deposit the sale proceeds into court and that, after paying the Court-fees, estate duty, stamp duty and the remuneration of the discharged Receiver-cum -Commissioner in the first instance, the share of the 5th defendant herein shall be separated for meeting the liabilities of Sajjid Yar Jung if any, therefrom and the balance shall be paid to the legatees and their family full or part satisfaction memo as the case may be and that, in case of the sale proceeds of the Wood Cock Hall at Ooty are found to be insufficient to satisfy the claim of legatees and others then the claims of the legatees shall be paid by auctioning the other matruka of late Nawab Sajid Yar Jung excluding the share of the defendant No. 5 in execution of this Decree.

Clause No. (8): That, in case the Receivers-cum-Commissioners fail to pay the legatees (plaintiffs 1 to 7 and the defendants 1 and 2) the amounts as per the terms of this decree within one year from the date of recording of the compromise, the legatees shall be at liberty to realise the same or any balance thereof in execution of this decree against the interests of defendants 4 and 6 to 10 in all or any of the properties of the estate and that, in case the legatees chose to proceed against the Wood Cock Hall at Ooty the fifth defendant shall not have any objection and that the share of the fifth defendant in such sale proceeds shall be paid to him through court..........

Inasmuch as the concerned parties did not carry out the terms of clause 6, an execution petition E.P. No. 12 of 1967) was filed on 13-3-1967 in terms of clause 8 thereof, In this execution-petition, one Sri Mallikarjuna Rao, advocate was appointed as a Receiver to sell the Hall, But, the joint receivers appointed under the interim final decree applied (I.A. No. 683/68) for discharging the said Sri Mallikarjuna Rao and for appointing M/s. J. Moosa and Sons to sell the said Hall. The Court below ordered the said I.A. which order was challenged in this Court by way of a revision petition. It so appears that, pending the Civil Revision Petition, the said E.P. No. 12/1967 was dismissed on 29-10-1971. At this stage one of the creditors namely, Sri Rajasimha Rao filed I.A. No. 1723/1970 to remove the joint Receivers, and the Court ordered the said petition on 22-1-1971. Under the same order, respondents 1 and 2 herein, who are advocates, were appointed as Joint Receivers (I.A. No. 2096 of I970).

5. On 28-10-1971, the plaintiffs, defendants 4 and 5 (the two sons) and defendants 7 and 8 (who are major shareholders) filed a joint memo withdrawing their objection raised earlier that the Court below has no jurisdiction to sell the said Hall and praying that "the Joint Receivers-cum-Commissioners (respondents 1 and 2) be directed to sell "Wood Cock Hall" at Ooty first in any manner they think fit and, in case the sale proceeds of the Wood Cock Hall are found to be insufficient to satisfy the claims of the creditors, then the other items to be stated of the estate of late Nawab be sold. "This Memo was ordered on 29-10-1971 and the Receivers were directed to sell the said "Woodcock Hall". The 5th defendant in the suit was also permitted to negotiate with third parties for the sale of the said Hall, and to report his negotiations to the Receivers. Between 15-9-1972 and 12-2-1973 various offers were received from various persons, and some of them were given an opportunity of depositing a token or a part of the consideration offered by them, but all the said offers became infructuous, either because they failed to deposit the said amounts, or because in one case the cheque given by one of them for Rs. 10,000/- was dishonoured. It then appears that respondents 3 and 4 herein, namely, S. Moolchand and R. Chikraj, came forward with their offer in. a sum of Rs. 5,60,000/-. A Memo appears to have been filed to that effect by the Joint Receivers-cum-Commissioners and, after hearing all the parties, the Court below accepted the said offer on 12-2-1973 in S.R. No. 4945/1972. It would be appropriate to refer to the contents of this order in some detail. It was noted by the Court that respondents 3 and 4 herein, who offered to purchase the said Hall for Rs. 5,60,000 were prepared to deposit Rs. 10,000/- immediately as a token of their earnest and also to produce the cash in currency. One of the persons, namely, Sri Basavaraj, who had earlier given an offer for Rs. 5,50,000/- was not present on that day. Sri Sahagal, advocate for one of the J. Ds./defendants (Khairunissa Begum) represented that a party has come forward with an offer of Rs. 10,00,000/- and asked for one week''s time; but he was not able to give either the name or any other particulars of the said offeror. Sri Ovasi, advocate for some other defendants, represented that, if the Court waits for one more week, some more offers were likely to be received, but in view of the previous experience, where offers were said to be forthcoming but no real and genuine offers were actually received, the Court below refused to act upon the said representations. In any event, the Court, in its indulgence granted time to Sri Sahagal, advocate, till 3.00 P.M. that day to give the particulars or to get the offeror as stated by him. However, at 3.00 p.m. the said counsel did not bring any offeror, but filed a Memo stating that, according to his client''s information the said Hall was likely to be taken by the Tamil Nadu Government in acquisition and, therefore, the offer of M/s. S. Moolchand and R. Chikraj should not be

accepted. In view of the sudden filing of the said Memo and in view of the inability of the counsel to state the source of his information regarding acquisition of the said Hall by the Tamil Nadu Government the Court below was not inclined to act upon the said representation, and also because respondents 3 and 4 herein were not prepared to wait and stand by their offer even for a week or 10 days, the Court in the circumstances, thought it fit to accept the said offer. The said respondents were directed to deposit a sum of Rs. 10,000 immediately with the receivers, and they were also directed to deposit various amounts on or before the dates prescribed by the Court. It appears that a considerable amount had to be paid by way of estate-duty, and the same was paid out of the consideration deposited by respondents 3 and 4. Some other liabilities were also met out of the said amount. On deposit of the entire amount, the Receivers were directed by the Court, on 29-9-1973 to execute a sale-deed and, on 22-10-1973, the Court passed an order noting that the estate-duty has been paid, and also confirming the sale in favour of respondents 3 and 4. In pursuance to the said order, a Certificate of sale was issued on 3-11-1973 by the Court. The said Certificate is in favour of "(i) Sri L. Moolchand, son of Loonkaran, Variety Hall, Ootacmund and 10 others, and Mrs. Kiran Bai, wife of Sri L. Nihalchand, Variety Hall, Ootacmund." As noted above, the said purchasers have deposited the total consideration of Rs. 5,60,000 and have been put in possession of the said Hall. It is then that the appellant herein filed I.A. No. 2179/73, u/s 47, Order XXI, R. 90 and Section 151 of the Civil Procedure Code, for setting aside the sale in favour of the said purchasers, as ordered by the court on 12-2-1973 and confirmed on 22-10-1973. The said petition was filed on 12-11-1973.

6. Another fact needs notice at this stage. Against the order dated 12-2-1973 accepting the offer of respondents 3 and 4, the 5th defendant in the suit (the son of the deceased Sajid Yar Jung and a major shareholder) filed a revision in this Court, being C.R.P. No. 306/73. The acceptance of the offer of respondents 3 and 4 was challenged in the said C.R.P. on several grounds, and it also appears that, pending the said C.R.P. an offer in a sum of Rs. 6,00,000 was also received. In any event, the said revision petition was, ultimately, dismissed by this Court holding that there is no irregularity or illegality in the said order, warranting interference by this Court u/s 115 of the C.P.C.

7. The petitioner (appellant herein) raised several grounds impugning the sale in favour of respondents 3 to 14 herein. It was stated that there were several other higher offers forthcoming on that day and that, in any event had the Court waited for some more time, more attractive offers could have been received. It was also alleged that, there was fraud and collusion between the joint Receivers and the purchasers which has vitiated the sale. To this petition, the Receivers filed a counter denying the allegations of fraud and collusion, and stating that, in the circumstances, the offer of respondents 3 and 4 was the highest and that they and the Court have acted in the best interests of the estate and that, there were no grounds for setting aside the said sale. It was contended by them that, out of the consideration deposited by the said purchasers, an amount of Rs.

1,80,811-25 was deposited towards estate-duty and another sum of Rs. 33,397-05 Ps. towards property tax due to the Ooty municipality. They mentioned several other liabilities which have to be met out of the said amount, They also raised a contention that, neither O. XXI, rule 90 nor Section 47 of the C.P.C. is applicable in the circumstances of this case and that, therefore, the petition filed by the appellant (petitioner) is not maintainable in law.

8. The learned Chief Judge heard the parties at length and held that the sale was effected by the Receivers appointed in an administration suit and that, the provisions of Order XXI, C.P.C are not applicable to sales effected by such Receivers and therefore, Order XXI, R. 90 C.P.C. is not applicable and because the sale was held in an administration suit and not in an execution petition, Section 47 of C. P. C. also is not-applicable. The I.A. was, therefore, dismissed on this preliminary ground itself without going into or without enquiring into the merits of the petition. Hence this Appeal.

9. Sri M. Ram Mohan Rao, the learned counsel for the appellant, contended (i) that, if the said sale is held to be a sale effected by the Court (as evidenced by the Certificate of Sale issued by the Court) then it would be governed by the provisions of Order XXI C.P.C. and the petition would be maintainable under Rule 90 of Order XXI C.P.C. (ii) if, on the other hand, it is held to be a sale effected by the Receivers appointed by the Court, it is vitiated by fraud and collusion and that, the petition filed by the appellant is maintainable either u/s 47 C.P.C. or at any rate, u/s 151 of the C.P.C. and (iii) that, even if the said sale is held to be in pursuance to the interim final decree in the administration suit, even then the court must be deemed to have necessary power to enquire into the allegations of fraud and other irregularities, if alleged by a party and the Court must be deemed to have the power to rectify the illegalities or set right the fraud or any other irregularity.

10. On the other hand, the learned Advocate-General, appearing for the purchasers, contended that the said sale is not a sale in execution and, therefore, neither Order XXI. R. 90 C.P.C. nor section 47 of the C.P.C. is applicable. According to him, the order dated 12-2-1973 as confirmed on 22-10-1973 may be treated as one of the interim final decrees (or even as one of the preliminary decrees) and that, in such a case, an appeal only is maintainable against the said order, and not an independent application.

11. Rule 13 of Order XX C.P.C. which provides for an administration suit, reads as follows:

R. 13 (1): Where a suit is for an account of any property and for its due administration under the decree of the Court, the Court shall, before passing the final decree, pass a preliminary decree, ordering such accounts and inquiries to be taken and made and giving such other directions as it thinks fit.

(2) In the administration by the Court of property of any deceased person, if such property proves to be insufficient for the payment in full of his debts and

liabilities the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable, and as to the valuation of annuities and contingent liabilities respectively, as may be in force, for the time being within the local limits of the Court in which the administration suit is pending with respect to the assets of persons adjudged or declared insolvent and all persons who in such case would be entitled to be paid out of such property, may come in under the preliminary decree, and make such claims against the same as- they may respectively be entitled to by virtue of this code........

Forms 17 and 18 in Appendix ''D'' to the CPC prescribe the preliminary decree and final decree respectively in an administration suit. The object of an administration suit is to have the estate administered under a preliminary decree of the Court; and until all the debts are paid off, outstandings are collected, and the shares are distributed, the estate is under the supervision and management of the Court. One mode of management is by appointment of Receivers, who are really officers of the Court and who act on behalf of and under the supervision of the court. Such a suit may be filed either at the instance of the creditors, or by one of the person having interest in the estate of the deceased, or by the legatees or heirs. Until the preliminary decree is passed, the Court does not have the seizin of the property, but, once a preliminary decree is passed the Court, so to say, takes hold of the estate. It is for this reason that it has been held by a Division Bench of this Court, in Masulipatam Municipality Vs. Rallabhandi Venkatappayya and Others, that before a preliminary decree is passed, the plaintiff in an administration suit, being dominus litis, is entitled to withdraw his suit, but not so after the passing of the preliminary decree, To the same effect is the judgment of a learned single Judge of this court in Khader Bee v. Dastagiri Saheb, (1958) 2 Andh WR 149. After referring to the decisions in Nicholson Town Bank v. Varadarajulu AIR 1939 Mad 204 and N. Abdul Rahim Vs. Lingappa Vaijappa Angol, , it was held that:

.... an administration suit is in essence one for account and application of the estate for the satisfaction of the dues of all the creditors. The whole administration and settlement of the estate are assumed by the Court, which marshals the assets. The court for this purpose appoints a person but the legal position of such a person should not be better nor higher than that of a Receiver appointed under Order 40, Rule 1. C.P.C. The possession of the estate is of the Court which takes upon itself the management during the continuation of the litigation, and it is a duty of the court to see that all the assets are realized and equitably distributed among all the creditors.

In such a suit, we can well conceive a preliminary or if the circumstances so warrant, more than one preliminary decree and several interim final decrees and, ultimately, a final decree, which puts an end to the suit itself. In a partition suit, it is well settled there can be any number of interim final decrees. In fact, in Phoolchand and Another Vs. Gopal Lal, , the Supreme Court has held that, if there is change in the circumstances, the Court is entitled to pass more than one preliminary decree in a partition suit and that, there is nothing in the CPC precluding the Court from doing so. We are of the opinion that, if more than one preliminary decree or interim final decree can be passed in a partition suit, it should equally be permissible in an administration suit which, if anything, is more comprehensive than a partition suit.

12. Let us look to the facts of the instant case in the light of the above well settled principles. A preliminary decree in this case was passed on 11-3-1964 and on 27-6-1964 an interim final decree was passed in appeal with the consent of all the parties. It was in pursuance to clauses 6 and 8 of the said interim final decree that the said Hall at Ooty was directed to be sold, and was brought to sale. The Receivers appointed by the Court were acting under the directions of and subject to the control of the court. The sale effected is therefore, in implementation of the said interim final decree. It is not necessary for our purposes to decide whether it itself can be called an interim final decree; but, since it is a sale effected by the Receivers subject to the supervision of the Court, in an administration suit, the said sale is not and cannot be governed by the provisions contained in Order XXI, C.P.C. In fact, it is not possible to comply with the several Rules in Order XXI, C.P.C. commencing from R. 66 onwards in a case where the sale is effected by the Receivers either by negotiations, or by public auction, or in such other manner as may be found appropriate in the circumstances of the case. We have, therefore, no difficulty in holding that the petition I.A. No. 2179 of 1973 filed by the appellant herein, is not maintainable under Order XXI, Rule 90 C.P.C.

13. In so far as the applicability of Section 47 C.P.C. is concerned, it is not necessary for the purposes of the present case to decide the applicability or otherwise of the said provision. It is enough for our purposes to hold that, even in the case of such sales the Court must have the power to rectify any illegality or any other grave irregularity. If a fraud has been perpetrated, or if there is any collusion or any other circumstance which vitiates the said sale, the court must have the necessary power to investigate the same and to set it right. After all it is a sale by a Court; and it is axiomatic that an act of the Court should not prejudice a party. It is indeed the duty of the court to see that the sales effected by it are proper and legal, and are not vitiated in any manner and, if any such vitiating factor is brought to its notice, it has the power, nay, it is its duty, to investigate the same, and to set it right or remedy it if the allegation in that behalf is found to be true. Such a power is inherent in every Court, and is recognised by Section 151 of the C.P.C. We are, therefore, of the opinion that the petition filed by the appellant is maintainable u/s 151 of the C.P.C and the Court below ought not to have dismissed it on the preliminary point, without going into its merits. We should not be understood to have, in any manner, either upheld the truth of the allegations made by the petitioner (appellant herein), or as disbelieving them. The allegations made by the appellant may be true, or may not be true. It is a matter for the Court below to investigate and come to a

finding upon the material before it. We are only holding that the petition filed by the petitioner (appellant) is maintainable and the same has to be dealt with on merits, in accordance with law. It is also brought to our notice by Sri M. Rama Mohan Rao, the learned counsel for the appellant, that another petition filed by the appellant for discharging the said Receivers (respondents 1 and 2) on the very same allegations, is still pending in the trial court. In fact a common affidavit has been filed in support of both the said applications. It would, therefore, be appropriate to dispose of both the said applications together.

14. It was suggested on behalf of the learned Advocate General that, previously, the appellant''s brother, i.e., the 5th defendant in this suit, had challenged the said sale on substantially the same grounds in C.R.P. No. 306/1973, but the same was repelled by this Court and that, having failed in his own attempt, the 5th defendant has now set up the present appellant to raise the very same objections. It is further argued that the offer of respondents 3 and 4 has been properly accepted by the Court below and that, the said acceptance is absolutely fair and unobjectionable in the circumstances of the case. It is also argued that the appellant has not given any particulars of the fraud and collusion alleged by her. In so far as the first objection is concerned, the present appellant was not a party to C.R.P. No. 306 of 1973 and, therefore, she cannot be precluded from questioning the said sale on the ground of dismissal of the said C.R.P. The other objections raised by the learned Advocate-General pertain to merits, and since we are not expressing any opinion on the merits of the said petition, it is not necessary for us to deal with the same. It is for the court below to enquire into the said petition according to law and come to its own finding.

15. The civil miscellaneous appeal is, therefore, allowed as indicated above, but in the circumstances, without costs.

