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In the Andhra Pradesh High Court

Case No : CRP No. 3669 of 1998

Gampa Srinivasa Ramesh Kumar APPELLANT

Vs

Punagani Venkataramaiah and Others RESPONDENT

Date of Decision : 16-03-2002

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 95

Citation : (2002) 3 ALD 508 : (2002) 4 ALT 639 : (2002) 2 APLJ 77

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : C.Y. Veera Reddy, for the Appellant; M.P. Chandra Mouli, for the Respondent

Judgement

C.Y. Somayajulu, J.—This revision arises out of the order dated 13-8-1998 in EA No. 153 of 1996 in EP No.46 of 1991 in OS No.23 of 1991 on the file of the Court of the Junior Civil Judge, Nandalur.

2. 1st respondent obtained a money decree against the 2nd respondent and brought the half share of the 2nd respondent in the properties specified in the schedule appended to EP No.46 of 1991 to sale. In the sale that was held on 28-4-1993, 3rd respondent figured as the highest bidder and so the sale was knocked down in his favour. 2nd respondent filed EA No. 110 of 1993 under Order XXI, Rule 90 CPC to set aside the said sale, which was dismissed on 27-12-1994 for default. IA No. 5 of 1995 filed for restoration of the said EA No. 110 of 1993 was also dismissed on 7-2-1995 and the sale was confirmed in favour of the 3rd respondent on 7-2-1995. In the meanwhile 2nd responded preferred CMA No.4 of 1994 and obtained stay of all further proceedings in EP No.46 of 1991 by the order dated 3-3-1995 in IA No.44 of 1995. The said CMA was dismissed on 6-11-1995 after contest. Thereafter Sale Certificate in favour of 3rd respondent was issued on 2-3-1996. Subsequently, 3rd respondent filed EA No. 153 of 1996 seeking delivery of possession of the property purchased by him on 12-9-1996. Revision petitioner, who is the son of the 2nd respondent-

judgment debtor, filed EA No. 153 of 1996 under Order XXI, Rule 99 read with Section 151 CPC for dismissing the said EA, inter alia, on the ground of limitation and on the ground that the undivided share in the property cannot be delivered possession to the auction purchaser. The said petition was dismissed by the order under revision. Hence this revision.

3. The only contention raised by the learned Counsel for the petitioner in this revision is that since the sale was confirmed on 7-2-1995, EA No. 153 of 1996 filed on 12-9-1996 by the 3rd respondent seeking delivery of possession of the property purchased by him in Court auction is hopelessly barred by time in view of the Article 134 of the Limitation Act. It is his contention that the Court below was in error in observing that the limitation starts from the date of issuance of sale certificate but not from the date of confirmation of the sale. The contention of the learned Counsel for the 3rd respondent is that since all further proceedings in the EP were stayed by virtue of the order dated 3-3-1995 in IA No. 44 of 1995 in CMA No.4 of 1995 filed by the 2nd respondent, questioning, the order when the said stay was vacated only on 6-11-1995, period covered by the stay order has to be excluded from computing the period of limitation as per Section 15 of the Limitation Act and if that period is excluded, the petition EA No. 153 of 1996 is well within time and so the order under revision is unassailable.

4. There is any amount of force in the contention of the learned Counsel for the petitioner that the petition for delivery of possession has to be filed within one year from the date of confirmation of the sale, but not from the date of issuance of the sale certificate. In fact the Supreme Court in Pattam Khader Khan Vs. Pattam Sardar Khan and Another, , held that application under Order XXI, Rule 95 CPC for delivery of possession of the property has to be filed within one year from the date of confirmation, because the period starts running from the date when the sale becomes absolute on confirmation under Rule 92(1) of Order XXI CPC and not when certificate of sale under Rule 95 of Order XXI CPC was issued, and if petition for delivery is not filed within time, suit for possession is the only remedy for auction purchaser. Therefore, the observation of the learned Junior Civil Judge that the limitation starts from the date of issuance of sale certificate, but not from the date of confirmation of sale, is erroneous.

5. Though Section 15 of the Limitation Act docs not relate to applications in respect of which period of limitation is prescribed by the schedule and of suits, execution petitions only in Sahu Deoki Nandan Vs. Narendra Kumar and Another, , a learned Judge of the Allahabad High Court held that application for execution of a decree referred to in Section 15(1) of the Limitation Act includes an application by an auction purchaser for delivery of possession also, and so if an auction purchaser was restrained by an injunction from taking delivery of the property purchased, the period during which he was so restrained must be excluded while computing the period under Article 134. The ratio in that decision can be applied for stay also. It is well known that injunction operates against the person who is injuncted upon, and stay operates against the Court. Therefore,

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even if a petition for delivery of possession of the property purchased by him in the Court auction was filed by the 3rd respondent during the period of stay covered by IA No. 44 of 1995 in CMA No.4 of 1995, the Court would not have given the relief of delivery of possession to the 3rd respondent. Since all further proceedings in the EP were stayed by a superior Court, 3rd respondent could not have filed an application for delivery of possession during the period of stay. Therefore, the period of stay needs to be excluded from the period of limitation prescribed under Article 134 of the Act. If the period from 3-3-1995 to 6-11-1995 is excluded, EA No. 153 of 1996 filed on 12-9-1996 is very much within one year period covered by Article 134 of the Limitation Act. Therefore, the order of the learned Junior Civil Judge dismissing the petition IA No. 156 of 1993 needs no interference though for different reasons. Hence, the revision is dismissed with costs. Advocate''s fee is fixed at Rs. 500/-.

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