
(2013) 12 AP CK 0141

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 6528 of 2012

Godavarthy Venkateswarlu

APPELLANT

Vs

Kudithipudi Venkateswara Rao and Another

RESPONDENT

Date of Decision : 13-12-2013

Acts Referred:

Citation : (2014) 3 ALD 294 : (2014) 3 ALT 750

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : V.S.K. Rama Rao, for the Appellant; C.V. Bhaskar Reddy, for the Respondent

Judgement

L. Narasimha Reddy, J.—The lack of proper care on the part of the Executing Court and the undue haste it has exhibited, has resulted in flagrant violation of several provisions of law and institution of numerous proceedings. The 1st respondent filed O.S. No. 45 of 2006 in the Court of Principal Senior Civil Judge, Tenali, against the petitioner, for recovery of Rs. 1,78,000/-. An ex parte decree was passed, on 29.12.2006. Thereafter, the 1st respondent filed E.P. No. 4 of 2009. An item of immovable property, viz., Acs. 2.40 cents of agricultural land, was sought to be proceeded. Sale was conducted on 30.05.2011.

2. The petitioner filed C.R.P. No. 2610 of 2011 pointing out certain irregularities in the execution proceedings. One of it was regarding valuation. The other was about violation of Rule 64 of Order XXI C.P.C. This Court disposed of the C.R.P., on 22.07.2011, leaving it open to the petitioner to file an application under Rule 90 of Order XXI C.P.C. Accordingly, E.A. No. 426 of 2011 was filed by the petitioner. However, that was dismissed for default on 22.02.2012 and on the next day, the sale was confirmed.

3. The petitioner approached this Court once again by filing C.R.P. No. 2494 of 2012. That was disposed of on 14.06.2012, permitting the petitioner to pursue the application for setting aside the order of dismissal for default passed in E.A.

No. 426 of 2011. The application filed by the petitioner for stay of execution was returned. Ultimately, through order, dated 07.11.2012, the Executing Court recorded delivery of possession. The same is challenged in this revision.

4. Sri V.S.K. Rama Rao, learned counsel for the petitioner, submits that his client was threatened by the respondents to such an extent that he was not able to pursue the proceedings in the Court or to enter the village and every effort made by him to protect his interests was thwarted. He contends that the value of the property is more than Rs. 30.00 lakhs and still a meagre amount was mentioned in the execution proceedings as its value without following the procedure prescribed under Order XXI C.P.C. He further submits that the fact that a sum of Rs. 13,05,000/- was fetched, as against the value of Rs. 4,80,000/- furnished by the decree-holder, would demonstrate the fallacy of the valuation. Learned counsel further submits that when the decretal amount is only Rs. 3,55,000/-, there was no justification for the Executing Court in selling the entire property for Rs. 13,05,000/-.

5. None appears for the 1st respondent.

6. Sri C.V. Bhaskar Reddy, learned counsel for the 2nd respondent, submits that the petitioner did not pursue the proceedings properly and it is on account of the default committed by him that the Court was left with no alternative except to proceed in accordance with law. He contends that though this Court gave him an opportunity more than once, he did not avail the same. Learned counsel further submits that the Executing Court has taken every aspect and provision of law into account and passed appropriate orders.

7. The suit was filed for recovery of a sum of Rs. 1,78,000/- and ex parte decree was passed. The decree became final and naturally the 1st respondent filed the E.P. for a sum of Rs. 3,55,732/-. The record discloses that except that the 1st respondent furnished the value of the attached property as Rs. 4,80,000/-, no effort was made by the Executing Court as required under Rule 66 of Order XXI C.P.C. The Rule, as it applies to the State of A.P., insists that the value of the property must be clearly indicated in the sale proclamation and the Executing Court shall ascertain the same not only from the Registrar, but also from both the parties. There was a clear infraction in this behalf, since the Court did not comply with Rule 66 of Order XXI C.P.C., as it applies to the State of Andhra Pradesh. It is a serious irregularity, which vitiates the entire proceedings.

8. As observed earlier, the decretal amount was only Rs. 3,55,732/- and what is fetched in the auction is Rs. 13,05,000/-. On the earlier occasion, the petitioner approached this Court and a specific finding was recorded in C.R.P. No. 2620 of 2011 to the effect that the Executing Court did not follow the procedure under Rule 64 of Order XXI C.P.C., since it proceeded to sell the entire property, though part of it was sufficient to satisfy the decree. In Sai Enterprises Vs. Bhimreddy Laxmaiah and Another, the Supreme Court categorically held that the Executing Court cannot sell any property over and above what is needed to satisfy the

decree. It is not even mentioned that the E.P. Schedule land is indivisible.

9. On this short ground, the C.R.P. is allowed and the sale of the schedule property is set aside. The Executing Court shall take the steps afresh strictly in accordance with Rules 66 and 64 of Order XXI C.P.C. Since the 2nd respondent raised crop upon the land and enjoyed it, he shall not be entitled for any damages. The petitioner shall be under obligation to deposit the amount, which is said to have been paid to the decree-holder, within four weeks from today. The amount deposited by him towards the consideration as well as poundage shall be refunded to him by the Executing Court within two weeks thereafter and he shall re-induct the petitioner into possession of the property as soon as the amount is received by him. There shall be no order as to costs. The miscellaneous petition filed in this revision petition shall also stand disposed of.