
(2009) 08 AP CK 0025
In the Andhra Pradesh High Court
Case No : C.R.P. No. 5664 of 2005

Gopavarapu Ramalinga Swamy

APPELLANT

Vs

Nimmala Kondalu and Another

RESPONDENT

Date of Decision : 21-08-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 5, 73, 73(1)

Citation : (2009) 6 ALD 204 : (2009) 6 ALT 204

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : K.V. Subba Reddy, for the Appellant; G. Rama Sarma, for the Respondent

Judgement

L. Narasimha Reddy, J.—The first respondent filed O.S. No. 6 of 2000 in the Court of the Junior Civil Judge, Macherla against the second respondent for recovery of certain amount. The suit was decreed on 05-09-2000. After the decree became final, he filed E.P. No. 121 of 2000 and, in the process, an item of immovable property was brought to sale. The sale proceeds of Rs. 82,500/- were deposited into the Court.

2. The petitioner filed O.S. No. 126 of 2000 against the second respondent in the same Court for recovery of a sum of Rs. 64,000/-. That suit was decreed on 19-12-2000. During the pendency of the suit itself, he is said to have got attached the same item of immovable property under Order 38 Rule 5 C.P.C. On coming to know that the property was sold and sale proceeds were deposited, the petitioner filed E.A. No. 198 of 2001 u/s 73 C.P.C. He wanted the reteable distribution of the sale proceeds, along with the first respondent. The application was opposed by the first respondent. Through its order, dated 19-01-2005, the executing Court dismissed the E.A. Hence, this revision.

3. Sri K.V. Subba Reddy, the learned Counsel for the petitioner, submits that the view taken by the executing Court that the claim of the petitioner cannot be accepted, since no E.P. was filed, is untenable in law. Placing reliance upon a

judgment of this Court in Jagadish Vaishnav Vs. Farpos Leading Cateror and Others, , he submits that once there exists an attachment in favour of the petitioner, filing of E.P. was not necessary at all. He submits that the petitioner is entitled to be paid rateable amount from out of the sale proceeds.

4. Though the respondents are served with notice, they have not chosen to enter appearance.

5. The second respondent suffered the decrees in the hands of the first respondent as well as the petitioner in O.S. Nos. 6 and 126 of 2000. Both the decrees became final. The first respondent initiated the executing proceedings by filing E.P. No. 121 of 2000. The attached item of immovable property was brought to sale and proceeds were deposited into the Court.

6. The manner in which the sale proceeds shall be distributed, in the event there being more than one decree against the same judgment debtor, is dealt with u/s 73 C.P.C. Clause (c) of Section 73(1) C.P.C. is the relevant provision, and it reads as under:

Section 73(1)(c): Where any immovable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of the sale shall be applied:

First, in defraying the expenses of the sale;

Secondly, in discharging the amount due under the decree;

Thirdly, in discharging the interest and principal moneys due on subsequent incumbrances (if any); and

Fourthly, rateably among the holders of decrees for the payment of money against the judgment-debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

7. From this, it becomes clear that whenever an item of property is brought to sale in execution, the adjustment of the sale proceeds thereof shall be made in the priorities mentioned in the provision. At first instance, the sale proceeds have to be adjusted towards the expenses incurred for conducting sale and thereafter, to satisfy the decree, as regards which, the sale is conducted. Any other decree-holder, even where he has filed the E.P., would figure at the fourth place in the order of priority.

8. In the judgment referred to above, this Court held that if a decree-holder has obtained attachment before judgment, it is not necessary for him to file an E.P. in the context of rateable sharing of the sale proceeds. That, however, was a case in which the amount, as such, was brought to the Court from a garnishee and not a case where an item of immovable property was brought to sale. Further, Clause (c) of Section 73(1) C.P.C. mandates that the claim of the decree-holder, who causes the property to be sold would have its own precedence, and it is only

after the concerned decree is satisfied that the balance would be adjusted for the satisfaction of the other decrees.

9. In that view of the matter, the civil revision petition is partly allowed, directing that in case any amount remains after satisfying the decree in O.S. No. 6 of 2000, the petitioner shall be entitled to be paid that amount. There shall be no order as to costs.