

(1995) 07 AP CK 0008

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1335 of 1988

Kannegolla Nagabhushanam

APPELLANT

Vs

Naraharisetti Ramamohanrao and Others

RESPONDENT

Date of Decision : 17-07-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 89(1), Order 21 Rule 92

Citation : (1995) 3 ALT 917

Hon'ble Judges : Maithili Sharan, J

Bench : Single Bench

Advocate : S. Surya Prakasa Rao, for the Appellant; D. Kodandarama Murthy, for Respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Maithili Sharan, J.—This petition has been filed against the order dt. 25-1-1988 passed by the Additional District Judge, West Godavari, Eluru in C.M.A. No. 30 of 1987, dismissing the appeal and confirming the order dated 27-4-1987 passed in E.A.No.666 of 1986 in E.P.No.250 of 1984 in O.S.No.468 of 1980 on the file of the I Additional District Munsif, Eluru,

2. The brief facts leading to this revision petition are thus: One Challagali Nagaraju (3rd respondent herein) filed Original Suit No. 468 of 1980 in the Court of the I Additional District Munsif, Eluru, against one Smt. N. Kanaka Durgamba and others for the recovery of Rs. 5,508/- with subsequent interest; it was decreed on 22-2-1983, and thereafter execution petition was filed by the decree holder for the recovery of a total amount of Rs. 7,001/-. The entire procedure of execution was followed, the scheduled property was attached and thereafter the property was sold in Court auction on 16-7-1986, subject of course to the mortgage standing thereon. The petitioner herein was the highest bidder for Rs. 80,000/- in that auction sale; proceedings were then adjourned to 31-7-1986 for the confirmation of sale. Pending these proceedings, the Judgment Debtor deposited an amount of Rs. 20,000/- on 24-7-1986 towards the decretal

amount, for which, a challan was issued and the amount was deposited in State Bank of India. Similarly, on that date, the auction-purchaser also deposited an amount of Rs. 64,000/- towards the purchase money. Then, the Judgment Debtor filed E.A.No.666 of 1986 on 24-7-1986 under Order XXI Rule 89 CPC alleging that as he had deposited the decretal amount and other expenses in the Court within thirty days from the date of sale, the sale was liable to be set aside. The 1st respondent i.e. the Decree Holder did not contest it. However, auction-purchaser/petitioner filed Ms counter contending that he was the bona fide purchaser on the date of the auction, and the Judgment Debtor had not paid any amount till then and had expressed his inability to pay the amount, hence his application for getting the sale set aside was liable to be dismissed, as it was mala fide. The executing Court allowed the said application of the judgment debtor on 27-4-87. The auction-purchaser, being aggrieved by the said order, filed C.M.A. No. 30 of 1987 in the Court of the Additional District Judge, West Godavari, Eluru, which was dismissed on 25-1-1988 and the order passed by the executing Court was upheld. Now, against this impugned order passed in C.M.A.No. 30 of 1987, by the Additional District Judge, West Godavari, Eluru the auction-purchaser has filed this revision petition.

3. I have heard the learned counsel for the petitioner at-length and have carefully gone through the record of the case. None appears for the respondents.

4. The short point involved in this petition is, as to whether the Execution Application No. 666 of 1986 filed by the Judgment Debtor after the auction sale in favour of the petitioner was liable to be dismissed ?

5. The learned counsel for the petitioner has raised two points -(1) Under Order XXI Rule 89(1) of the Code of Civil Procedure, as amended by the Amendment Act, 1976, the Judgment Debtor has no right to file any objection, and (2) in the instance case, the Judgment Debtor had not acted in a bona fide manner. On these two counts, the learned counsel for the petitioner has argued that the petition filed by the Judgment Debtor was liable to be dismissed, and hence the order passed by the executing Court as well as the appellate Court deserve to be set aside.

6. Dilating on the first argument of the learned counsel for the petitioner in regard to his legal objection, it is worthwhile to trace the history of the relevant provision. In the CPC 1882, Section 310-A provided that "any person whose Immovable property has been sold under this Chapter" was entitled to apply to get the sale set aside. Afterwards, the Code of Civil Procedure, 1908 was enacted and it widened the categories of persons who could apply for getting the sale set aside; it substituted the words "any person either owning such property or holding an interest therein by virtue of a title acquired before such sale", for the words "any person whose Immovable property has been sold under this Chapter". Thereafter, by the Amendment Act, 1976, for the words "any person either owning such property or holding an interest therein by virtue of a title acquired before such sale", the words "any person claiming an interest in the

property sold at the time of the sale or at the time of making the application, or acting for or in the interest of such person", were substituted. Apparently enough, the words substituted in Sub-rule 89(1) of Order XXI of the Code of Civil Procedure, by virtue of the Amendment Act, 1976, carry a wider import than the words appearing in the Rule earlier. A Judgment Debtor is undoubtedly a person "claiming an interest in the property sold in execution" both at the time of sale as well as at the time of making an application for getting the sale set aside. The amendment introduces a beneficiary Rule and hence it should be liberally construed. Thus, it cannot be said that the judgment debtor is excluded and now after the Amendment Act, 1976 he is debarred under Order XXI Rule 89(1) of the CPC to move an application to get the auction sale set aside. Therefore, I am afraid, I do not agree with the argument advanced by the learned counsel for the petitioner in this regard.

7. Coming to the second argument advanced by the learned counsel for the petitioner concerning the bona fides of the judgment debtor, a perusal of the record reveals that he had made some payments during the pendency of the sale proceedings. This shows that he was interested in retaining the property. That apart, when the provisions of Order XXI Rule 89(1) provide a statutory right to the Judgment Debtor i.e. a person claiming an interest in the property, to deposit the decretal amount within thirty days from the date of sale, his bona fides or otherwise could not be looked into. He has a right to apply to have the sale set aside on his fulfilling the twin conditions provided in clauses (a) and (b) of Rule 89(1) of Order XXI of the Code of Civil Procedure. In the instant case, since these two conditions were fulfilled by the Judgment-Debtor, there was no point in disallowing his application.

8. In view of the above discussion, I am of the opinion, that the order passed by the executing Court i.e. I Additional District Munsif, Eluru dated 27-4-1987 and the order passed by the learned Additional District Judge, West Godavari, Eluru in C.M.A.No.30 of 1987 dated 25-1-1988 do not call for "any interference in this petition.

9. In the result, therefore, this revision petition is dismissed and the impugned order passed by the learned Additional District Judge, West Godavari, Eluru is upheld. No costs.