
(1977) 08 AP CK 0017
In the Andhra Pradesh High Court
Case No : A.A.O. No. 12 of 1977

Katikirddi Gavaramma and Others

APPELLANT

Vs

Surireddi Satyam

RESPONDENT

Date of Decision : 12-08-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1, Order 21 Rule 2, Order 23 Rule 3, Order 41 Rule 5

Citation : AIR 1978 AP 144

Hon'ble Judges : A.V. Krishna Rao, J

Bench : Single Bench

Advocate : T. Dhanurbhanudu and A. Narasimha Rao, for the Appellant; T. Veerabhadrayya and S. Satyanarayana Prasad, for the Respondent

Judgement

A.V. Krishna Rao, J.—The appellant herein filed I. A. No. 208/1974 in A. S. No. 31 of 1972 on the file of the Court of the Subordinate Judge, Narsapur, under the provisions of O. 23, Rule 3 and S. 151, C.P.C., to record full satisfaction in O. S. No. 306/1971 on the file of the Court of the District Munsif, Narasapur and pass a decree accordingly.

2. The facts leading up to the application may be briefly stated: The respondent in the appeal filed O. S. No. 306 of 1971 on the file of the District Munsif's Court, Narsapur, for recovery of money due under a promissory note said to have been executed by the appellants Gavaramma and two others. He obtained a decree. The appellants preferred A. S. No. 31 of 1972 on the file of the Court of the Subordinate Judge, Narsapur. During the pendency of that appeal, the appellants herein had filed I. A. No. 208 of 1974 under O. 23, Rule 3 and S. 151 of the Civil P. C. The prayer in the petition was to record satisfaction of the decree which was appealed against on the ground that the appellants had in full satisfaction of the decree paid Rs. 1,600 to the plaintiff-decree-holder, who gave a receipt which was filed along with the petition to record full satisfaction. The decree-holder (respondent) had opposed the application on the ground that nothing was paid

under the decree, that the receipt in question is a rank forgery and the petition to record satisfaction did not lie under O. 23, R. 3 C.P.C. and if any satisfaction is to be recorded, a petition must be filed in the Court of the District Munsif on the execution side, but not in the Appellate Court as was done by the judgment-debtors.

3. The lower Court framed the point for consideration to the following effect : Whether the petition under O. 23, R. 3, C.P.C., lay to it? (The Appellate Court on the facts.)

4. On a consideration of the point, the opinion was expressed that the receipt filed along with the application cannot be used to record a compromise under O. 23, R. 3 C.P.C. In other words, the Court expressed the opinion that the application to record full satisfaction did not lie to it under O. 23, R. 3, C.P.C.

5. In this appeal, the point for determination is whether I. A. No. 208/1974 in A. S. No. 31/1972 was maintainable in the court below.

6. I. A. No. 208/1974 in A. S. No. 31/1972 was filed under O. 23, R. 3 read with S. 151, C.P.C. The prayer in the petition was to record full satisfaction of the decree in view of the payment of a sum of Rs. 1,600 by the appellants to the respondent (decree holder) who passed a receipt for the said amount filed along with the petition.

7. Order 23, rule 3, C.P.C. is in the following terms:-

"Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit."

8. The case of the appellants is not that the parties had arrived at a lawful agreement or compromise resulting in a full satisfaction of the decree and that therefore the said agreement should be recorded and pass a decree in accordance therewith in so far as it related to the suit. There can be no doubt that an application under O. 23, R. 3 C.P.C. can be filed in an Appellate Court. But the petition filed by the appellant does not conform to the requirements of O. 23, R. 3. The averments in the prayer clearly attract O. 21, R. 2, C.P.C., all money payable under a decree shall be paid as follows, namely:-

"(a) into the Court whose duty it is to execute the decree; or

(b) out of Court to the decree-holder; or

(c) otherwise as the Court which made the decree directs".

Clause (2) of O. 21, R.1, C.P.C. states:

"Where any payment is made under cl. (A) of sub-rule (1) notice of such

payment shall be given to the decree-holder." Order 21, R. 2 of the Civil P. C. States:

"(1) Where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the court whose duty it is to execute the decree and the court shall record the same accordingly.

(2) Any party to the suit or his legal representative or any person who has become surety for the decree debt also may inform the Court of such payment or adjustment, and apply to the Court, to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

(3) A payment or adjustment which has not been certified or recorded as aforesaid, shall not be recognised by any court executing the decree."

9. These provisions leave no doubt whatsoever in one's mind that where money is payable pursuant to the decree already passed, it should be paid in one of the modes prescribed by O. 21, R. 1(1), C.P.C., notwithstanding the fact that the defendants in a suit for money had preferred an appeal. An appeal does have the effect of setting the decree at naught. In such circumstances, even though an appeal is preferred, unless there is a stay, recourse must be had to the provisions of O. 21, Rules 1 and 2 which provide for execution of decrees and orders and payment under a decree. Order 41, R. 5(1) of the Civil P.C. is quite clear. It provides that an appeal shall not operate as a stay of proceeding under a decree or order appealed from except so far as the Appellate Court may order.....Therefore the mere preferring of an appeal does not have any effect on the decree that is passed, except to the extent a stay is granted under O. 41, r. 5, C.P.C. In the instant case, the averments in the petition filed under O. 23, R. 3, C.P.C., are to the effect that the money payable under the decree appealed from was paid out of Court as per the receipt produced and that the decree was therefore fully satisfied and fall quite clearly within the ambit of O. 21, rules 1 and 2, C.P.C., is the one to which recourse in the circumstances must have been taken by the present appellants (judgment-debtors). What the appellants really wanted was not that compromise should be recorded and a decree passed in terms thereof within the meaning of O. 23, R. 3, C.P.C., by payment made out of Court evidenced by the receipt filed along with the application. Recording satisfaction either in full or part of a money decree by the judgment-debtor is only within the jurisdiction of the executing Court which, of course, here means the original Court. I am of the opinion that the application purporting to be under O. 23, R. 3, C.P.C., having regard to the averments in the petition and the prayer therein cannot be entertained by the lower Appellate Court in A. S. No. 31/1972. The order under appeal does not call for any

interference.

10. The C.M.A., therefore, fails and is dismissed with costs.

11. Appeal dismissed.