
(2004) 03 AP CK 0055
In the Andhra Pradesh High Court
Case No : CMSA No. 23 of 2003

Korru Reddi Kumar

APPELLANT

Vs

M. Suresh Kumar Reddy and Others

RESPONDENT

Date of Decision : 26-03-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58

Citation : (2004) 3 ALD 260

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : K.G. Krishna Murthy, for the Appellant; N. Pramod, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The first respondent filed O.S. No. 80 of 1996 in the Court of Senior Civil Judge, Madanapalle for recovery of Rs. 90,625/- against the Respondents 2, 3 and 4. The suit was decreed on 16-9-1998. Since the Respondents 2, 3 and 4 did not satisfy the decree, the first respondent initiated execution proceedings in the Court of the Senior Civil Judge, Madanapalle, which in turn were transferred to the Court of Senior Civil Judge, Punganur and numbered as E.P. No. 16 of 1999. Certain items of landed property belonging to the fourth respondent were attached. When further steps were in progress, the appellant filed E.A. No. 32 of 2000 under Order XXI, Rule 58 C.P.C.

2. The appellant contended that he entered into an agreement of sale with the fourth respondent on 5-8-1998 to purchase Items 8 to 12 of the E.P. schedule, for a consideration of Rs. 40,000/- and an amount of Rs. 35,000/- was already paid. On the strength of this agreement, he claimed that the said items of property cannot be proceeded with. The E.A. was resisted by the first respondent. Through its orders dated 23-4-2001, the Executing Court dismissed the E.A. Aggrieved thereby, the appellant filed A.S.No. 31 of 2001 in the Court of the II Additional District Judge, Madanapalle. The appeal was dismissed through

judgment dated 9-5-2001. Hence, this civil miscellaneous second appeal.

3. Sri K.G. Krishna Murthy, learned Counsel for the appellant submits that the appellant had acquired substantial right in the property in question on the strength of the agreement of sale and the Courts below ought to have accepted the claim of the appellant. He submits that the agreement of sale was anterior to the decree and that the same cannot be ignored.

4. Sri N. Pramod, learned Counsel for the first respondent submits that the agreement itself is a sham transaction brought about, for the purpose of defeating the claim under the decree. He submits the fact that the agreement of sale was brought about, hardly one month before the date of the decree, that too without any possessory rights discloses the purpose behind it.

5. The first respondent filed a suit for recovery of amount against the Respondents 2, 3 and 4 and the suit was decreed on 16-9-1998. Execution proceedings were initiated and certain properties belonging to the fourth respondent were attached. As regards Items 8 to 12 of the schedule, the appellant came forward with a claim petition under Order XXII, Rule 58 C.P.C. Such an application required to be dealt with, as though it is an independent suit. An appeal is provided for against an order passed therein. It was for this reason that the Executing Court permitted oral and documentary evidence to be adduced, and considered the matter extensively. P.Ws.1 and 2 were examined on behalf of the appellant and the agreement of sale dated 5-8-1998 was marked as Ex.A1. The first respondent was examined as R.W.1.

6. For raising a claim under Order XXI, Rule 58 or 99 C.P.C., the claimant should possess valid and substantial right in the property, which is sought to be attached or otherwise proceeded with, in execution. Claims, which are not recognized in law, cannot be permitted to be raised. The appellant contended that a right had accrued to him under agreement of sale dated 5-8-1998. The Courts below refused to recognize his rights on recording a finding that the agreement itself is a sham transaction brought about to defeat the claim under decree. Extensive discussion was undertaken for recording this finding. The fact that the appellant was none other than the co-brother (husband of wife's sister) and that he failed to prove the factum of payment of the amount were, specifically referred to.

7. Even assuming that the agreement is not genuine, it needs to be seen as to how far the claim of the appellant can be accepted to stall the execution proceedings. Admittedly, the possession continued to be with the fourth respondent despite the agreement. In such an event, the right of the appellant if at all was only to seek specific performance of agreement of sale. Once the property is attached, no decree for specific performance can be granted in respect of the same. It is not as if the relief of specific performance is absolute and legal. It is purely discretionary and equitable. Even if the relevant circumstances exist, the Court has the discretion to deny the relief of specific

performance as a whole, or grant a decree for recovery of the amount advanced. One of the ways to consider the claims of third parties in execution proceedings is to see whether any relief on such claims could have been granted in an independent suit. If no relief can be granted in a suit on the set of facts pleaded in claim petition, the objection to execution proceedings cannot be sustained. In view of the observation made, as to the nature of his rights, the appellant cannot be permitted to stall the execution proceedings.

8. Viewed from any angle, this Court does not find any basis to interfere with the concurrent findings of the Court below.

9. The CMSA is accordingly dismissed. It shall be open to the appellant to take steps as are open to him in law to recover the amounts said to have been paid by him under Ex.A1 against the fourth respondent.