
(2014) 12 AP CK 0132

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 1985 of 2014

Kottu Veera Venkata Satyanarayana

APPELLANT

Vs

Padala Ramanna Dora and Others

RESPONDENT

Date of Decision : 19-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 100, Order 21 Rule 101, Order 21 Rule 95, Order 21 Rule 99, 151

Citation : (2015) 3 ALD 622 : (2015) 2 ALT 750

Hon'ble Judges : Nooty. Ramamohana Rao, J

Bench : Single Bench

Advocate : Rama Murthy PVSA, Advocates for the Appellant; S. Subba Reddy, Advocates for the Respondent

Judgement

Nooty. Ramamohana Rao, J.—This revision is preferred by the petitioner in E.A. SR. No. 2714 of 2014 in E.P. No. 63 of 2011 in O.S. No. 468 of 2008 on the file of the Junior Civil Judge's Court, Anaparathy. The 1st respondent herein was the auction purchaser while the 2nd respondent was the decree holder and the 3rd respondent was the judgment debtor. The petitioner/claim petitioner is a stranger/third party, though the judgment debtor was his brother.

2. The E.P. No. 63 of 2011 is moved by the 2nd respondent/decreed holder for executing the decree passed in O.S. No. 468 of 2008 and in that process immovable property of a total extent of 82 1/2 cents has been brought to sale by public auction on 09.12.2011. The 1st respondent emerged as the best bidder and his offer to purchase the schedule property for Rs. 2,25,000/- has been accepted by the Court and the sale was accordingly confirmed on 04.06.2012 by the Junior Civil Judge at Anaparthi. Thereafter the 1st respondent/auction purchaser moved E.A. No. 127 of 2012 under Rule 95 of Order XXI, CPC for delivery of the property purchased by him. Accordingly the immovable property has been delivered on 16.11.2013 and hence E.A. No. 127 of 2012 was closed on 26.11.2013. Thereafter, the petitioner herein moved an application on

23.01.2014 bearing E.A. SR. No. 2714 of 2014 in E.P. No. 63 of 2011 in O.S. No. 468 of 2008 for restoration of possession and redelivery of 38 cents of land lying in R.S. No. 348/1 of Kapavaram village out of 82 1/2 cents of land delivered to the auction purchaser. It is the claim of the petitioner herein that he is the absolute owner of land of an extent of 38 cents and that he is in possession and enjoyment of the said land in his own right and the judgment debtor without having any manner of right has allowed the said land to be sold by public auction to satisfy the decree and hence dispossession of the petitioner herein from land of an extent of 38 cents is wrongful and hence he should be put back in possession of the said land. It is this application, which was dismissed by the Junior Civil Judge, Anaparthi by order dated 15.04.2014 on the ground that the E.P. itself was disposed of and the immovable property was also delivered to the auction purchaser and at this belated stage the petitioner cannot maintain the said application and at any rate he should have filed the application during the pendency of the main E.P. and hence the petition is not maintainable and it was directed to be returned to the petitioner. It is this order, which is challenged in this revision.

3. It should be noted that the petitioner being a third party to the Civil Suit O.S. No. 468 of 2008 as well as E.P. No. 63 of 2011 has filed the present application under Order XXI Rule 99 and 101 CPC as well as under Sections 47 and 151 CPC.

4. Heard the learned counsel for the petitioner as well as learned counsel for the 1st respondent/auction purchaser.

5. The auction purchaser has been delivered possession of agricultural land of a total extent of 82 1/2 cents which included 38 cents, claimed herein by the petitioner as owned and belonging to him in his own right, independent of the right of the 3rd respondent.

6. The question which is required to be considered by the Court is whether the application under Order XXI Rule 99 read with 101 CPC is maintainable or not.

7. Rule 99 of Order XXI CPC dealt with dispossession by decree-holder or by purchaser thereof. It clearly spells out that where any person other than the judgment debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession. Sub-rule 2 thereof makes it further clear that where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained. It is, therefore, very clear that where any person other than the judgment debtor is disposed of his immovable property either by the decree holder or by the purchaser of such immovable property, such a person who has been so dispossessed may move an application complaining of such dispossession and all questions including questions of right, title and interest in the property in question arising between the parties shall be determined by the

Court. Therefore, the only question which is required to be examined at the initial stage for entertaining an application under Rule 99 of Order XXI CPC was whether the person who moved the application claimed a right independent of the judgment debtor or not. A person claiming through or under the judgment debtor can be dispossessed in execution of a decree passed against the judgment debtor but not a person who is in possession of the property in question in his own independent right. It would be appropriate to notice at this stage the Judgment rendered by the Supreme Court in H. Seshadri Vs. K.R. Natarajan and Another, wherein it is set out as under:

For the purpose of considering an application under Order XXI Rules 99 and 100 of the Code of Civil Procedure what was required to be considered was as to whether the applicant herein claimed a right independent of the judgment-debtor or not. A person claiming through or under the judgment-debtor may be dispossessed in execution of a decree passed against the judgment-debtor but not when he is in possession of the premises in question in his own independent right or otherwise.

8. In view of this principle there is no difficulty whatsoever in holding that the application moved by the petitioner herein under Rule 99 Order XXI CPC is certainly maintainable. May be the mentioning of Section 47 CPC by the petitioner herein is inappropriate. The petitioner being a third party, he cannot maintain any application under Section 47 CPC.

9. Further, a Division Bench of this Court in Pavan Kumar and Another Vs. K. Gopalakrishna and Another, in paragraph No. 5 has dealt with the relevant principle in the following words.

The third party aggrieved by dispossession in execution of a decree, may make an application to the Court complaining such dispossession. If he makes such an application, all questions including questions relating to right, title and possession in the properties shall be decided in that application as if it were a full-fledged suit for title and possession and no separate suit would lie for this purpose. However, an appeal lies under Rule 103 as if the order passed on such application were a decree. We are unable to visualize the provisions of Rules 99 to 101 even after amendment as laying down an exhaustive Code on the remedies of the third parties dispossessed in execution of a decree for possession. The remedy under Order 21 Rule 99 CPC is no doubt one of the remedies available to the person dispossessed. But, we are unable to construe Order 21 Rule 99 as placing a bar on bringing an independent suit for possession, without filing an application under the said Rule. Such a bar, in our view, does not arise even by necessary implication.

10. In this view of the matter, the order passed by the learned Junior Civil Judge, Anaparthi on 15.04.2014 is not sustainable. It is accordingly set aside. The E.A. SR. No. 2714 of 2014 is restored and now the Court shall proceed to consider the same on merits subject to all such objections that might be raised on merits as

well as the objection that the application is barred by limitation shall be considered independently and uninfluenced in any manner by the observations made herein above.

11. The Civil Revision Petition is accordingly allowed. No order as to costs.

12. The miscellaneous petitions, if any pending in the revision, shall stand closed.