
(2001) 04 AP CK 0091
In the Andhra Pradesh High Court
Case No : CMA No. 2812 of 2000

M. Kanthamma

APPELLANT

Vs

Nellore Finance Corporation and Others

RESPONDENT

Date of Decision : 09-04-2001

Acts Referred:

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

Citation : (2001) 04 AP CK 0091

Hon'ble Judges : B. Prakash Rao, J

Bench : Single Bench

Advocate : B. Sudhakar Reddy, for the Appellant; T. Sridhar Reddy, for the Respondent

Final Decision : Dismissed

Judgement

B. Prakash Rao, J.—The appellant herein is the claim petitioner, who is aggrieved against the orders in E.A.No.548 of 1998 in E.P. No. 65 of 1995 in O.S. No. 23 of 1989 dated 18-9-2000 on the file of the Senior Civil Judge at Kavali, dismissing an application filed by her under Order 21 Rule 58 of the Code of Civil Procedure.

2. The respondent No. 1-plaintiff, a Finance Corporation, filed the suit for recovery of amounts in pursuance of mortgage dated 9-4-1987 and ultimately a final decree was passed on 14-9-1994. Thereupon, he filed E.P. No. 65 of 1995 for execution. While so, the appellant filed the claim petition in respect of the property alleging that in pursuance of an agreement to sell dated 15-10-1986, the respondent No.1-the judgment debtor sold the same under Ex.A.1 a registered sale deed dated 12-10-1989 on receipt of entire consideration of Rs. 1,90,000/- of which initially a sum of Rs. 50,000/- was paid as advance on the date of agreement and later the amounts of Rs. 40,000/- on 10-3-1987, Rs. 50,000/- on 17-4-1987 and Rs. 50,000/- on 19-8-1989 were paid. Thus, she being in possession since the date of purchase, the property cannot be proceeded against.

3. On contest and after enquiry, the court below rejected the claim holding that the transaction is a concocted one and the provisions of Order 21 Rule 58 of the CPC have no application to a decree on a mortgage.

4. Heard both the counsel.

5. On a consideration of the submissions made and on a perusal of the record, the facts which emerge are that there is a final decree in pursuance of a mortgage dated 9-4-1987, whereas this application is filed long after the date of final decree. The registered sale deed Ex.A.1 is dated 12-10-1989 and claimed to be in pursuance of the agreement dated 15-10-1986. Ex.A.1 is only a certified copy and not an original one. No worthy explanation is forth-coming for non-filing of the original. The alleged prior agreement is not filed. Though it was claimed that the amounts were paid in between, except her own self serving statement as P.W.1, there is no other evidence to support. Even P.W.1 pleads ignorance of the transaction till she was told by her husband. Her grandson is a doctor who is working in the hospital of the judgment debtor. It also transpires that in execution in E.P.No. 5 of 1992, under a decree in O.S. No. 50 of 1989 obtained by one Tanguturu Raghava Reddy against the judgment debtor, similar such claim petition in E.A. No. 81 of 1994 was filed but there is no reference or mention to the alleged agreement to sell. With these and other reasons, cogently sound, the alleged purchase was not accepted.

6. Admittedly, the decree is based on a mortgage and the alleged purchase is subsequent thereto. In such circumstances, the court below rightly refused to entertain the application under Order 21 Rule 58 of the Code of Civil Procedure.

7. Accordingly, there are absolutely no merits and the appeal is dismissed. No costs.