
(2011) 11 AP CK 0091

In the Andhra Pradesh High Court

Case No : C.C.C A. Nos.111 and 113 of 2011

Maresh Pakhare

APPELLANT

Vs

A.S. Gopal and others

RESPONDENT

Date of Decision : 15-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 100, Order 21 Rule 101, Order 21 Rule 102, Order 21 Rule 19, Order 21 Rule 29
Contract Act, 1872 — Section 202, 203, 204, 205, 208
Specific Relief Act, 1963 — Section 31, 31(2)
Transfer of Property Act, 1882 — Section 3, 52

Citation : (2013) 3 ALD 628 : (2012) 3 ALT 562

Hon'ble Judges : V. Eswaraiah, J;K.S. Appa Rao, J

Bench : Division Bench

Advocate : Peri Prabhakar and Mr. R Chandrashekar Reddy, for the Appellant; D. Pakash Reddy, for Mr. T.V. Ramana Rao, Counsel and Mr. K.R. Koteswra Rao, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Appa Rao, J.—These appeals are filed against the orders, dated 25-3-2011 passed in E.A. Nos. 59 of 2010 and 62 of 2010 respectively in E.F. No. 39 of 2008 in O.S.No. 108 of 2007 on the file of the Additional Chief Judge, City Civil Court at Secunderabad. The appellants herein are the objection petitioners in the said E.As. For convenience sake, the parties hereinafter will be referred to as they are arrayed before the lower Court. The objection petitioners filed C.C.C.A.M.P.Nos. 417 of 2011 and 432 of 2011 along with the appeals, seeking stay of eviction from the petition schedule property and stay of all further proceedings in E.P.No. 39 of 2009 (sic. 2008) in O.S. No. 108 of 2007 on the file of the I Additional Chief Judge, City Civil Court at Secunderabad, pending disposal of the appeals. This Court was pleased to grant stay of all further proceedings in both the C.C.C.A.M.Ps. The respondents, who are the Decree Holders and Judgment Debtors, filed C.C.C.A.M.P.Nos.578 of 2011 and 573 of

2011, along with the counters, seeking to vacate the interim orders passed in the said C.C.C.A.M.Ps.

2. During the course of hearing, both the learned counsel advanced arguments in the vacate stay petitions as well as appeals also. Therefore, at their request, both the vacate stay petitions and the main appeals were taken up together for disposal, and since these two appeals arise out of the proceedings in the same suit and E.P. and the issue also interrelated, they are clubbed and disposed of by this common order.

3. The brief facts of the case, which are necessary for the disposal of these appeals, are as follows:

Originally the suit in O.S.No. 108 of 2007 was filed by respondent Nos.1 to 3, namely A.S. Gopal, R. Madhava Rao and Smt. Gayatri, represented by the G.P.A. Holder A.S. Gopal, against respondent Nos.4 to 7, namely M. Vijayalaxmi, Monagari Pentamma, S. Vasantha and M/s. Kollati Constructions Ltd. represented by its Managing Director K. Seshagiri Rao, seeking cancellation of the agreement of sale-cum-General Power of Attorney, and consequently for recovery of possession of the suit schedule property and original documents, and for mandatory injunction. The suit schedule property is the house bearing Nos. 10-3-113/P, 10-3-32/1/114, and 10-3-32/9/115 in all admeasuring 799.98 square yards (each plot (sic. flat) admeasuring 266.66 square yards) situated at Nehrunagar Co-operative Housing Society Limited, East Marredpally, Secunderabad. However, during the course of enquiry, both the parties filed a joint memorandum of compromise petition and accordingly, a compromise decree was passed on 29-2-2008 recording the terms of compromise thereunder. Condition Nos.3 and 4 of the joint memorandum of compromise reads as follows:

3. In case the defendants failed to pay the amounts on or before 30-5-2008 as mentioned in clause No.1, the Agreement of sale-cum-General Power of attorney dated 1-2-2006 bearing document No.2380/2006 registered in the O/o Sub-Registrar, Marredpally, Secunderabad, shall stand cancelled and the plaintiffs are entitled for recovery of physical and vacant possession of the suit schedule property through process of the Court.

4. A copy of the decree be sent to the Sub-Registrar, Marredpally, Secunderabad as required u/s 31(2) of Specific Relief Act to make necessary endorsement of cancellation of Agreement of Sale-cum-General Power of Attorney dated 1-2-2006, bearing document No. 2380/ 2006 in the concerned register in the event of Clause No.3 hereinabove coming into force in default of payments as per Clause No.1 hereinbove."

4. Subsequently, the Decree Holders filed E.P. seeking eviction of the Judgment Debtors from the suit schedule premises and to deliver vacant peaceful possession of the same after demolishing the structures put up thereon, as per the terms of the said compromise decree. Accordingly, the lower Court ordered for issuance of warrant of delivery of possession.

5. At this stage, the objection petitioners filed E.A.Nos. 59 of 2010 and 62 of 2010 " before the lower Court, under Order 21 Rules 97 and 101 of C.P.C., to declare that the decree dated 22-2-2010 passed in E.P.No.39 of 2010 (sic. 2008) in O.S.No.108 of 2007 is not binding on them; and to grant permanent injunction restraining the Decree Holders and Judgment Debtors from interfering with their possession and enjoyment of the petition schedule property on the ground that (1) they purchased the schedule property from the Judgment Debtors under the registered sale deeds dated 2-5-2009, 9-1-2009 and 11-4-2008 for valuable sale consideration; (2) the alleged compromise decree between the Decree Holders and the Judgment Debtors is a collusive one and it does not bind them; and (3) Section 52 of the Transfer Property Act does not apply to the collusive suits.

6. It was the contention of the objection petitioners that they have no knowledge about the compromise decree. According to them, they have purchased the property from the judgment debtors through the registered sale deeds after making all possible enquiries. They heard rumors that orders were passed in E.P.No.39 of 2008 in O.S.No.108 of 2007, to the effect that Judgment Debtors (respondent Nos.4 to 7 herein) have failed to abide by the terms and conditions of the compromise decree and as such, they will be threatened by the eviction orders. Therefore, they made enquiries and came to know about the litigation and immediately filed the E.As after obtaining necessary papers. It was also their contention that they have entered into an agreement of sale with the Judgment Debtors and purchased the plots much before passing the decree and paid advance consideration and also obtained loans, and that the Decree Holders failed to obtain the endorsement of cancellation of agreement of sale-cum-General Power of Attorney in the registers of the Sub-Registrar's office.

7. The lower Court, after considering the facts and circumstances, dismissed the E.As through the impugned order dated 25-3-2011 holding that such applications are not maintainable and the objection petitioners have no locus standi to file the applications. Aggrieved by the same, the present appeals are filed by the objection petitioners.

8. Sri Prabhakar Peri, learned counsel, appeared for the appellant-objection petitioner in C.C.CA.No. 111 of 2011 and Sri. R. Chandrasekhar Reddy, learned counsel, appeared for the appellant-objection petitioner in C.C.CA.No. 113 of 2011. Both the learned counsel contended that dismissal of the claim petitions through the impugned orders resulted in incapacitation of the objection petitioners in putting forward their evidence before the lower Court, and the lower Court did not go into the mandatory provision of Order 21 Rule 101 of C.P.C., which lays down the procedure for disposal of the claim petition, and therefore, the impugned orders are erroneous, contrary to law and unsustainable.

9. It is further urged that the appellants-objection petitioners are innocent and bona fide purchasers of the petition schedule property for valuable consideration without having knowledge of the earlier litigation between the Decree Holders and the Judgment Debtors and even by virtue of the said compromise decree in

O.S.No.108 of 2007, the agreement of sale-cum-General Power of Attorney executed in favour of the Judgment Debtors is valid and there is no bar on the Judgment Debtors from executing the documents or dealing with the property. It is further urged that the lower Court failed to see that condition No.4 of the joint memorandum of compromise petition remained unimplemented as the Decree Holders have failed to send a copy of the compromise decree to the Sub-Registrar, Marredpally, as required u/s 31(2) of the Specific Relief Act, to make necessary endorsement of cancellation of the agreement of sale-cum-GPA, dated 1-2-2006 in the concerned registers even after failure of the Judgment Debtors to pay the amount as per condition No.1 of the joint memorandum of compromise. The learned Counsel further urged that the lower Court also failed to apply the provisions of Sections 202 to 205 of the Contract Act which clearly state that when the General Power of Attorney is coupled with interest, the same cannot be terminated to the prejudice of the interest of the party/agent.

10. In support of his arguments, Sri Prabhakar Peri, learned counsel, placed reliance on the decisions reported in *Ram Padarath and Others Vs. Second Addl. District Judge and Others*, AIR 1934 104 (Rangoon) , *Janardhan Jaikrishna v. Gangaram Mangalchand* (3) AIR (38) Nagpur 313, *Union of India(UOI) Vs. Motilal Kamalia and Others*, and *Kathoom Bivi Ammal and Another Vs. Arulappa Nadar and Another*, Sri R. Chandra Sekhar Reddy, learned counsel, in support of his contentions, placed reliance on the decisions reported in *A.P. State Co-op. Rural Irrigation Corporation Ltd. Vs. Co-operative Tribunal and Others*, *South Eastern Carriers Private Limited Vs. Mohd. Sarvar*, and *M/s. Dilawari Exporters v. M/s. Alitalia Cargo* (8) 2010 (4) SCJ 115.

11. On the other hand, Sri D. Prakash Reddy, learned senior counsel appearing for the respondents-Decree Holders and judgment Debtors, mainly urged that by virtue of the prohibition under Rule 102 of Order 21 of C.P.C, adjudication under Rule 100 of Order 21 of C.P.C. is not available to a person to whom the Judgment Debtor in the suit has transferred the property after institution of the suit, and thus it is clear that Rule 99 does not come to the rescue of the person who purchases the property from the Judgment Debtor during the pendency of the suit. He further contended that since admittedly the objection petitioners are the transferees of pendente lite, and they are not entitled to resist the execution proceedings as in view of the prohibition under Order 21 Rule 102 of C.P.C, they cannot maintain an application under Rule 99 of (Order 21) C.P.C

12. The learned counsel further urged that the property claimed by the objection petitioners is part and parcel of the suit schedule property, and admittedly they are the transferees of pendente lite from the Judgment Debtors and as such the objection petitioners are bound by the decree passed in the suit and in view of Rule 102 of Order 21 of C.P.C, the objection petitioners are not entitled to get their claim adjudicated. He further urged that the objection petitioners, whose claim is based on the sale deed registered after passing of the decree, have no locus standi to maintain such an application and the present claim petition

demonstrates the extent to which the Courts have become vulnerable to frivolous litigation. The learned counsel further urged that the Judgment Debtors, who executed the sale deeds in favour of the objection petitioners, have no right, title or interest in respect of the petition schedule property in view of the decree passed by the Court in the suit, and the objection petitioners are strangers to the Decree Holders who never had any dealing with the objection petitioners in respect of the petition schedule property. It is further urged that the claim petitions are filed at the behest of the Judgment Debtors with an intention to stall the eviction proceedings knowing fully well that the claim petitions are not maintainable, and there are no bona fides on the part of the objection petitioners in filing the claim petitions. The learned counsel further contended that the objection petitioners have knowledge and notice of the proceedings instituted by the Decree Holders, which is evident from the averments made in the claim petitions, and the appeals are devoid of merits, and liable to be dismissed. In support of his arguments, he placed reliance on the decision reported in Usha Sinha Vs. Dina Ram and Others, wherein it was held that:

"The doctrine of lis pendens is based on the principle that the person purchasing property from the judgment-debtor during the pendency of the suit has no independent right to property to resist, obstruct or object execution of a decree. Resistance at the instance of transferee of a judgment-debtor during the pendency of the proceedings cannot be said to be resistance or obstruction by a person in his own right and, therefore, is not entitled to get his claim adjudicated. The doctrine of lis pendens would apply to the transaction in question, and the High Court was wholly right in holding that the case was covered by Rule 102 of Order 21 CPC. The appellant could not seek protection of pendency of suit instituted by her. The executing court was not justified in granting stay of execution proceedings. Rule 29 of Order 21 CPC deals with cases wherein a suit has been instituted by the judgment-debtor against the decree-holder and has no relevance to cases of lis pendens wherein transfer of property has been effected by the judgment-debtor to a third party during the pendency of the proceedings."

13. While evaluating the rival contentions made by both counsel, the point that arises for consideration is whether the impugned orders, dated 25-3-2011 passed in E.A.Nos.59 of 2010 and 62 of 2010 are sustainable?

POINT:

14. It is the case of the objection petitioners that they have purchased the property from the Judgment Debtors-

respondent Nos.4 to 7 herein, and at the time of purchase of the property, they were given an understanding that respondent Nos.4 to 7 are the agreement of sale-cum-General Power of Attorney holders of respondent Nos.1 to 3, for an extent of 799.98 square yards at Nehru Nagar Cooperative Housing Society Limited, East Marredpally, Secunderabad, and having believed the said

representation, they have purchased two plots (sic. flats) in the apartment after paying valuable consideration to the G.P.A. holders of respondent Nos.1 to 3 and since the date of execution of the sale deed, they are in possession and enjoyment of the property using the same for their residential purpose.

15. The Decree Holders-respondent Nos.1 to 3 did not dispute the agreement of sale-cum-GPA executed in favour of Judgment Debtors-respondent Nos.4 to 7. It is also an admitted fact that the objection petitioners are not parties to the suit in O.S.No.108 of 2007. The alleged compromise is between respondent Nos.1 to 3 and 4 to 7. By virtue of the said compromise, the rights of the G.P.A. Holders were ratified on the date of compromise. It is not in dispute that the Decree Holders are the absolute owners of the suit schedule property in respect of which they have executed an agreement of sale-cum-GPA dated 1-2-2006. As per the said agreement of sale-cum-GPA, the Judgment Debtors have paid an amount of ` 22,00,000/- vide three demand drafts bearing Nos.288919 and 358994 for ` 7,50,000/- each and No. 953018 for ` 7,00,000/- and issued six post dated cheques each for ` 11,00,000/- for the balance amount of ` 66,00,000/-. The conditions of the said compromise were not complied with by the Judgment Debtors by paying the balance amount on or before 30-5-2008. It is also not in dispute that the said compromise was not intimated to the Sub-Registrar, Marredpally, Secunderabad, as required u/s 31(2) of the Specific Relief Act as per Condition No.4 of the joint memorandum of compromise. The Decree Holders filed the execution petition to redeliver the entire property in their favour on the ground of violation of the terms and conditions of the compromise decree by the Judgment Debtors.

16. It is the contention of the objection petitioners from the beginning that the judgment Debtors have sold the plots (sic. flats) on behalf of the Decree Holders only by virtue of the General Power of Attorney and therefore, the Decree Holders are bound by the contracts entered by the Judgment Debtors through the General Power of Attorney. But, the lower Court failed to see that the compromise decree passed in O.S.No.108 of 2007 does not keep the power given to the Judgment Debtors under the agreement of sale-cum-GPA in abeyance and in fact, the Judgment Debtors are at liberty to deal with the property on behalf of the Decree Holders as there is no bar in the compromise decree to do so except for payment of the amount mentioned therein before the stipulated date i.e., 30-5-2003. The objection petitioners are claiming the property not from the Judgment Debtors but from the Decree Holders themselves as the registered sale deed was executed in their favour where the Decree Holders were represented by the General Power of Attorney holders.

17. It is relevant to mention here that even by virtue of the compromise decree in O.S.No.108 of 2007, the agreement of sale-cum-GPA executed in favour of the Judgment Debtors is valid and there is no bar on the Judgment Debtors from executing the documents. Further as per Condition No.4 of the joint memorandum of compromise, the Decree Holders have failed to send a copy of

the decree to the Sub-Registrar, Marredpally, Secunderabad, as required u/s 31(2) of the Specific Relief Act, to make necessary endorsement of cancellation of the agreement of sale-cum-GPA dated 1-2-2006 in the concerned register even after the failure of payment by the Judgment debtors as per condition No.1 of the joint memorandum of compromise. Therefore, non-implementation of condition No.4 of the joint memorandum of compromise is fatal to the contention of the Decree Holders in view of the dictum of the Supreme Court in Ram Padarath's case (1 supra), wherein a Full Bench of the Allahabad High Court (Lucknow Bench) held as follows:

"Section 31 of the Specific Relief Act makes specific provision for cancellation of void as well as voidable instrument. Suits for cancellation of such documents being of civil nature are cognizable by a civil court and even otherwise suits claiming relief provided under Specific Relief Act are entertainable only by a civil court and no revenue Court or any other Court can entertain such a suit including for cancellation of an instrument or documents. Section 31 of the Specific Relief Act reads as under:

Section 31. When cancellation may be ordered-

(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable, and the Court may, in its discretion so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act 1908 (16 of 1908), the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered and such officer shall note on the copy of the instrument contained in his books the facts of its cancellation. Thus one who has reasonable apprehension that any instrument if left outstanding may cause him serious injury can approach a competent Court of law to get it cancelled. Sub-section (2) of Section 31 casts a mandatory duty upon the Court passing a decree to send a copy of the same to the registering officer, who is enjoined by law to make a note on the copy of such document regarding the order of its cancellation passed by a particular Court and after such an endorsement is made, the document becomes legally ineffective and no benefit of the same can be derived by any one. If a certified copy of such a document is issued it would obviously contain the note regarding its cancellation by a Court of law."

18. Therefore, mere recording the compromise is not sufficient for cancelling a registered document. In the case on hand, the lower Court should have seen that the General Power of Attorney should be cancelled by making appropriate endorsement in the concerned register of the Sub-Registrar's office so as to give notice to all the concerned and make the persons like the objection petitioners alert. In the absence of any such endorsement and in the absence of any objection for registration in favour of the objection petitioners, there is no way of

knowing about the prior litigation or that the documents concerned are cancelled. Therefore, in the absence of any endorsement of cancellation of the agreement of sale-cum-General Power of Attorney in the concerned registers of the Sub-Registrar's office, the agreement of sale-cum-GPA is deemed to be valid and subsisting even as on the date of registration in favour of the petitioners.

19. In this regard, it is pertinent to refer to the law laid down by various High Courts. In Maung Lu Gale's case (2 supra), it was held that:

"If the authority of an agent to admit execution of a document is revoked before registration, but such revocation is not known either to the grantee of the document or to the registering officer the document is not invalidated, although it is registered by the agent after the revocation of his authority."

In Janardhan Jaikrishna's case (3 supra), it was held that:

"It is of course true, as has been held by the lower appellate Court, that in so far as third parties are concerned the termination of a contract of agency will take effect only from the time the third party obtained knowledge of it. That is clear from S. 208, Contract Act as well as the decision in Dasarath v. Brojo Mohan, 18 C.L.J. 621."

In A.P. State Co.op. Rural Irrigation Corporation Limited's case (6 supra), this Court held that:

"Agent must have contractual relations with third persons for and on behalf of his principal which must bind the principal. Act of agent in law is not his own but that of principal."

20. According to Section 202 to 205 of the Contract Act, 1872, when the GPA is coupled with interest, the same cannot be terminated to the prejudice of the interest of the party or the agent as the case may be. Though there is a compromise in the suit, there is time stipulated for payment of the amount in the suit, and further there is a condition that in case of failure to pay the amount on or before the stipulated date, the agreement of sale-cum-general power of attorney stands cancelled and a copy of the decree be sent to the Sub-Registrar to make necessary endorsement of such cancellation in the concerned register of the Sub-Registrar's office. The lower Court failed to see that the agent has made a contract with third parties, which is binding on the principal as the authority given by the principal to the agent is deemed to be not revoked till the endorsement is made in the registers of the Sub-Registrar's office which would constitute notice to one and all as per Section 31(2) of the Specific Relief Act and Section 3 of the Transfer of Property Act. Therefore, any cancellation of a registered document should be by a decree of the Court with proper endorsement about the same being recorded in the registers of the Sub-registrar's office, failing which the same cannot amount to notice to the third parties/general public, as such the principal cannot claim any rights under the compromise decree through which the agreement of sale-cum-General Power of

Attorney is said to have been cancelled.

21. In this regard, it is pertinent to refer to the decision relied on by the learned counsel for the objection petitioners reported in Motilal Kamalia's case (4 supra), wherein the Patna High Court held that:

"Where a principal gives an agent, an express authority to do a particular act or class of acts on his behalf, the principal is bound as regards third persons, by every act done by the agent which is so authorized, or which is necessary for the proper execution of such authority, even though the existence of such authority is unknown to the third person. But if any limitation is imposed by the principal on an agent, it would not be binding against third parties unless they are made aware of that. Section 208, Contract Act provides that the termination of the authority of an agent does not take effect so far as regards third persons before it becomes known to them."

In Kathoom Bivi Animal's case (5 supra), the appellant appointed her stepdaughter's husband as her Power of Attorney agent, who, in exercise of the power, executed two mortgages on the suit properties. The mortgages were challenged on the ground that the appellant had cancelled the Power of attorney sufficiently prior to the date of execution of the mortgages. Neither the agent nor the mortgagees knew about the cancellation of the power of attorney. In those circumstances, the Madras High Court held that:

"The mortgages executed by the agent were valid and binding on the appellant. The consideration that it was very unreasonable to expect that the appellant should inform the whole world that she had cancelled the power of attorney given to the person, was not relevant in the face of the clear words of the Section 208 of the Contract Act. The policy of the law, apparently in the interest of trade and commerce, is that the agent's action should bind the principal, even though the principal might have cancelled the agent's authority unless the third person with whom the agent enters into contracts knew of the termination of the agency."

22. The above decisions relied on by the learned counsel appearing for the objection petitioners have direct bearing on the facts of the present case while deciding the matter in right perspective. In view of the above settled principles of law, the objection petitioners should be deemed to be the purchasers from the Decree Holders themselves but not from the Judgment Debtors and as such the claim petitions are maintainable. Therefore, the finding of the lower Court that the objection petitioners are the purchasers from the judgment debtors is totally erroneous. The lower Court has erroneously applied the provisions of Order 21 Rule 101 (sic. 102) of C.P.C. and held that the objection petitioners have got the property transferred from the Judgment Debtors after institution of the suit, in which the decree was passed, and as such they are not entitled to invoke the provisions of Order 21 Rule 91 (sic. 99) of C.P.C. But, the lower Court should have seen that the objection petitioners purchased the property from the Decree

Holders represented by their G.P.A. holders and not from the Judgment Debtors and as such, the provision under Order 21 Rule 102 of C.P.C. has no application to the facts of this case.

23. Hence, we find no force in the argument of the learned counsel appearing for the respondents that the objection petitioners are transferees pendente lite and they are not entitled to resist the execution of a decree for possession since by virtue of the provisions under Order 21 Rule 102 of C.P.C, an application under Rule 19 (sic. 99) of Order 21 of C.P.C. cannot be maintained on any ground.

24. In view of the above reasons, the finding of the lower Court in the impugned orders, while dismissing the claim petitions filed by the objection petitioners at the threshold without going into the merits of the contentions on facts, in our view, is not sustainable. As the objection petitioners filed the E.As, having come to know about the compromise decree obtained behind their back, claiming as bona fide purchasers for valuable consideration, the lower court ought to have given opportunity to them to substantiate their contentions for better adjudication of the matter. Therefore, the impugned orders of the lower Court are erroneous and not sustainable and the same are liable to be set aside.

25. Therefore, the impugned orders of the lower Court dated 25-3-2011 passed in E.A.Nos. 59 of 2010 and 62 of 2010 are set aside, and consequently, the E.As are restored to its files. The matter is remanded to the lower Court directing to dispose of the E.As afresh, on merits in accordance with law, after giving opportunity to both parties, uninfluenced by the observations, if any, made in this order. However, the interim stay granted by this Court in C.C.C.A.M.P.Nos.417 of 2011 and 432 of 2011 is made absolute. Accordingly, both the C.C.C.As are allowed and the vacate stay petitions in C.C.C.A.M.P.Nos.578 of 2011 and 573 of 2011 are dismissed. No order as to costs.