(1961) 09 AP CK 0020

In the Andhra Pradesh High Court

Case No : Letter Patent Appeal No. 129 of 1960 (C.R.P. No. 1560 of 1961 and C.M.P. No''s. 8486 and 9291 of 1961)

Mudragada Suryanarayanamurthi APPELLANT

Vs

Southern Agencies, Rajahmundry and Another RESPONDENT

Date of Decision : 18-09-1961

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 85, Order 21 Rule 86, Order 21 Rule 94, 115, 151

Citation : AIR 1962 AP 271

Hon'ble Judges : P. Chandra Reddy, C.J;Chandrasekhara Sastry, J

Bench : Division Bench

Advocate : P. Venkataramanamurthy, for the Appellant; A. Sambasiva Rao, B. Ramalingeswararao, K. Ramanadham and K.S. Somasekhararao, for the Respondent

Judgement

Chandrasekhara Sastry, J.

(1) The appellant in this appeal is the judgment -debtor in O.S. No. 191/53 on the file of the court of the District Munsif , Rajahmundry. The 1st respondent in the appeal is the decree-holder and the 2nd respondent is the person who bid at the auction held in execution of the decree in E.P. No. 63/55. The sale in execution of the decree in E.P.No. 63/55 on the file of the District court, Rajahmundry was held on 3-8-1957 and the 2nd respondent herein became the highest bidder. He deposited 1/4th of the bid amount on that date as required by Order 21, Rule 84 of the CPC and the balance i.e., 3/4ths of the bid amount within 15 days as required by Order 21, Rule 85 C.P.C. Within the said 15 days, the 2nd respondent deposited for the sale certificate, but the correct amount to be deposited for the general stamp for the sale certificate as calculated with reference to Articles 16 and 20 of schedule I-A of the stamp Act as applicable in the state of Andhra Pradesh was Rs. 45/- and not Rs.36/- . When this mistake was discovered, the 2nd respondent deposited the balance of Rs. 9/- towards the general stamp on 8-10-1957. This admittedly, is beyond 15 days prescribed by

Order 21, Rule 85 C.P.C.

The appellant filed in the District court, East Godavari at Rajahmundry, E.A. No. 144/57 praying to set aside the sale held on 3-8-1957. In the affidavit filed in support of the application, it was alleged that the decree-holder brought his properties to sale and got them purchased in favour of the 2nd respondent, who was his clerk, for the benefit of the decree-holder himself and that the decree-holder did not obtain the permission of the court to bid at the auction. It was also alleged that the property was knocked downfor a nominal price and that there were no outside bidders. It was further alleged that the 2nd respondent deposited only Rs. 36/- towards the general stamp for sale certificate whereas he had to deposit Rs.45/- within 15 days from the date of the sale as required by Order 21, Rule 85 and that the balance of Rs. 9/- was deposited beyond the prescribed period. It was also alleged that the proclamation and publication were not proper. Therefore, it was prayed that the sale held on 3-8-1957 be set aside. The application was filed under Order 21, Rule 86 and S.151 C.P.C.

By his order dated 19-11-1957, the Additional District Judge, East Godavari at Rajahmundry, directed the appellant to deposit the sale warrant amount within 15 days from that date and directed that in default of such deposit, the petition (E.A. 144/57) stands dismissed. The application, E.A. 144/57 was again called on 16-12-1957 and was dismissed. On that date itself, the sale was confirmed and part satisfaction for Rs. 1125/- was recorded.

Against these offers, the appellant filled C.M.A.. 2.58. This was heard by our learned brother, Sanjeeva Row Nayudu , J., who dismissed the appeal with costs on 16-11-1960. Vide Mudrageda Suryanarayanamurthi Vs. Southern Agencies, Rajahmundry and Another, . It was contended before thelearned Judge that the full amount required for the general stamp was not deposited before the Court closed on the 15th from the date of the sale of the property as required by Order 21, Rule 85 C.P.C. This contention was rejected by our learned brother, Sanjeeva Row Nayudu J., and the appeal was dismissed. This appeal is filed by the appellant against that judgment under Clause 15 of the Letters Patent.

(2) One of the questions raised before our learned brother Sanjeeva Row Nayudu, J., was whether an appeal lay against the order dismissing E.A. No. 144/57 and it was suggested before him that the appeal might be treated as one against the order recording part satisfaction of the decree. When the same objection was raised before us, the appellant filed C.M.P. No.8486/61 before us praying to treat it as a Civil Revision petition against the order dated 16-12-1957 dismissing E.A. No.144/57 after excusing the delay. Subsequently, he has presented a Civil Revision petition with a petition to excuse delay (C.M.P. No. 9291 of 1961). Since it is not quite clear whether an appeal lay against the said order, we execuse the delay in filing the Civil Revision Petition against the order dated 16-12-1957 dismissing E.A. No. 144 of 1957 and take on file the C.R.P. Therefore, it is not necessary for us to decide the question whether an appeal lay against the said order.

(3) The question that arises for determination in this case is whether the sale of the appellant''s property held on 3-8-1957 in E.P. 63/55 by the District Court, East Godavari at Rajahmundry and in execution of the decree in O.S. No. 191-53 on the file of the District Munsif''s Court, Rajahmundry is a nullity and has to be set aside as the amounts mentioned in Order21, Rule 85, C.P.C. were not deposited in full before the court closed on the 15th day from the date of the sale of the property. Under Rule 84 of Order 21:

"On every sale of Immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty five percent on the amount of his purchase-money to the officer or other person conducting the sale, and in default of such deposit, the property shall fortwith be re-sold"

In the present case, the required deposit of twenty five percent on the amount of the purchase money was deposited and the conditions of this rule are satisfied. But R. 85 of O.21, as amended in Madras and which is applicable to Andhra Pradesh is as follows:

" The full amount of purchase money payable and the general stamp for the certificate under Rule 94 or amount required for such stamp, shall be deposited into court by the purchaser before the court closes on the fifteenth day from the sale of the property:

Provided that in calculating the amount of purchase money to be so deposited, the purchaser shall have the advantage of any set off to which he maybe entitled under Rule 72"

The provision has no application to the present case as the purchaser is not a decree-holder and has not the advantage of any set-off under Rule 72; under Rule 85 Order 21, the person declared to be a purchaser shall deposit into court not only the full amount of the purchase money payable , but also the amount required for the general stamp for the certificate under Rule 94 before the court closes on the fifteen day from the date of the sale of the property. But the purchaser in this case deposited only Rs.36/- for the general stamp whereas he had to deposit Rs. 45/-. The deficit of Rs. 9/- was deposited on 8-10-1957 long after the fifteen days period prescribed by the Rule 85 of Order 21 expired.

(4) Rule 86 of Order 21 is as follows :

" In default of payment within the period mentioned in the last preceding rule, the deposit may, if the court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the property or to any part of the sum for which it may subsequently be sold''

Under this rule, the property shall be re-sold in default of payment within the period mentioned in the last preceding rule. At the same time, the court is given a discreation to forfeit to the Government the amount deposited by the purchaser after deducting the expenses of the sale. But , in this case, the court accepted the deficit of Rs.9/- for purpose of the general stamp for the certificate under Rule 94 and confirmed the sale after dismissing E.A. No.144/57 filed by the appellant to set aside the sale. The question is whether, in view of the admitted fact that the entire amount required for the general stamp was not deposited within the fifteen days from the date of sale by the purchaser,it can be said that there is a sale under these rules and whether the court was not bound to resell the property as prescribed by Rule 86.

The language of Rules 84, 85, and 86 is mandatory. Under Rule 84, twenty five percent of the amount of the purchase money shall be deposited immediately after the person is declared to be the purchaser and in default of such deposit, the property shall forthwith be re-sold. Similarly, under Rule 85, the full amount of the purchase money payable as well as the amount required for the general stamp for the certificate under Rule 84 shall be deposited into court before the court closes on the fifteenth day from the date of the sale of the property. In default of payment within the period mentioned in Rule 85, the property shall be re-sold under Rule 86.

The payment mentioned in Rule 86, is, in our opinion, the payment of the amounts that are required to be deposited under Rule 85, including the full amount required for the general stamp for the sale certificate. That the "Payment" referred to in Rule 86 is not merely the payment of the full amount of the purchase money but refers also to the amount required for the general stamp for the certificate under Rule 94 is clear also from Rule 87 as amended in Madras, Kerala and Andhra Pradesh which is as follows :

Very re-sale of immovable property, in default of payment of the amounts mentioned in Rule 85 within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period herein before prescribed for the sale".

Rule 87, as unamended, refers to default of payment of purchase money only within the period allowed for such payment. But Rule 87, as amended provides that in default of payment of the "amounts mentioned in Rule 85" within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period herein before prescribed for the sale".

Rule 87, as unamended, refers to default of payment of purchase money only within the period allowed for suchpayment. But Rule 87, as amended, provides that in default of payment of the "amounts mentioned in Rule 85" within the period allowed for such payment, every re-sale of immovable property shall be made after the issue of a fresh proclamation. The use of the words "amounts mentioned in Rule 85" in the amended Rule 87, makes it clear that in default of payment of the full amount of the purchase money and also the full amount required for the general stamp for the certificate within the period mentioned in Rule 85, the property shall be re-sold. Admittedly , in the present case, the full amount required for the general stamp for the certificate which has to be issued under Rule 94 was not deposited within the period mentioned in Rule 85. Therefore, the court was bound under Rule 86 to resell the property. The court has no discretion in the matter as Rules 85 and 86 are mandatory. The only discretion which the court has under Rule 86 is in deciding whether or not it will forfeit the amount deposited to the Government.

(5) That these Rules 84,85 and 86 are mandatory and that the court has no jurisdiction to extend the period fixed in Rules 84 and 85 for the deposit of the respective amount mentioned in those rules is finally decided by the supreme court in Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another, . The question that was posed for decision by the supreme court in that case was whether the failure to make the deposit under Order 21, Rules 84 and 85 is only a material irregularity in the conduct of the sale which can only be set aside under Rule 90 orwhether it is wholly void. The default, which occurred in that case, was with regard to the deposit of twenty five percent on the amount of the purchase money immediately after the person was declared to be thepurchaser as required by Rule 84.

After referring to Rules 84 and 85, the supreme court held that both the deposit andpayment of the purchase-money being mandatory under the combined effect of Rules 84 and 85, the court has the discretion to forfeit the deposit, but it was bound to re-sell the property with the result that, in default, the purchaser forfeited all claim to the property. The supreme court further held that :

" These provisions leave no doubt that unless the deposit and the payment are made as required by the mandatory provisions of the rules, there is no sale inthe eye of law in favour of the defaulting purchaser and no right to own and possess the property accrues to him:"

Later in its judgment, the supreme court stated that in its view.

"the provisions of therules requiring the deposit of 25 percent of the purchase money immediately on the person being declared as a purchaser and the payment of the balance within 15 days of the sale are mandatory and upon noncompliance with these provisions there is no sale at all. The rules do not contemplate that there can be any sale in favour of a purchaser without depositing 25 percent of the purchase money in the first instance and the balance within 15 days. When there is no sale within the contemplation of irregularity in the conduct of the sale. Non -payment of the price on the part of the defaulting purchaser renders the sale proceedings as a complete nullity. The very fact that the court is bound to re-sell the property in the event of a default shows that the previous proceedings for sale are completely wiped out as if they do not exist in the eye of law".

In our view, the point is no longeropen to argument in view of this decision of the supreme court.

(6) But it is argued by the learned counsel for the respondents that Rule 85 was

amended in Madras by requiring the purchaser to deposit alsothe amount required for the general stamp for the certificate under Rule 94, whereas under the Rule, as it originally stood, the purchaser had to deposit only the full amount of the purchase money. But Rule 86 itself was not amended by requiring that the property shall be re-sold in default of the payment of the amount required for the stamp duty also. It is contended that, therefore, the decision of the supreme court in the above case does not apply, as it was a decision under Rule 85 as it stands unamended.

we are unable to accept this contention. R.86 refers to the default in payment within the period mentioned in the last preceding rule i.e., Rule 85. The question is what is the payment contemplated by Rule 86. The payment obviously is the payment of the amounts mentioned in Rule 85 within the period of 15 days prescribed by that rule. No distinction, in our view, can be drawn between the payment of the full amount of the purchase money and the payment of the full amount required for the general stamp for the certificate. In default of the payment of either amount in full within the prescribed period, the property shall be re-sold under Rule 86.

(7) The learned counsel for the respondents relied upon a decision in Dandigunta Venkataramaiah and Another Vs. Dandigunta Audinarayanaiah and Others, and contended that the court had jurisdiction under under 21, Rule 85 to extend the time for depositing the amount required for the general stamp for the certificate under Rule 94. But we find that this decision is not an authority for the position contended for by the learned counsel.

On the other hand, it is pointed out by Rajamannar C.J., who delivered the judgment of the Court, that if the auction purchaser does not comply with the provisions of Order 21, Rule 85, he cannot insist on complying with it after the lapse of the prescribed time and demand that the sale in his favour should be confirmed. But, as pointed out by the learned Chief Justice, what happened in that case was that the sale was confirmed in accordance with a compromise between the parties and subsequently the court had condoned the delay in depositing the amount required for stamps for the sale certificate. It was also pointed out in that decision that there was a prior application filed by the judgment-debtor to have the sale set aside on the very same ground and that the said application was dismissed and that the order of dismissal was confirmed by the High Court in revision and that the said order was binding on the plaintiffs in that case.

Reliance also is placed on the decision in subramanyam Varankkot Illath Subramaniyam Nambudri, Karnavan and Manager of the Illom Vs. V.K. Vykunda Kammathi and Others, for the proposition that if the court did extend the time for the payment of the balance of the sale consideration, the sale cannot be regarded as a nullity. But this decision would no longer be good law in view of the decision of the Supreme Court in Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another, referred to above.

We, therefore, hold that the court had no jurisdiction to extend the time prescribed by Rule 85 of Order21, either for depositing the full amount of the purchase-money or the full amount required for the general stamp for the certificate under Rule 94 and that in default of the deposit of either amount , the court was bound to re-sell the property. Therefore, the sale held on 3-8-1957 in this case are " a complete nullity" and are "completely wiped out as if they do not exist in the eye of law".

We must point out that the court had no jurisdiction to direct the appellant to give security for the sale warrant amount or to deposit the sale warrant amountwhen the appellant filed an application to set aside the sale under Order 21, Rule 86 C.P.C. It would have jurisdiction to make such an order only if the application was filed to set aside the sale under Order 21, Rule 90 C.P.C.

(8) We, therefore, in the exercise of our revisional jurisdiction, set aside the order dated 16-12-1957 dismissing E.A. No. 144/57 which was confirmed in C.M.A. 2/58 as well as the order dated 16-12-1957 confirming the sale. We direct the parties tobear their own costs throughout, that is, in the L.P.A. 129/60, in the C.M.A. 2/58 and in E.A. 144/57. We also direct under Order 21, Rule 86 C.P.C. that all the amounts deposited by the 2nd respondent-auction-purchaser after defraying the expenses, of the sales shall be refunded to the auction purchaser.

(9) Order accordingly.

