
(1960) 11 AP CK 0004
In the Andhra Pradesh High Court
Case No : A.A.O. No. 2 of 1958

Mudrageda Suryanarayanamurthi	APPELLANT
Vs	
Southern Agencies, Rajahmundry and Another	RESPONDENT

Date of Decision : 16-11-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 85, Order 21 Rule 86

Citation : AIR 1961 AP 480

Hon'ble Judges : Sanjeeva Row Nayudu, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

Sanjeeva Row Nayudu, J.—This C. M. A. appears to have been directed against the orders of the District Judge, East Godavari, Rajahmundry, dated 16th December, 1957, passed in E.A. 144/57 and E.P. 63/55 in O.S. 191/1953 on the file of the Court of the District Munsiff Rajahmundry.

2. The facts relating to this appeal may be briefly stated: -

The properties of the appellant who was the judgment-debtor in E.P. 63/55 in O.S. 191/53 aforesaid, were brought to sale by the District Judge's Court, Rajahmundry in execution of the said decree and were sold on 3-8-1957. The auction-purchaser deposited 1/4th of the sale consideration on the day of the sale, and subsequently the remaining 3/4ths, within fifteen days as required by Order 21, Rule 85 C. P. C. While making the payment of the sale consideration, he also deposited a sum of Rs. 36/- towards the general stamp for the sale certificate, under the impression that all that he had to deposit was 3 per cent of the value of the sale consideration which amounted to Rs. 36/-.

The correct amount as calculated with reference to Arts. 16 and 20 of Schedule 1-A of the Stamp Act as applicable in the Andhra Pradesh State was Rs. 45/-, and

not Rs. 36/-. Discovering this mistake, the auction-purchaser deposited the further sum of Rs. 9/- some days later on 8-10-1957. Contending that the failure to deposit the full value of the general stamp or the full amount required for the general stamp within the time allowed by Order 21, Rule 85 C. P. C. amounted in effect to a violation of the mandatory provision, and that, consequently, the sale must be regarded as having been wiped out, the present appellant filed E.A. 144/57 praying for the sale being set aside.

When this application came on for hearing before the Court below, the petitioner was absent and his advocate reported no instructions. Thereupon the order was made dismissing the petition with costs. This order, it is admitted, is not appealable, and no revision petition has been preferred against the same. Further, the order itself could not be questioned on the merits because it is not disputed that the Petitioner was absent, nor is it disputed that the petitioner's advocate reported no instructions and consequently, the only proper and valid order to have been made in the circumstances was to dismiss the petition, and no exception could be taken to that order, in law. When this objection was pointed out to the learned counsel for the appellant, he took his stand on the ground that the appeal was also against the order on the execution petition 63/55 recording part satisfaction of the decree on the basis of the sale held in the case, and the (consideration being adjusted against the decree.

3. His contention is that the sale itself must be regarded as non-existent, and must be deemed to have disappeared on the failure of the auction-purchaser to deposit into Court the full value of the general stamp payable on the sale certificate to be issued in his favour in regard to the sale. Apart from the objection that there could not be a single appeal against two orders and assuming that the present appeal is only an appeal against the order on the execution Petition u/s 47, C. P. C., the point that arises for consideration is, whether the delay in depositing the full amount representing the general stamp on the sale certificate would result in the sale itself being regarded as non-existent. In this connection, it is necessary to refer to Order 21, Rules 85 and 86 C. P. C. which are as follows:-

Rule 85: "The full amount of the purchase-money payable and the general stamp for certificate under Rule 94 or the amount required for such stamp shall be deposited into Court by the purchaser before the Court closes on the fifteenth day from the date of sale of the property:

Provided that in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set off to which he may be entitled under Rule 72."

Rule 86: "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 defaulting purchaser shall forfeit all claim to the

property or to any part of the sum for which it may subsequently be sold."

4. It is contended by Mr. Venkataramanamurthy, the learned counsel for the appellant, that Rule 85 as amended by the Madras Amendment required two things to be done by auction-purchaser:

(1) payment into Court of the balance of sale consideration namely 3/4ths of the total bid amount;

(2) the depositing of the general stamp for the sale certificate under Rule 94, or in lieu of it the amount required for such stamp and that both these things should be done before the Court closes on the fifteenth day from the date of sale of the property, and that if these are not done, the mandatory provision contained in Rule 86 would come into operation and the Court is bound to resell the property.

The question, therefore, that arises for consideration is whether the mandatory provision in rule 86 could be held to have come into operation not only when default is committed in depositing the balance of sale consideration by the auction purchaser, but also if he committed default in depositing the general stamp or the money equivalent thereof within the time allowed, notwithstanding the fact that he had complied with the requirement of the deposit of sale consideration.

5. In this connection, it should be noted that Rule 86 has not been in any manner amended by the Madras Amendment, consequent upon the amendment to Rule 85. In order to make a proper appreciation of the legal position, it is necessary to consider how Rule 85 stood before it was amended by the Madras Amendment, and this is how the Rule was before it was amended:-

"The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property:

Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set off to which he may be entitled under Rule 72."

Reading this rule in juxtaposition with Rule 86 it is not difficult to conclude that the payment referred to in Rule 86 related to the Payment that was referred to in Rule 85 as it stood before it was amended, and the rule as it now stands in other States other than Madras and Andhra Pradesh, that is the default in payment of the purchase-money payable had no manner of connection with the payment or the default in the payment of the general stamp or the money equivalent thereof. By not amending Rule 86, the Legislature obviously did not contemplate any widening of the scope of Rule 86 as it stood before the amendment, so that, it is only reasonable and correct to conclude that even after the amendment of rule 85, the operation of rule 86 remained the same, and must be deemed to apply only to the default in payment of the sale consideration. In other words, if there is default in payment of the sale consideration, as the Court is bound to resell the

property, the conclusion follows that the sale must be deemed to have been wiped out, consequent on the default in making the payment of sale consideration.

In addition to this consequence of the Court being bound to resell the property, the Court is also given the discretion of forfeiting the deposit made by the auction-purchaser at the time of the bid, namely, 1/4th of the purchase-money, with the added consequence of the defaulting purchaser forfeiting all claim to the property or to any part of the sum which may be realised by the subsequent sale. Hence, in my opinion, the Madras Amendment to Rule 85 has no effect on Rule 86 and did not enlarge the scope thereof. In that view, the consequences contemplated by Rule 86 would only come into play if there is a default in payment of the purchase-money and not for any other reasons.

6. The same conclusion would be reached by an examination of the basis of the Rule 86. If the purchaser commits default in paying the sale consideration, the law declares the sale to be non-existent and requires the property to be resold. This is because the default of the auction-purchaser has a direct effect on the rights of the judgment-debtor as well as the decree-holder in the execution of whose decree the property came to be sold.

Whereas, if there is no default in payment of the purchase-money within the time allowed, the rights of the judgment-debtor and the decree-holder are not in any way affected; and if there is default only in the payment of the general stamp or the value thereof, the only person affected is the auction-purchaser because of the consequential delay in the issue of the sale certificate to him.

By such default neither the decree-holder nor the judgment-debtor is in any way prejudicially affected. Hence a default in depositing the value of the sale certificate stamp ought not to make any difference in the matter of the sale that has been validly held and when the full sale consideration has been realised from the auction-purchaser within the time allowed.

7. Mr. Venkataramanamurthy placed reliance on the decision of the Supreme Court reported in *Manilal Mohanlal Shah and Others Vs. Sardar Sayed Ahmed Sayed Mahamad and Another*, . This decision lays down that the default in paying the sale consideration under Order 21 Rule 85 C. P. C. ipso facto results in the wiping out the sale under Order 21, Rule 86, and, therefore, the Court is bound to hold a resale, and that it would have no jurisdiction to extend the time in making the payment contemplated by Rule 85.

This is the only conclusion that could be reached on a reading of Order 21 Rules 85 and 86 but that decision is not authority for the position contended for by Mr. Venkataramanamurthy that, even in the event of a delay or default in depositing the general stamp for the sale certificate the sale must be deemed to have been wiped out under Order 21, Rule 86. That question was not considered in that case for the simple reason that their Lordships were dealing with a case arising from the Bombay State under Order 21 Rule 85 without any amendment similar

to the one in force in the Andhra Pradesh State.

Mr. Sambasivarao, the learned counsel for the respondent, invited my attention to the decision of the Madras High Court reported in *Dandigunta Venkataramaiah and Another Vs. Dandigunta Audinarayanaiah and Others*, which is a case on all fours with the present one, for, in that case the decree-holder purchaser failed to deposit within the time into Court, the stamp or the amount required for stamp for the sale certificate under Order 21, Rule 85, and their Lordships Rajaman-nar, C.J., and Venkatarama Ayyar, J., held that this failure could not result in the automatic cancellation of the sale under Order 21 Rule 86 C. P. C.

8. It is true in that decision reference is made to *Varankkot Illath Subramaniam 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 of course be no longer good law, in view of the Supreme Court decision above referred to.

9. But still *Dandigunta Venkataramaiah and Another Vs. Dandigunta Audinarayanaiah and Others*, is an authority for the Proposition that the Court has power to extend time for making the deposit of the amount required for the general stamp for the sale certificate, and the failure to so deposit or the granting of extension of time for making the deposit would not have the effect of rendering the sale a nullity. I respectfully follow the conclusions reached by their Lordships in that case and hold that the omission of the auction-purchaser in not depositing the correct amount representing the general stamp in this case cannot have any effect whatsoever on the validity of the sale held, once the condition required by Order 21, rule 85 namely the deposit of sale consideration in its entirety within the time allowed, has been complied with.

10. In the result this appeal fails and is dismissed with costs.