

(1995) 10 AP CK 0019

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3593 of 1992

Neti Venkatanarayanamma and Others

APPELLANT

Vs

Nune Ramanna

RESPONDENT

Date of Decision : 11-10-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1, Order 21 Rule 2(2A), Order 21 Rule 66, Order 21 Rule 66(2), 47

Citation : (1995) 3 ALT 572

Hon'ble Judges : Maithili Sharan, J

Bench : Single Bench

Advocate : Durga Prasad, for the Appellant; I. Nagesh, for the Respondent

Judgement

Maithili Sharan, J.—This is Judgment Debtors" revision petition against the impugned order dated 25-9-1992 in E.P. No. 8 of 1992 in O.S. No. 145 of 1989 on the file of the Subordinate Judge, Rajahmundry, over-ruling the objections raised by the Judgment Debtors.

2. Briefly stated the facts of the case may be summarised thus: The respondent filed suit O.S. No. 145 of 1989 against the petitioners for the recovery of money on the basis of a mortgage of the suit schedule property i.e. house executed by the petitioners in his favour. The said mortgage suit was decreed and a final decree was passed on 23-8-91. Thereafter, the respondent filed the present Execution Petition for the decretal amount of Rs. 64,671-25ps. which includes interest, costs of the suit and E.P. costs, A counter-affidavit was filed by the petitioners-Judgment Debtors raising three objections, namely, (1) they had paid Rs. 10,000/- to the Advocate of the Decree Holder on 28-2-1991 and obtained a receipt from the Advocate of the Decree Holder, they also filed the receipt in the Court; (2) the calculations shown in the execution petition were not as per the decree and even the interest calculated was excessive of the amount granted in the decree and (3) the mortgaged property i.e. house was worth Rs. 7,50,000/- and hence the whole of the house could not be sold in execution of the decree. A

valuation report dated 8-6-92 by one Lakshmi Consultants was also filed in this regard. Besides a certificate of market value of the site from the Office of Sub-Registrar was also obtained and filed in support of this contention. It is pertinent to note that on 24-7-1992 the said execution petition was posted for appearance of the Judgment Debtors, objections were filed by them on 21-9-1992 and after four days i.e. on 25-9-1992 the impugned order was passed. Aggrieved by the said order, the Judgment Debtors have preferred this revision petition.

3. I have heard the learned Counsel on both the sides and have carefully gone through the record of the case.

4. The learned Counsel for the petitioners has vehemently contended firstly, that no opportunity was given to the judgment debtors to adduce and prove the evidence in their favour to the effect that they had paid Rs. 10,000/- to the advocate of the decree holder and also to the effect that the market value of the mortgaged house in question was approximately Rs. 7,50,000/- . He has further argued that the petitioners were not even given an opportunity to prove the documentary evidence filed by them in support of their objections raised before the executing Court. Besides, to substantiate his contention, the learned Counsel for the petitioners has also drawn my attention to the provisions of Order XXI Rules 1,2(2 A) and 66 of the Code of Civil Procedure. Looking to the legal position involved in the case, I find substance in the argument advanced by the learned Counsel for the petitioners.

5. Order XXI Rule I(b) of the CPC lays down that in a money decree, the payment may be made "out of Court, to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing" and Rule 2(2A) states that "no payment or adjustment shall be recorded at the instance of the judgment-debtor unless-(a) the payment is made in the manner, provided in Rule 1". Thus, applying this principle, in the instant case, it appears that if the judgment debtors had got a receipt in their favour from the advocate of the decree holder in regard to the payment of Rs. 10,000/- it would be worthwhile to put it to actual proof so that it could come to light as to whether actually the alleged amount had been paid or not. But, no opportunity was given to the Judgment Debtors to prove this fact. Secondly, regarding the sale of the mortgaged property, it is worthwhile to note that, before the actual sale, it has got to be decided as to what portion and how much portion of the property was required to be sold so as to satisfy the E.P. amount and, in this connection, it is much relevant to first find out and pin-point as to what the actual E.P. amount is. Since the judgment debtors had raised an objection in this regard concerning the calculation of the interest, then, it was incumbent upon the executing Court, in view of the mandatory provisions laid down u/s 47 of the Code of Civil Procedure, to reach to a conclusion as to what the actual E.P. amount is, and unless that is done, it cannot be ascertained as to which portion of the mortgaged property would be required to be sold in execution. Be that as it may, it is also curious to note that the executing Court has held that the question whether the entire

property is to be put to auction or a portion thereof has to be put to auction could be decided at the time of the sale depending upon the bidders and the feasibility of bifurcation of the schedule property into different portions. I am afraid, prima facie, this is the erroneous approach adopted by the executing Court, obviously because it is incumbent upon the executing Court to dilate on these issues first and then only the property or a portion of the property would be put to sale. The approach of the executing Court is clearly against the provisions of Order XXI Rule 66 of the Code of Civil Procedure.

6. In view of the above discussion, it appears but clear that the executing Court had been in much haste to pass the impugned order without giving any opportunity to the judgment debtors in this regard. Thus, the impugned order is liable to be set aside. Therefore, it is hereby set aside and this revision petition is allowed. The executing Court is directed to decide the objections raised by the Judgment debtors on merits after giving them an opportunity for adducing evidence in this regard. No costs.