(2009) 07 AP CK 0059

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 5330 of 2003

P. Bangaruthalli APPELLANT

Vs

Piratla Suryanarayana and Sons and Another RESPONDENT

Date of Decision : 21-07-2009

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 38 Rule 5, 151, 73

Citation : (2009) 6 ALD 49 : (2009) 5 ALT 639

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Gudapati Venkateswara Rao, for the Appellant; P.R. Prasad, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner filed O.S. No. 51 of 1989 in the Court of Senior Civil Judge, Vizianagaram, against the second respondent, for recovery of certain amount. The suit was decreed and after the decree became final, the petitioner filed E.P. No. 89 of 1998. Even during the pendency of the suit, an item of immovable property was got attached before judgment under Order 38 Rule 5 CPC. The same was brought to sale on 23.04.2003. At that stage, the first respondent filed E.A. No. 184 of 2003 u/s 73, read with Section 151 CPC. He pleaded that he filed O.S. Nos. 82 of 1993 and 213 of 1994 in the Court of Junior Civil Judge, Vizianagaram, for recovery of Rs. 26,348/- and Rs. 50,467/- respectively, and that the said decrees have become final. It was alleged that the decrees were transmitted from the Court of Junior Civil Judge, Vizianagaram to the Court of Senior Civil Judge of that place and thereafter, E.P. No. 84 of 2002 was filed for execution thereof. The first respondent wanted rateable distribution of sale proceeds.

2. The petitioner opposed the application stating that the application is not maintainable, on the ground that the decrees are of different Courts and that EP was not filed by the time the property was sold by the Executing Court by virtue

of attachment. The trial Court allowed the I.A. through an order, dated 19.08.2003. The same is challenged in this civil revision petition.

3. Sri G. Venkateswar Rao, learned Counsel for the petitioner, submits that the application filed by the first respondent is not maintainable in law and that the order under revision is opposed to Section 73 CPC. He further submits that there was absolutely no basis or justification to the Court in directing rateable distribution of sale proceeds.

4. Sri P.R. Prasad, learned Counsel for the respondent, submits that his client has also obtained the decrees against the second respondent and the very object of Section 73 CPC is to provide for rateable distribution of sale proceeds.

5. The petitioner obtained decree against the respondent in the Court of Senior Civil Judge, Vizianagaram. An item of immovable property was attached before judgment, and after the decree became final, sale of the property was effected. The first respondent, on the other hand, filed suits in the Court of Junior Civil Judge at the same place. It is not known as to under what circumstances and on what basis, he got the decrees transferred to the Court of Senior Civil Judge. Normally, one comes across the instances of decrees being transferred from one place to another place, for effective enforcement of the decree. Even where such transfer is made, it would be to the Court of same or equivalent jurisdiction. Transferring of a decree from one Court to another, at the same place, is somewhat unknown. In the instant case, the decree passed by a Court of Junior Civil Judge at Vijayanagaram is said to have been transferred to the Court of Senior Civil Judge, of the same place. That, however, to be the aspect altogether.

6. Section 73 CPC provides for rateable distribution of sale proceeds among various decree holders. The provision reads as under:

Proceeds of execution sale to be rateably distributed among decree holders.

(1) Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons:

Provided as follows:

(a) Where any property is sold subject to a mortgage or charge, the mortgagee of incumbrancer shall not be entitled to share in any surplus arising from such sale;

(b) Where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold;

(c) Where any immovable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of the sale shall be applied-

Firstly, in defraying the expenses of the sale;

Secondly, in discharging the amount due under the decree;

Thirdly, in discharging the interest and principal moneys due on subsequent incumbrances (if any); and

Fourthly, rateably among the holders of decrees for the payment of money against the judgment-debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

(2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

(3) Nothing in this section affects any right of the Government.

7. While the main provision mandates that the sale proceeds shall be distributed rateably, the proviso carves out exceptions, to the same. The request for rateable distribution can be acceded to, only when applications are made to the same Court for execution of decree for payment of money, and it is asserted that, the decrees were not satisfied by the time the assets held by the Court are put to sale. Even where the conditions mentioned in Sub-rule (1) of Section 73 CPC are complied with, the proviso assumes significance. Clause (c) of the proviso gets attracted to the facts of the case.

8. It is not in dispute that item of immovable property was attached in the suit filed by the petitioner. Hence, there exists an incumbrance upon it, in the form of a decree. It is only after incumbrance is discharged, that the remainder of the sale proceeds can be distributed among others. The Executing Court did not appreciate the scope and ambit of Section 73 CPC properly and directed rateable distribution of the sale proceeds. There would have been justification for ordering distribution of any amount out of the sale proceeds, after the decree in favour of the petitioner is satisfied.

9. The Civil Revision Petition, is accordingly, allowed. The order under revision is set aside. There shall be no order as to costs.