

(2009) 11 KL CK 0062
In the High Court Of Kerala
Case No : C.R.P. No. 603 of 2008

Perinthalmanna Taluk Rural Housing Co-op. Society	APPELLANT
Vs	
Unnikrishnan	RESPONDENT

Date of Decision : 18-11-2009

Acts Referred:

Civil Procedure Code Amendment Act, 1976 — Section 97
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 85, Order 21 Rule 89, Order 21 Rule 90, Order 21 Rule 91, Order 21 Rule 92
Limitation Act, 1963 — Article 134

Citation : (2010) 1 KLT 124

Hon'ble Judges : S.S. Satheesachandran, J

Bench : Single Bench

Advocate : Wilson Urmese, for the Appellant;

Final Decision : Dismissed

Judgement

S.S. Satheesachandran, J.—The decree holder in E.P. No. 14 of 2004 in A.R.C. No. 1531 of 2002-03 on the file of the Munsiff Magistrate Court, Perinthalmanna is the revision petitioner. Revision is directed against the order dated 29.2.2008 passed by the execution court declining the request made by the decree holder for resale of the property. The decree holder pursuant to permission accorded, purchased the property of the judgment debtor in court auction and the sale was confirmed on 16.11.2004. However, the decree holder failed to produce the stamp paper for issue of sale certificate. Nearly three years later, the decree holder moved an application for setting aside the sale requesting for resale of the property for the reason of non-production of the stamp paper for the issue of sale certificate. The execution court, after hearing the counsel for the decree holder, dismissed that application. Propriety and correctness of that order is challenged in the revision.

2. I heard the counsel for the petitioner. Having regard to the submissions made and the facts and circumstances presented, I find no notice to the respondents is

necessary and it is dispensed with. Learned Counsel for the petitioner relying on Order 21 Rule 85 of the CPC submitted that where there is default in deposit of the sale price after setting aside the sale, property has to be resold. Provision under that rule is applicable even where there is failure or omission to reproduce the stamp paper after the confirmation of the sale is the submission of the counsel. Learned Counsel has relied on *Joseph v. Central Bank of India* 1987 (2) KLT 539 to contend that on the default of the decree holder to produce the stamp paper for issuing the certificate, the sale has to be treated as nullity. According to the learned Counsel, the execution court went wrong in declining the request of the decree holder in resale of the property treating the previous sale as a nullity on default of the decree holder in producing the stamp paper. I do not find any merit in the submission made by the counsel. The decision relied by the counsel dealt with the question whether on default of the deposit of the purchase money together with the amount required for the general stamp paper for the certificate to be issued, what would be the consequences on the sale already conducted by the court. In such circumstance, it was held that such default would make the sale a nullity. It is to be noticed that the decision relied on by the learned Counsel was rendered without taking note of the amendment brought to the CPC under the Amendment Act 104 of 1976. Rule 85 of Order 21 as applicable to Kerala in view of the substitution by the notification published in Kerala Gazette dated 21.12.1965, prior to the Amendment Act 104 of 1976, contemplated deposit of the full amount of the purchase money with the amount required for the general stamp paper for the certificate under Rule 94 by the purchaser before the court closes on the 15th day from the date of the sale of the property. By virtue of the Amendment Act 104 of 1976, the above substituted Rule became inconsistent and conflicting with the provision covered by Act 104 of 1976. Section 97 of the Amendment Act 104 of 1976 spell out that any amendment made or any provision inserted in the Principal Act by a State Legislature or a High Court before the commencement of the Act shall except in so far as in such later provision is inconsistent to the provisions of the Principal Act as amended by the Act shall stand repealed. Rule 85 Kerala was inconsistent with the Rule 85 under the Amendment Act 104 of 1976, which contained no stipulation as to payment of the amount for stamp paper with the deposit of the full amount of the purchase price within 15 days from the date of the sale. Taking note of the impact of the amendment and inconsistency of the previous Rule 85 (Kerala) with the provision under the Amendment Act 104 of 1976, this Court in *Ananthan Sreedharan v. Sankaran Sukumaran* 1991 (1) KLT 114 has held that after coming into force of the C.P.C. Amendment Act, Rule 85 which was substituted by notification in the Kerala Gazette dated 21.12.1965 as to insistence for payment of the stamp paper with the full amount of the purchase price within 15 days from the date of the sale has no-legal force and only the rule under the Amendment Act after coming into force of such amendment would prevail. The view taken in the aforesaid decision was followed by this Court in *Kunhambu v. Geetha* 2001 (1) KLT 602 as well and the law on the point has been enunciated as such by this Court in the two decisions as referred to above. It is too late in

the day for the petitioner to contend that nonpayment of the amount required for the stamp paper within 15 days from the date of sale with the full amount of the purchase money would render the sale nullity banking upon the previous decision of this Court in *Joseph v. Central Bank of India* 1987 (2) KLT 539 which had been rendered without taking note of the impact of the Amendment Act 104 of 1976.

3. Sale shall become complete only on an order confirming the sale by the court under Order 21 Rule 92 of the Code of Civil Procedure. Such order by the court confirming the sale is made when no application is moved under Rules 89, 90 or 91, or, after sale if such application is made and disallowed. Once confirmation of sale is made, a challenge by the decree holder or auction purchaser that the sale has to be treated as nullity since he has not paid the amount required for the stamp paper to issue the sale certificate is unworthy of any merit. The issue of sale certificate after confirmation of sale is purely a ministerial order of the court and not at all a judicial function. Whether the decree holder has purchased the property in court sale towards satisfaction of the decree debt, his remedy is to move an application seeking delivery of the property after obtaining a sale certificate. Such application can be moved for delivery within one year after sale has become absolute as covered by Article 134 of the Limitation Act, It is not the date of issue of the sale, but, the date of confirmation of the sale that has to be reckoned for the period of one year to claim under Order 21 Rule 94 of the C.P.C. In the present case the sale became absolute, according to the petitioner/decreed holder as on 16.11.2004 when it was confirmed by the execution court. After the right of the decree holder to get delivery of the property covered by the sale certificate has been extinguished by the bar of limitation, the decree holder society has come forward with a case for setting aside the sale on the plea of nonpayment of the amount for the stamp paper for issuing the purchase certificate and non-collecting of such certificate from the court. The case so canvassed by the decree holder to impeach the sale seeking for a fresh sale to recover the decree amount which stands already satisfied by the confirmation of the previous sale is devoid of any merit. Revision is dismissed.