

(2005) 06 AP CK 0105
In the Andhra Pradesh High Court
Case No : CRP No. 4988 of 2004

Roshan Ali (died) and Another	Vs	APPELLANT
Executive Engineer, I and CAD, Department, I.B. Division		RESPONDENT

Date of Decision : 22-06-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 101, Order 21 Rule 58

Citation : (2005) 5 ALD 379

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Pottigari Sridhar Reddy, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The decree holders in O.S. No. 352 of 1982 on the file of the District Munsif, Ibrahimpatnam are the petitioners. They assail the order dated 17-8-2004 in C.M.A. No. 1 18 of 2002 passed by the Court of the Principal District Judge, Ranga Reddy District.

2. The facts that gave rise to the filing of the C.R.P. are as under:

The petitioners filed the suit for the relief of declaration, perpetual injunction and direction as to the correction of records in respect of 16 guntas of land in Sy.No. 1437 of Ibrahimpatnam. The Joint Collector, Ranga Reddy District and the Mandal Revenue Officer, Ibrahimpatnam were impleaded as defendants. The suit was decreed on 11-6-1986. An appeal was preferred by the defendants therein with the delay of eight years. The appellate Court refused to condone the delay and it came to be dismissed on 15-3-1997. Thereby, the decree in the suit became final.

3. The petitioner filed E.P. No. 5 of 1994 for implementation of the decree. The same is said to have been allowed on 5-4-1995. Alleging that the directions contained in the order passed in the E.P. were not carried out, the petitioners filed E.P. No. 23 of 1998 to punish the judgment-debtors. In the E.P., the

respondent herein filed E.A. No. 9 of 1999 under Rule 58 of Order 21 C.P.C. making a claim to the effect that the suit schedule property constitutes part of the Inspection Bungalow. The Executing Court dismissed the E.A. on 17-1-2000. Aggrieved thereby, the respondent filed C.M.A. No. 118 of 2002. The C.M.A. was allowed.

4. The learned Counsel for the petitioners submits that the E.A. was not maintainable for the reason that there was no attachment in the E.P. He further contends that the C.M.A. was not maintainable in view of the judgment of the Full Bench of this Court in Mr. Gurram Seetharam Reddy Vs. Gunti Yashoda and Another, .

5. The learned Counsel for the respondent, on the other hand, submits that under the guise of implementation of the decree in the suit, the petitioners are making claim for the land, which is part of Inspection Bungalow.

6. It is not in dispute that E.A. No. 9 of 1999 was filed under Rule 58 of Order 21 C.P.C. That provision enables the third parties to make a claim against the attachment of properties in the course of execution. Filing of a claim under Rule 58 presuppose the existence of attachment of the property during the course of execution. It is not in dispute that the respondent did not obtain attachment of the suit schedule property. In that view of the matter, the application filed by the respondent under Rule 58 of Order 21 C.P.C. was misconceived. Further, there is no decree for recovery of money. The question of ordering attachment of the property would arise, if only there exists any necessity to bring the property to sale. Hence, the application filed by the respondent was not maintainable in law.

7. In Gurram Seetharam Reddy's case, a Full Bench of this Court took the view that against an order under Rule 58 or 101 of Order 21 C.P.C., a regular appeal under Order 41 C.P.C., and not a miscellaneous appeal under Order 43 C.P.C., is maintainable. The principle was made applicable prospectively. The C.M.A. came to be filed in the year 2002, much before the judgment of the Full Bench. Hence, it cannot be said that the C.M.A. was not maintainable.

8. For the foregoing reasons, the civil revision petition is allowed and the order under revision is set aside.