

(2003) 08 AP CK 0086

In the Andhra Pradesh High Court

Case No : Appeal Against Order No. 2540 of 1997

Sakary Viswanatha Rao and Others

APPELLANT

Vs

K. Manikyamma and Another

RESPONDENT

Date of Decision : 22-08-2003

Acts Referred:

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

Citation : (2004) 2 ALD 15 : (2004) 1 ALT 651

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : K. Somakonda Reddy, for the Appellant; P. Venugopal and H. Prahalada Reddy, for the Respondent

Final Decision : Dismissed

Judgement

G. Yethirajulu, J.—This appeal is preferred by the petitioners in E.A.No. 148 of 1993 in E.P.No. 70 of 1986 in O.S.No. 56 of 1977 on the file of the Subordinate Judge, Adoni under Order 21 Rule 58 C.P.C.

2. The appellants filed the above execution application praying to raise the attachment in respect of the petition schedule house property and to dismiss the execution petition to the extent of the suit house.

3. The first respondent is the mother of the second respondent. The second respondent filed O.S.No. 56 of 1977 on the file of the Subordinate Judge, Adoni for partition and separate possession of immovable properties. The mesne profits were also awarded in favour of the second respondent to be recovered from the first respondent to a tune of Rs. 1,33,655-25 ps. In pursuance of the final decree passed in O.S.No. 56 of 1977 the second respondent filed E.P.No. 70 of 1986 seeking attachment of the properties, including the suit house and for sale of the properties in public auction for the purpose of realization of the amount from the first respondent. There was a paper publication and the sale of property was proposed to be held on 26-2-1993. Subsequently, on 21 -6-1993 the petitioners

filed the E.A. claiming title over the suit house.

4. The averments of the petition covered by E.A.No. 148 of 1993 are briefly as follows:

5. The petitioners 1 and 2 purchased the suit house under an agreement of sale dated 3-2-1986 for Rs. 1,50,000/- and paid advance of Rs. 20,000/- in cash to the first respondent. They again paid Rs. 15,000/- on 28-4-1986 and Rs. 40,000/- on 4-9-1986. They have also agreed to pay Rs. 29,385-50 ps. towards mortgage debt and paid the same on 29-3-1986. Subsequently a regular sale-deed was executed on 22-10-1986 by the first respondent in their favour after receiving the balance sale consideration of Rs. 48,614-50 ps., therefore, the agreement entered into earlier to the attachment of the suit house ceased to be a free hold property of the first respondent and the attachment cannot be free from any obligation incurred under such agreement, therefore requested to raise the attachment by allowing the petition.

6. The respondents filed separate counters opposing the application. The first respondent contended that she was not paid the entire consideration of the sale-deed. She was paid Rs. 20,000/- in cash on one occasion in discharge of mortgage debt. The petitioners obtained registered sale-deed on 22-10-1986 on the pretext of paying the entire amount in Sub-Registrar's Office. After execution of the sale-deed and its registration the petitioners went on making false promises and did not pay any amount. The petitioners in well-designed manner played fraud on her and obtained sale-deed from her. The sale-deed in favour of the petitioners is a fraudulent document, therefore, the claim petition is liable to be dismissed.

7. The second respondent being the decree-holder in the suit filed a counter stating that the first respondent is responsible for the claim petition in an attempt to delay the execution proceedings. The first respondent despite giving an undertaking to the court that she will not alienate the property, knowing fully well that the property was attached, created the fraudulent document. The petitioners filed a suit for injunction against the respondents, which was contended by her, and it was dismissed after contest. The execution application is therefore liable to be dismissed.

8. The petitioners in order to prove their claim examined P.Ws.1 to 5 and marked Exs.A-1 to A-10. The respondents examined two witnesses and marked Exs.B-1 to B-10.

9. The lower court after taking into consideration the evidence adduced by both parties came to the conclusion that the agreement of sale is not a genuine one, therefore, the sale-deed which was executed by the first respondent in favour of the petitioners subsequent to the date of attachment of the property do not bind the second respondent, therefore, the claim petition is liable to be dismissed.

10. The appellants-claim petitioners being aggrieved by the order of the tribunal

preferred this appeal challenging the validity and legality of the order of the lower court.

11. The petitioners are contending that they purchased the suit property under Ex.A-4 registered sale-deed which was obtained in pursuance of an agreement of sale covered by Ex.A-1. The second respondent is contending that the agreement of sale covered by Ex.A-1 is not a genuine transaction and it is fraudulent transaction with the help of the first respondent and the sale-deed covered by Ex.A-4 executed subsequent to the date of attachment cannot be acted upon.

12. The rights of the agreement-holder who entered into agreement with the judgment debtor prior to the date of attachment is subject to the right, title and interest of the judgment debtor and the attaching creditor cannot ignore that application and proceed to bring the property to sale as if it remained the absolute property of the judgment debtor. But, in the case on hand, the agreement of sale is itself in question, therefore, firstly it has to be decided whether the agreement of sale covered by Ex.A-1 is true, valid and binding on the respondent.

13. The agreement of sale was said to be executed on 3-2-1986. As per Ex.A-1, the man who offered to purchase the land is one C. Mohan Rao. In the normal circumstances the stamp papers should be purchased in the name of the agreement holder, but peculiarly the stamp papers were purchased by T. Anjaneyuulu S/o Eranna and there was no proper explanation forthcoming from the appellants as under what circumstances they could not purchase the stamp papers either in the name of C. Mohan Rao or in the name of K. Manikyamma (respondent No. 1). The agreement of sale was executed in favour of Sri C. Mohan Rao, but the sale-deed was executed in favour of the claim petitioners.

14. The first claim petitioner as P.W.1 stated that the suit schedule property originally belonged to the first respondent. She sold the said house to him initially under an agreement of sale. He further stated as follows:

The petition schedule property originally belonged to the first respondent. She sold the said house to me initially up on execution of an agreement of sale. The petition scheduled house was agreed to be sold for Rs. 1,50,000/- on 3-2-1986. I paid the advance of Rs. 20,000/- when the first respondent executed an agreement of sale in my favour. Ex.A-1 is the said agreement. Within two or three months thereafter I paid Rs. 15,000/-. Again two or three months thereafter I paid Rs. 40,000/- to R-1. All the payments were entered on the reverse of the first page of Ex.A-1 covered by Exs.A-2 and A-3 respectively. The first respondent had raised a loan under a simple mortgage from one B.P. Basaiah. The loan amount, including interest in a sum of Rs. 29,000/- and odd was repaid by me to Basaiah who was the mortgagee. Thus, the said debt was redeemed by me. On 22-10-1986 I paid the balance consideration to the first respondent and obtained a regular sale-deed from her and got it registered.

15. The chief-examination of P.W.1 was deferred on 15-2-1996. He was further

examined in chief on 17-7-1996 i.e., about five months after the first chief examination. The petitioner having realized the mistake committed by him in claiming that the agreement of sale covered by Ex.A-1 was executed in his favour tried to correct the same in the further chief examination dated 17-7-1996 which reads as follows:

The sale agreement in respect of the petition schedule property was executed in favour of C. Mohan Rao, by R-1. The said Mohan Rao is the brother of my wife, even though I negotiated in respect of this transaction and intended to purchase the property, since he provided me the necessary funds, he entered into such sale agreement. By that time I was lacking funds. I repaid the said sum to Mohan Rao later on.

16. P.W.1 while speaking about the funds stated as follows:

By the date of agreement I was lacking funds and I repaid the said amount to Mohan Rao later on. I was running a medical shop at Adoni. About 7 or 8 years ago I suffered loss in that business. Because of it, I suffered loss and was wandering. I was also mentally upset and suffering from depression during that period.

17. In the further chief examination he admitted that a suit filed by him against the second respondent for injunction in respect of the suit house was dismissed.

18. In the cross-examination dated 24-7-1996 P.W.1 stated that he does not remember the name of the scribe of Ex.A-1. After he suffered mental derangement he stopped payment of income tax. He was maintaining accounts. He further stated that Mohan Rao paid Rs. 20,000/- towards part of sale consideration and the balance amount of Rs. 1,30,000/- was paid by him.

19. The above evidence of P.W.1 is an indication that he is not a serious purchaser of the property and that he did not pay any amount by himself and he does not know anything about the contents of Ex.A-1 -agreement of sale and Ex.A-4 sale-deed.

20. P.W.2 is a mortgagee for the mortgage deed covered by Exs.A-5. He simply stated that the mortgage debt was discharged by the first respondent under Ex.A-6-endorsement. He did not tell the source of income to the first respondent for the discharge of debt.

21. P.W.3, Mr. C. Mohan Rao, in whose name the first respondent alleged to have executed Ex.A-1 -agreement of sale deposed as follows:

The first petitioner is my sister's husband. I am aware that the first petitioner purchased a house from the first respondent. In February 1986 I paid Rs. 20,000/- to the first petitioner to enable him to purchase the house from the first respondent. In that connection an agreement was executed in my name by the first respondent. The first petitioner repaid the said amount of Rs. 20,000/- The first petitioner himself had negotiated to purchase the house from the first

respondent. The agreement was obtained nominally in my name.

22. In the cross-examination P.W.3 stated as follows:

The first petitioner knows about the amounts paid to the first respondent on subsequent dates towards balance of sale consideration. I am not personally aware of such payments. I have not signed in Ex.A-1. I do not know as to who attested Ex.A-1 I was not present when Ex.A-1 was entered into. I do not know as to who scribed Ex.A-1 or who attested the same or the terms negotiated thereunder. I am not aware of the contents of Ex.A-1 even to this day. I have not seen Ex.A-1 till this day.

23. The evidence of P.W.3 makes the case of the petitioners to collapse on account of the ignorance pleaded by him about the execution of Ex.A-1 by the first respondent in his favour.

24. P.W.5 an attester of Ex.A-1 stated that it was executed in the presence of P.W.3 after paying Rs. 20,000/- towards earnest money. P.W.5 stated that the said agreement was executed by the first respondent in favour of P.W.3.

25. The above evidence is leading to a state of confusion on account of various versions given by the witnesses regarding the execution of Ex.A-1 agreement of sale, its contents and the payments etc. The discrepancies in the transactions are listed as under:

(1) The stamps for Ex.A-1 were purchased in the name of one T. Anjaneyulu, who has nothing to do with the sale transaction;

(2) The agreement of sale is in the name of C. Mohan Rao, i.e., P.W.3, but he denied his knowledge about the contents of Ex.A-1, the name of the scribe, attestors etc. P.W.3 also denied his signature on Ex.A-1.

(3) P.W.3 stated that he paid only Rs. 20,000/- whereas Ex.A-1 contains Exs.A-2 and A-3 endorsements that P.W.3 paid Rs. 15,000/- on 28-4-1996 and Rs. 40,000/- on 4-9-1986. P.W.1 spoke about these payments by himself.

(4) He did not explain as to where from he got the money for making those payments, since he stated that he was not having money in his account for making such payments.

(5) Ex.A-4-sale-deed was executed in favour of P.W.1 Either P.W.1 or P.W.3 explained the circumstances under which the sale agreement was executed in favour of P.W.3 and the sale-deed was obtained in the name of P.W.1.

26. The contradictory versions given by P.W.1 initially that he obtained Ex.A-1 - agreement of sale from the first respondent and later that the agreement of sale was obtained in the name of C. Mohan Rao lead the lower court to come to the conclusion that Ex.A-1 transaction is not a genuine one and some fraud was involved in bringing out Ex.A-1. The lower court therefore rightly came to the conclusion that the agreement of sale covered by Ex.A-1 cannot be accepted.

Unless and until agreement is held to be a genuine one, the question of attaching any validity to Ex.A-4-sale-deed does not arise. If there is sufficient proof that an agreement of sale was executed in the ordinary course prior to the date of attachment and in pursuance of such genuine transaction if a sale-deed is executed subsequent to the date of attachment, then only the attachment does not prevail over the pre-existing contract to sell, therefore, under the peculiar circumstances of this case, no importance can be attached either to Ex.A-1 - agreement of sale or Ex.A-4-sale deed. The lower court after considering the oral and documentary evidence came to the conclusion that the attachment prevails over the sale transaction. Since the agreement of sale covered by Ex.A-1 is under a could, the lower court rightly dismissed the claim petition by confirming the attachment as valid one. After carefully going through the material available on record i am convinced that the lower court came to a right conclusion in refusing the relief sought for by the claim petitioners and I find no grounds to interfere with the judgment and decree of the lower court.

27. In the result, the appeal is dismissed confirming the order of the lower court with costs.