(1954) 09 AP CK 0028

In the Andhra Pradesh High Court

Case No : Second Appeal No. 1627 of 195

Samudrala Srinivasacharyulu APPELLANT

Vs

Marripati Hanumantha Rao and Others RESPONDENT

Date of Decision : 21-09-1954

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 122, 125, 66

Citation : AIR 1955 AP 10

Hon'ble Judges : Subba Rao, C.J

Bench : Single Bench

Advocate : A.G. and K.B. Krishnamurtim, for the Appellant; M.S. Ramachandra Rao and M. Krishna Rao, for the Respondent

Judgement

(1) The question in the second appeal is whether S. 66, Civil P. C., is bar to the maintainability of the suit.

(2) The plaintiff Hanumantha Rao, Ramakrishna Rao and the 3rd defendant are brothers Defendants 4 to 6 are the undivided sons of the plaintiff and his two brothers. The 3rd defendant, the youngest of thebrothers, became indebted to the Krishna Co-operative Urban Bank Limited, Masulipatam, as a surety, the principal debtor being Velagapudi Ranga Rao, who is the plaintiff''s son-in-law. The Registrar of Co-operative Societies passed an award No. 1770 of 1940 against the 3rd defendant and Velagapudi Ranga Rao. The award was sought to be executed in e. P. No. 30/1941-42 and the undivided 1/3 share of the 3rd defendant along with the other items was brought to sale. At that stage, it was arrangeed between the brothers and the 2nd defendant that the 2nd defendant should advance the necessary funds and liquidate the debts of the plaintiffs and the 3rd defendant and subsequently recoup himself from their properties. This arrangement, it is said, was arrived at even before 1-3-1942, though an actual trust deed was executed in favour of the 2nd defendant on 29-3-1942.

In implementation of that arrangement, the 2nd defendant gave some amount to the 1st defendant and got the undivided 1/3 share in the suit house purchased in the 1st defendant''s name benami for the 2nd defendant. The 1st defendant subsequently executed a letter dated 16-3-1942 in favour of the 2nd defendant setting forth the circumstances under which the property was purchased in his name and agreeing to execute the necessary conveyance in favour of the 2nd defendant soon after the confirmation of the sale. On 29-3-1942, the 2nd defendant relinquished his interest in favour of the plaintiff and defendants 3 to 6 under a registered document. Meanwhile, the 1st defendant sold the 1/3 undivided share purchased in his name to the 7th defendant. The plaintiff filed O. S. No. 72 of 1948 on the file of the Court of the Principal Subordinate Judge of Masulipatam, for a declaration that the plaintiff and defendants 3 to 6 are jointly entitled tothe 1/3 share in the suit house and for a permanent injunction restraining defendants 1 and 7 from interfering with their possession.

(3) Defendants 1 and 7 pleaded, inter alia, that the suit was not maintainable by reason of S. 66,C. P. C. The learned Subordinate Judge and, on apeal, the learned District Judge, negatived the contention of the defendants and decreed the suit. The 7th defendant has preferred the above second appeal

(4) The learned Advocate General appearing for the appellant contended that the 1st defendant claimed title under a purchase certified by a court, and, therefore, a suit for a declaration that he made the purchase on behalf of the 2nd defendant or the plaintiff would not lie and that S. 66, C. P. C., was a bar to such an action; whereas the learned Counsel for the respondents argued that S. 66(1), C. P. C., should be confined only tyo a sale certified by the court under any of the rules framed under the CPC and that, as in the present case the sale was purusant to the rules made under the co-operative Societies Act, the said section has no application. Section 66(1), C. P. C., runs thus:

"No suit shall be maintained against any person claiming title under a purcahse certified by the court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims".

The bar under that section is imposed only in respect of a sale under a certificate issued by the court in the manner prescribed. The CPC defines the word "prescribed" as "prescribed by the rules". "Rules" are defined as meaning "Rules and forma contained in the first schedule or made under Ss. 122 or 125, Civil P. C." Sulaiman C. J., in -- Bishen Dayal Vs. Kesho Prasad and Another construed the provisions of s. 66 and, after noticinig the definition of the words "prescribed" and "rules" observed:

"It is, therefore, patent, that a person, who is not claiming title ''under a purcahse certified by'' the court under any of the rules framed under the Code would not be protected under S. 66, C. P. C."

Stone C. J. and Clarke J. in -- ''Shrideo Ram Janki Mandir v. Nathuram Nanhebhal\\i'', AIR 1941 Nag 84 (B), followed the decision of the Allahabad High Court. At page 86, the learned Judges stated the arguments of the learned

Counsel and met it as follows:

"It is said that as S. 66, strikes against purchases benami, where these purcahses are effected at a court auction, it is enunciating a matter of general policy, and is in terms laying down a principle that should be applied to all public sales always assuming that those sales are in some way conducted in a manner simialr to the mode of conducting sales adopted in the rules by the Civil Courts in execution. Needless to say, there is no case in support of that proposition. On the other hand, there are cases going back to 1870 to the contrary. The case law commences with -- ''Brijo Beharee Singh v. Shaw Wajed Hossein'', 14 Suth WR 372 (C), where the Bombay High Court refused to apply the provisions of the then Civil Proceddure Code to revenue sales. Five years later, in 1875, the Privy council in -- ''Lokhee Narain Roy v. Kallypuddo Bandopadhya'', 23 Suth WR 358 (PC) (D), expressed the view that this section, cutting, athwart ordinary principles of law as it does, must be construed strictly and literally and as it strikes at suits against a certified purcahser, it does not affect the position of a defendant sued by a certified purcahser. Later in -- ''Muthunaiyan v. Sinna Samavanjan,'' 15 Mad LJ 419 (E); -- ''Narayansami Padayachi v. Govindasami Padayachi'', 16 Mad LJ 505 (F), and -- ''Venkata challam Pillai v. Purshotama Naicker'', 19 Mad LJ 270 (G), it was indicated that the mere fact tht the sale is under the Revenue Act does not preclude any one from contending that the purchaser is only a benamidar. the same view is expressed in -- ''Fazal Rahaman v. Imam Ali'', 14 Cal 583 (H), where it was regarded as obvious that the analogous section of theold CPC has no application to any other kind of sale than sales in execution of decrees of Civil Courts.".

From the aforesaid passage, it is manifest that from 1870 the Courts have taken the view that the operation of S. 66, C. P. C., and its corresponding section in the earlier Code should be confined only to sales in execution of decrees of Civil Courts. This question was against considered by Venkatarmana Rao J. in -- Muthukumaru Maniakarar and Another Vs. Pethia Maniakarar, (I). there a sale was held in execution of a decree for arrears of rent by the Revenue Court under the provisions of the Madras Estate Land Act. The question for decision in that case was whether the plaintiffs were precluded by S. 66 from paying for a declaration that the said sale was benami. The learned Judge, after considering the relevant provisions of the CPC and the case on the subject, posed the question for decision as follows:

"The question, therefore, is whether the purchase by the fourth defendant can be said to be one certified by the Court under any of the rules framed under the Civil Procedure Code. If it is not, the section will not apply".

The learned Judge then pointed out that the procedure followed in a sale in execution of a decree for arrears of rent was that provided by the Madras Estates Land Act, that as the sale certificate was issued under that Act, neither the sale was made nor the certificate issued under the rules in the 1st schedule of the Civil Procedure Code. I respectfully agree with the aforesaid decisions and reasons given by the learned Judges.

(5) In the present case, neither the sale was held, nor the certificate was issued under the krules in the first schedule of the Civil Procedure Code. The sale was held in execution of an award made by the Registrar of Co-operative Societies under the Madras Co-operative Societies Act. Under S. 57-A, the Registrar, or any person subordinate to him empowered by the Registrar in that behlaf may, subject to such rules, as may be prescribed by the Provincial Government and without prejudice to any other mode of recovery provided by or under this Act, recover any amount due under a decision or award of the Registrar. Section 65 enables the Provincial Government to make rules for the enforcement of the decisions or awards. Rule 22 of the Rules made by the Government under the Co-operative Societies Act prescribes the procedure for executing awards made by the Registrar. The procedure prescribed with some variations is analoguous to that provided for under the Civil Procedure Code, and under Rule 22 (10) (v), after the confirmationof the sale, the said Registrar said grant a certificate of sale bearing his seal and signature to the purcahser. There is no provision analogous to S. 66, C. P. C., in the said rules. It i, therefore, clear that the sale was held under the rules made under the Madras Co-operative Societies Act, and the sale certificate was also issued under the said rules. If so, if follows that, as neither the sale was held nor the certificate was issued under the rules in the 1st schedule of the Code of Civil Procedure, S. 66 has no application to the sale in question.

(6) It was argued by the learned Counsel for the Appellant that this conclusion would lead to an anomaly as under as under R. 15 (7) of the rules made under the Madras Co-operative Societies Act, the Registrar has the option either the collect the sums due under R. 22 of the Rules or through the Collector under the Revenue Recovery Act or throiugh a Civil Court, and that in the third case S. 66 would apply, whereasin the first two cases, if the aforesaid decisions were correct S. 66 wouild not be a bar. Arguments based on possible anomalies are not of relevance when the provisions of the section are clear and unambiguous. Assuming, without deciding that S. 66 would apply in case an award is executed through Court, in my view that cannot be a reason for holding that in the case of a sale under the rules made under the Madras Co-operative Societies Act, S. 66 would apply. When S. 66 in terms will not apply, it cannot be applied by analogy unless it is held that it embodies a well-settled general principle of law applicable to all cases. On the other hand, benami transactions are valid. Unless a statute specifically and directly strikes at a particular category of behami transactions, the real owners are certainly entitled to a declaration of their title as neither the Act nor the Rules framed there under prohibit benami purchases. I would, therefore, hold that s. 66 is not bar to the maintainability of the suit.

(7) The appeal fails and is dismissed with costs. No leave.

(8) Appeal dismissed.

