

(1962) 08 AP CK 0010

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 43 of 1959

Sannidhanam Lakshmi Kantayya

APPELLANT

Vs

Ghatam Suryanarayana and Another

RESPONDENT

Date of Decision : 27-08-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 89
Civil Rules of Practice — Rule 203

Citation : AIR 1963 AP 198

Hon'ble Judges : P. Chandra Reddy, C.J.; Chandrasekhara Sastry, J

Bench : Division Bench

Advocate : K. Krishnamurthy, for the Appellant; T. Dasaratharamayya, for V. Venkateswarlu, M. Kesava Rao, M.S. Sarma, B. Srihari Rao and D.V. Sastry, Amicus Curiae, for the Respondent

Final Decision : Allowed

Judgement

Chandra Reddy, C.J.—This revision petition raises a question relating to the interpretation of Order 21, Rule 89 CPC and it arises in the following circumstances.

2. In execution of the decree made in S.C.S. No. 94 of 1956 on the file of the District Munsif's Court, Gurazala, for Rs. 300/- two acres of land belonging to the petitioner was sold on 24-9-1957 for a sum of Rs. 680/-. On 19-10-1957, the petitioner (Judgment-debtor) deposited a sum of Rs. 363/- towards compensation payable to the auction-purchaser under Clause (a) , Order 21 Rule 89 CPC and for payment to the decree-holder the amount specified in the proclamation of sale for recovery of which the sale was ordered. The balance evidently represented the poundage payable by the judgment-debtor.

3. An objection was taken by the decree-holder and the auction-purchaser that the deposit made by the judgment-debtor fell short by Rs. 6-91 nP. and consequently the sale could not be set aside. It must be mentioned here that the amount of Rs. 363/- could be said to be short by Rs. 6-91 only if the poundage

payable by the judgment-debtor was also taken into consideration. Consequent on this objection, the judgment-debtor deposited a further sum of Rs. 10-46nP. with a prayer that the delay in this behalf might be condoned. The attitude adopted by the decree-holder was that the balance of the amount might be accepted as having been deposited in time, the delay condoned and the sale set aside, while the auction-purchaser resisted the application.

4. The trial Court being of opinion that it was open to the decree-holder to waive the objection, excused the delay and set aside the sale.

5. On appeal by the auction-purchaser, the Subordinate Judge reversed the decision of the trial Court and dismissed the application to set aside the sale in the view that the trial Court had no jurisdiction to condone the delay in depositing the amount to make up the deficit in the amount payable as mentioned in the sale proclamation since the waiver was not within thirty days of the sale. It is this view of the Subordinate Judge that is challenged before us in this Civil Revision Petition.

6. We feel that it is unnecessary for us to express any opinion on the question as to the impact of the consent of the decree-holder to the receipt of the balance after thirty days, under Order 21. Rule 89 CPC in view of the fact that the amount originally deposited was quite sufficient to cover the compensation payable to the auction-purchaser and also to pay off the decree-holder. It should be borne in mind that the amount mentioned in the sale proclamation was Rs. 302-11-6 and the amount payable to the auction-purchaser by way of compensation was Rs. 35/- aggregating Rs 363-11-6. As we have already stated, the sum of Rs. 363/- was more than adequate to pay the compensation to the auction-purchaser and the decretal amount as mentioned in the proclamation of sale to the decree-holder. Obviously, the parties proceeded on the assumption that poundage should also be included in the deposit to be made under Order 21, Rule 89 Civil Procedure Code. It is this impression that was responsible for all the confusion and trouble in the case.

7. In our opinion, there can be little doubt on the language of Order 21, Rule 89 CPC and the relevant rules of the Civil Rules of Practice that in order to entitle the judgment-debtor to have the sale set aside under Order 21, Rule 89 CPC only two payments have to be made, namely, (i) compensation to the auction-purchaser equivalent to five per cent of the purchase-money and (ii) the decretal amount as indicated in the proclamation of sale for the recovery of which the sale was ordered for being paid to the decree-holder. We cannot import into this provision of law the payment of poundage which should only follow the setting aside of the sale as is clear from Rule 203 of the Civil Rules of Practice which postulates that the Court "may make an order for payment by the judgment-debtor of the poundage and other costs and interest, if any, not covered by the proclamation of sale," after the sale is set aside under Order 21, Rule 89 CPC and not before. If that were the legal position, we fail to see how the failure to deposit the full poundage which here we are told comes to Rs. 32-19 nP. would

result in the dismissal of the application to set aside the sale. The mere fact that in ignorance of the requirements of Order 21, Rule 89 Civil Procedure Code, the petitioner requested that the delay in depositing the balance of amount to make up the deficiency should be condoned, could not lead to the conclusion that there was non-compliance with the provisions of Order 21, Rule 89 Civil Procedure Code. It follows that there was full compliance with the conditions contemplated by Order 21, Rule 89 CPC and there was no justification for dismissing the application on the ground that the deposit envisaged by that provision of law was not made in time.

8. It is not necessary for us to consider whether *Kalinga Hebra v. Narasimha Hebra* 21 MLJ 631, which contained the principle that the Court was not entitled to appropriate the amounts paid on other accounts to make up the deficit in the amount payable as mentioned in the sale proclamation, is correct and whether it requires reconsideration, since in the present case, no attempt need be made to appropriate any portion of the amount paid on other accounts to make up the deficit in regard to payment to the decree-holder. As we have already stated, it was a lump sum of Rs. 363/- that was deposited without allocating any portion of it either towards compensation or the decretal amount or the poundage. It was recited in the affidavit filed in support of the petition to set aside the sale that the deposit was intended to cover the decretal amount and other payments.

9. In the circumstances, we allow the revision, reverse the judgment of the lower appellate Court and restore that of the trial Court. In the circumstances of the case, we direct the parties to bear their own costs throughout.