
(1977) 07 AP CK 0015

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2240 of 1976

Satyavolu Venkata Bhaskara Umamaheswara Varaprasada
Murthy

APPELLANT

Vs

Potti Veeraraju and Another

RESPONDENT

Date of Decision : 29-07-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 93, 115

Citation : AIR 1978 AP 176 : (1977) 2 APLJ 36

Hon'ble Judges : Chennakesav Reddy, J

Bench : Single Bench

Advocate : N.V. Suryanarayana Murthy, for the Appellant; C. Poorniah and Jagannadha Rao, for the Respondent

Judgement

1. This revision petition arises out of execution proceedings initiated by the auction purchaser, the first respondent herein under O, 21, R. 93, C. P. C, for recovery of the purchase money and other expenses from the decree-holder and the judgment-debtor, the petitioner and the second respondent respectively in the revision petition.

2. The decree-holder and judgment-debtor are brothers. The decree-holder obtained three money decrees against his brother in three suits in O. S. No. 17 of 1956, O. S. No. 63/55 and O. S. No. 2 of 1956 on the file of the District Court, East Godavari at Rajahmundry. All the three decrees were compromise decrees creating a charge on three items of property belonging to the judgment-debtor.

3. In execution of the decree in O. S. No. 17 of 1956, the decree-holder brought Item No. 1 of the charged property to sale, in E. P. No. 13 of 1960. The auction was held on 28-8-1961.. The first respondent was the highest bidder for Rupees 13,000/-. He deposited into the Court the entire sale price by 6-9-1961 as required under the conditions of sale. The sale was posted for confirmation to 19-7-1962.

4. While the matters stood thus, one Karri Mahalakshmi and Nookaraju, hereinafter referred to as "Karri People" filed E. A. No. 198 of 1961 on the file of the District Court under O. 21, R. 89, Civil P. C. for setting aside the Court sale. They deposited into the Court Rs. 4,950/- representing the sale warrant amount, the poundage and solatium. The decree-holder, the judgment-debtor and the auction purchaser opposed the application. The principal ground on which this application was opposed was that the Karri people had no existing interest in the property within the meaning of O. 21, R. 89, C. P. C. The objection did not find favour with the learned District Judge and E. A. No. 198 of 1961 was dismissed on 17-7-1962. Thereupon, the sale in favour of the first respondent was confirmed and a sale certificate Ex. A-1 was issued. Aggrieved against the said decision, Karri people preferred C. M. A. No. 336 of 1962 to this Court. But since no stay was granted in (sic) the C. M. A. No. 336 of 1962 was allowed by this Court on 6-9-1966 and the karri people took back possession of the property in question on 15-3-1967 from the respondent No. 1. The first respondent then filed the E. A. out of which this revision petition arises on 17-7-1967 for recovery of purchase money and other expenses incurred by him.

5. During the pendency of the above C. M. A. in the High Court the decree-holder filed execution applications and withdrew the amount of Rs. 4,950/- towards the decree amount in O. S. No. 17 of 1956. He also filed E. P. No. 80 of 1960 in O. S. No. 63 of 1955. The sale of the other two items of property was ordered and the sale was posted to 20-7-1972. Then the wife of the judgment-debtor filed E. A. No. 136 of 1962 under O. 21, R. 69 (3) and Ss. 47 and 151, C. P. C. seeking to stop the sale and requesting the Court to pay the amount lying to the credit of the judgment-debtor in O. S. No. 17 of 1956 and enter full satisfaction. It was not opposed by the decree-holder. So the entire decree amount was paid and full satisfaction was recorded in O. S. No. 63 of 1955. Still a sum of Rupees 342-37 P. remained to the credit of the judgment-debtor in O. S. No. 17 of 1956. The decree holder filed another E. A. No. 145 of 1962 in O. S. 2 of 1956 for the payment of the said balance of the amount of Rs. 342-37 P. and recording part satisfaction of the decree. That E. A. was allowed. In the result, the decree-holder withdrew the entire sale price deposited by the auction purchaser.

6. The Court below held that the auction purchaser is entitled to recover from the decree holder the amount of Rs. 12,770-31 P. with interest at 6% per annum from 15-3-1967 onwards on the said amount till the said amount is deposited or paid directly to the auction-purchaser. The learned Additional District Judge also held that the judgment-debtor is liable to pay Rs. 529-69 P. together with interest till the date of the deposit amount into Court or payment of the said amount to the auction purchaser. Hence this revision petition by the decree-holder.

7. The learned counsel for the petitioner firstly urges that the auction purchaser has no right, after confirmation of sale, to file an application under O. 21, R. 93, C. P. C. and the Court below ought to have dismissed the application as not

maintainable. This contention was not raised either before the learned District Judge or even in the Memorandum of Grounds in the revision petition. I do not, therefore, think that this contention can be permitted to be raised by the learned counsel at this stage.

8. The next contention of the learned counsel is based on the construction of R. 93 of O. 21, C. P. C. He submits that the auction-purchaser is entitled to recover the money only from the person to whom the purchase money had been paid, that the amount deposited by the auction purchaser was to the credit of the judgment-debtor and therefore, it was from the judgment-debtor alone to whom the amount has been paid, the auction purchaser can recover the amount. Order 21, Rule 93 reads :

"Where a sale of immovable property is set aside under R. 92, the purchaser shall be entitled to an order for repayment of his purchase-money, with or without interest as the Court may direct, against any person to whom it has been paid."

9. The Rule is clear and unambiguous. It posits a condition pre-requisite for ordering refund of the purchase-money to the purchaser. It is, that the sale must have been set aside under R. 92. When that essential condition is fulfilled, then any person who has been actually paid the purchase-money is liable to refund it to the auction-purchaser. The words "any person to whom it has been paid" employed in the Rule are very significant. They are reasonably susceptible only to one meaning. It is that the person to whom the purchase-money has been paid, has to refund the amount to the purchaser. If the intention of the Legislature was to be otherwise and to make the judgment-debtor whose property has been auctioned liable to repay, then the words employed in the rule would have been the "judgment-debtor or his Legal Representatives" instead of the words "any person".

10. Now the facts which are not in dispute may be looked into to ascertain the person that received the purchase-money. The sale was held on 6-9-1961. The auction-purchaser duly deposited the entire purchase price of Rs. 13,000/- by 6-9-1961. The sale was ultimately set aside at the instance of Karri people on 6-9-1966 by the High Court. To that application, E. A. No. 198/61 to set aside the sale, the decree-holder and the judgment-debtor as well as the auction-purchaser were parties. After the dismissal of the said E. A. by the District Judge, the sale was confirmed on 19-7-1962 and the auction purchaser took possession of the property on 16-2-1962. The decree-holder withdrew the decretal amount in O. S. 63/55 by filing E. P. 80/60. He withdrew again the rest of the amount of Rs. 8,764-35 ps. lying to the credit of the judgment-debtor in full satisfaction of the decree in O. S. 63/55 and part satisfaction of the decree in O. S. 2/56. It is true that it was at the instance of the wife of the judgment-debtor who filed E. A. No. 136/62 requesting the Court to pay the E. P. amount in O. S. 63/55 out of the amount lying to the credit of the judgment-debtor in O. S. 17/56 and enter full satisfaction of the decree was entered in O. S. 63/55 and the balance of the

amount was also withdrawn in part satisfaction of the decree in O. S. 2/56, there can be no dispute that the decree-holder alone was the person that was paid the entire amount of Rs. 13,000/- deposited by the auction-purchaser as purchase-money. It is equally indisputable that the judgment-debtor got the benefit and full satisfaction of the decrees were entered. So the question is as to who is the person to whom the money has been paid. Is it the decree-holder who has received the amount or the judgment-debtor who got the benefit of taking full satisfaction of the decree-debt ? He garnered great support from a decision of the Privy Council in *Jai Berham v. Kedar Nath* (AIR 1922 PC 269) for his submission that it is the judgment-debtor. In that case it was the judgment-debtor that claimed restoration of the property from the auction-purchaser as a consequence of the sale being set aside. Therefore, it was rightly observed that the judgment-debtor should pay the money before claiming restoration of possession from the auction-purchaser.

The learned counsel then placing strong reliance on the decision of the Madras High Court in *Kode Seshamma Vs. Mandana Rattayya and Others*, submits that where the money paid by the purchaser can be deemed to have been paid to the judgment-debtor who had accepted and had the benefit of such deposit, the auction-purchaser is entitled to recover the amount from the judgment-debtor. That was a case arising under the Madras Agriculturists Relief Act. In that case, the decree-holder herself was the auction-purchaser and she deposited the amount that remained after setting off the decree amount due to the judgment-debtor in Court. The balance amount was Rs. 995-12-0. A third party, one Tirupathaiah, had a decree against the judgment-debtors in a small cause suit and in purchase of that decree he attached the amount in Court to the credit of the judgment-debtors, and drew out the amount in part satisfaction of the decree. Later on, the judgment-debtors filed an application under S. 23 of the Madras Agriculturists Relief Act, 1938, to have the sale set aside and the same was accordingly set aside. The result was that the decree-holder, who had purchased the properties in Court auction lost them. She therefore, filed a suit for recovery of the amount deposited by her to the credit of the judgment-debtors and taken over by Thirupathaiah in pursuance of the decree obtained by him. The learned Judges held, on the facts of that case, that it was not open to the judgment-debtors to contend that the deposit amount does not belong to them and they did not have the benefit of that amount. The learned Judges also held (at p. 455 of AIR) :

"On the footing that the deposited amount belonged to the judgment-debtors when the same was attached and taken away by Thirupathaiah, the present respondents got the decree against them sealed down and satisfied, i.e., they have used the money in Court deposit for getting the decree against them satisfied and such being the case they have obtained an advantage by the use of that money. We therefore are of the opinion that it is not open to the judgment-debtors now to contend that the money deposited in Court when once the sale was set aside, automatically reverts and becomes the money of the depositor

and that the respondents have no interest or benefit in the same."

11. In this case, the amount paid by the decree-holder is not paid to any third party. The amount is entirely drawn by the decree-holder himself. He is not the auction-purchaser. He is not the person that is deprived of the property. He did not deposit any amount into the Court after satisfying the amount under the decree. On the other hand, he had the benefit of the entire amount deposited by the auction-purchaser.

12. The case referred to by the learned Judges of the Madras High Court namely Koorapati Seshavatharam Vs. Thalasila Ramayya and Another, and on which the learned counsel for the judgment-debtor placed strong reliance is more apposite. In that case, which also was one arising under the Madras Agriculturists Relief Act, the sale had been set aside under S. 24 of the Act. A division Bench of the Madras High Court consisting of Wadsworth and Pathanjali Sastry, JJ., held :

"The action-purchaser is given under S. 24 the right to get back his money in full from the person to whom it has been paid and S. 23 expressly states that the sale shall be deemed not to have taken place at all. That is to say, the satisfaction of the decree out of the purchaser's money is cancelled just as the sale is cancelled. The decree-holder has to give back the money which he has drawn and he remains at liberty to execute any amended decree which may be passed in fresh proceedings. There can be no question in such circumstances of the payment made by the auction-purchaser having benefited the judgment-debtor. The decree towards which the payment was made is one that has been into the melting pot and as a result of the application of S. 19 it may well disappear entirely. The decree-holder is not debarred by reason of his having drawn the proceeds of the sale from executing any revised decree which may be passed, but he is required to refund the sale proceeds to the auction-purchaser. In such circumstances, there can be no question of any refund of the sale price by the judgment-debtor".

13. In that case also, as in this case, the decree-holder brought the properties of the judgment-debtor to sale and they were sold for Rs. 1,900/-. The decree-holder drew out from the Court out of the sale proceeds the amount necessary to satisfy his decree. When the sale was set aside, an application was filed by the judgment-debtor for re-delivery of the properties and another application by the purchaser for the repayment of the balance of the sale proceeds, he having already drawn the amount remaining in Court deposit. The learned Judges held that the decree-holder has to repay the money which he has drawn and he has the liberty to execute the decree against the judgment-debtor. Therefore, in my opinion this decision directly applies to this case. In this case also, it is the decree-holder that has withdrawn the amount. So he is the person to whom the purchase money has been paid within the meaning of O. 21. R. 93, C. P. C. He has, therefore, to repay to the purchaser when the sale is set aside. Therefore, the Court below rightly held the decree-holder liable to repay the purchase money.

14. The learned counsel for the auction-purchaser submits that the auction-purchaser paid mesne profits for the luse and occupation for four years to the Karri People and therefore, the Court below rightly granted interest. I do not, therefore think that the award of interest on the amount by the Court below is illegal or improper.

15. The learned counsel for the decree-holder placing reliance on a judgment of the Rajasthan High Court in Thakar Lal Vs. Nathulal and Others, submits that once the decree-holder is compelled to refund the decretal amount recovered by him in the shape of the purchase price of the property sold to the auction-purchaser, that should operates as a revival of the execution case with effect from the stage at which the money was paid to the decree-holder. He submits that it is open to the decree-holder to take any further steps from that stage to realise his money from the judgment-debtor by any of the modes permissible to him at law. When the sale is set aside, the sale is deemed not to have taken place at all and the decree-holder is entitled to execute his decree. (Vide : Koorapati Seshavatharam Vs. Thalasila Ramayya and Another, . The execution petition filed automatically gets revived when once the amount received by any person by way of purchase-money is paid back to the purchaser. The satisfaction of the decree recorded gets wiped out. Therefore, the decree-holder is at liberty to proceed with the execution from the stage at which the moneys were withdrawn by him in the execution petition. It is also open to him to take such steps as are open to him under law for the realisation of the decretal amount with interest from the judgment-debtor.

16. In the result, subject to the above direction, the civil revision petition is dismissed. No costs.

17. Revision dismissed.