

(1990) 11 KL CK 0002
In the High Court Of Kerala
Case No : C.R.P. 1878/90

Sreedharan

APPELLANT

Vs

Sukumaran

RESPONDENT

Date of Decision : 22-11-1990

Acts Referred:

Civil Procedure Code Amendment Act, 1976 — Section 97(1), 97(2), 97(3)

Citation : (1990) 11 KL CK 0002

Hon'ble Judges : M.M. Pareed Pillay, J

Bench : Single Bench

Advocate : S. Subramoni, for the Appellant; P. Sukumaran Nair, for the Respondent

Judgement

M.M. Pareed Pillay, J.—Revision Petitioner is the judgment debtor. He filed E.A. 9.3 of 1990 to review the order confirming the sale. E.A. 92 of 1990 was filed to extend time for deposit of the sale amount. Both petitions were dismissed by the executing Court.

2. The only contention of the revision Petitioner is that the Respondent (decree holder) did not pay the required amount for the stamp paper for the certificate under Rule 94 and so the sale is a nullity. Contention of the Respondent is that Rule 85 which is substituted by notification in Kerala Gazette dated 21st December 1965 and which came into force on 1st January 1966 stands repealed in view of Section 97(1) of the CPC Amendment Act 104 of 1976 and so nonpayment of the required amount for the stamp paper within 15 days from the date of sale is not in any way detrimental to the sale. Rule 85 (Kerala) reads:

The full amount of purchase-money payable together with the amount required for the general stamp paper for the certificate under Rule 94 shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the date of the sale of the property.

As the sale took place after the CPC Amendment Act 104 of. 1976, we have to

consider the impact of Section 97(1) of the Amending Act 104 of 1976. Section 97(1) reads:

Any amendment made, or any provision inserted in the principal Act by a State legislature or a High Court before the commencement of this Act shall, except insofar as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.

The principal Act mentioned in Section 97(1) is the Code of Civil Procedure. By the Amending Act many amendments were carried out to the CPC on the basis of the recommendations of the Indian Law Commission. The effect of Section 97(1) is that all local amendments made to the CPC either by a State legislature or by a High Court which are inconsistent with the Code as amended by the Amending Act stood repealed irrespective of the fact whether the corresponding provision in the Code had been amended or modified by the Amending Act. Section 97(1) is subject to Section 97(2). Section 97(3) states that save as otherwise provided in Sub-section (2) the provisions of the CPC as amended by the Amending Act shall apply to every suit, proceeding, appeal or application pending at the commencement of the Amending Act or instituted or filed after such commencement notwithstanding the fact that the right or cause of action in pursuance of which such suit, proceeding, appeal or application is instituted or filed had been acquired or had accrued before such commencement. As Rule 85 (Kerala) is inconsistent with the provisions of the principal Act, the former cannot have any application and so the failure to pay the required amount for the stamp paper within 15 days from the date of sale does not invalids the sale. The rule that applies is not Rule 85 (Kerala) but the Rule under the Principal Act which contains no mandate as to the payment of the amount for stamp paper within 15 days from the date of sale. Rule 85 (Kerala) stands repealed in view of Section 97(1) of CPC Amendment Act 104 of 1976.

3. Construing Section 97(1) the Supreme Court in *Ganpat Giri Vs. Second Additional District Judge, Ballia and Others*, held thus:

The object of Section 97 of the Amending Act appears to be that on and after February 1, 1977 throughout India wherever the Code was in force there should be same procedural law in operation in all the civil Courts subject of course to any future local amendment that may be made either by the State legislature or by the High Court, as the case may be, in accordance with law. Until such amendment is made the Code as amended by the Amending Act alone, should govern the procedure in civil Courts which "are governed by the Code.

Thus it can be discerned from the Supreme Court decision that after coming into force of CPC Amendment Act Rule 85 which was substituted by notification in the Kerala Gazette of 21st December 1965 cannot be invoked by the revision Petitioner and insist upon the payment of the amount required for the stamp paper within 15 day"s from the date of sale.

There is no merit in the Civil Revision Petition. C.R.P. is dismissed. No costs.