

(1980) 12 AP CK 0008
In the Andhra Pradesh High Court
Case No : C.R.P. No. 3670 of 1980

T. Venugopal Naidu

APPELLANT

Vs

N. Tirumala Naidu

RESPONDENT

Date of Decision : 12-12-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 89

Citation : AIR 1981 AP 238

Hon'ble Judges : Punnayya, J

Bench : Single Bench

Advocate : O. Adinarayana Reddy, for the Appellant; E. Manohar, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner purchased the suit lands from the judgment-debtor, Balamma, under a registered sale deed on 6-7-1966 for a sum of Rs. 6,000/-. The respondent herein filed a suit O. S. No. 111/1966 for specific performance of an agreement of sale executed by the self-same judgment-debtor, Balamma, at she failed to perform her part of the contract in not executing the sale deed. He impleaded the petitioner as the 2nd defendant in the suit. The trial Court did not grant the decree for specific performance, but granted alternative remedy for damages by awarding Rs. 1,000/- towards damages and Rs. 1,000/- towards the advance amount paid by the plaintiff. The Court also created a charge over the suit lands, while granting the decree for damages. The Court also held that the sale deed executed by Balamma in favour of the petitioner was not supported by consideration and the petitioner is not a bona fide purchaser and that the lands continued to be in the ownership of the 1st defendant. But the Court held that the petitioner is in possession of the property from 6-7-1966. As against the judgment and decree, the petitioner-2nd defendant filed appeal A. S. No. 130/71, but the same was dismissed. As no second appeal was preferred, the decision in A. S. No. 130/71 became final.

2. To recover the amount for which he obtained the decree towards damages instead of the relief of specific performance the decree-holder in O. S. No. 111/66 filed E. P. No. 118/76 and the sale of the property was sought for. The sale was held on 4-7-1977. The decree-holder himself became the highest bidder and the bid was, therefore, knocked down in his favour. The property was sold for Rs. 7,100/-. The petitioner, who was in possession of the property was not a party in the E. P. He, therefore, filed a petition E. A. No. 207/77 in E. P. No. 118/76 under Order 21, Rule 89, C. P. C., having deposited the entire decretal amount together with poundage and solatium and prayed for setting aside the sale held on 4-7-1977. The learned District Munsif set aside the sale after ordering payment of the decretal amount from out of the amount deposited by him. Against this order, an appeal C. M. A. No. 37/79 was filed by the decree-holder in the Sub Court, Tirupathi. The learned subordinate Judge allowed the appeal on the ground that the petitioner has no interest in the property by the date of the sale and he cannot maintain application under Order 21, Rule 89, C. P. C. It is this decision that it now assailed in this revision petition.

3. Sri O. Adinarayana Reddy, the learned counsel for the petitioner, contends that when the petitioner is found in possession of the properties in question right from 1966, the trial Court is justified under law to hold that the petitioner was the person having interest in the property and the lower appellate Court is, therefore, not correct in holding that the petitioner is not the person having interest in the property.

4. Sri Manohar, on the other hand, contends that there is a clear finding of the District Munsif in O. S. No. 111/66 that the petitioner is not a bona fide purchaser and the sale deed on the basis of which the petitioner lays claim is not supported by consideration and hence the transaction is sham and nominal. He further contends that the trial Court committed illegality in placing reliance upon the subsequent agreement of sale dated 25-8-1977 which is brought into existence subsequent to the E. A. filed for setting aside the tale and hence this document should not be given any weight and if that be so, the petitioner should not be treated to have any interest in the property. He further contends that merely because the petitioner is in possession of the property, he cannot be treated at a person having interest in the property at the time of the sale.

5. In order to set aside a sale under Rule 89 of Order 21, the petitioner should satisfy the Court that he is having an interest in the property sold at the time of the sale or at the time of making the application. It is not in dispute that the petitioner originally laid a claim on a sale deed and that claim was rejected by the learned District Munsif in O. S. No. 111/66 in which it was held that the sale deed is not supported by consideration and is sham and nominal. But now the petitioner again claims his rights on the strength of an agreement of sale dated 25-8-1977 and he contends that he is a person having interest in the property which was sold.

6. Evidently this document dated 25-8-1977 came into existence subsequent to

the court sale held in favour of the respondent on 4-7-1977 and also subsequent to E. A., which was filed on 1-7-1977 for setting aside the sale. Hence the document dated 25-8-1977 cannot have any evidentiary value and the lower Court, therefore, justified in holding that this document cannot be given any weight. But the fact that the petitioner has been in possession of the land in question since 6-7-1966 as held by the District Munsif is not disputed. Since he has been in lawful possession of the property in his own right, ever since 1966, is he not entitled to claim the benefit of the provisions of Rule 89 of Order 21 ?

7. Sri Adinarayana Reddy claims that the petitioner is entitled to take the benefit of Order 21, Rule 89, C. P. C.. iN support of his contention, he relied upon the rulings of the Madras High Court in Potti v. Suppammal, AIR 1924 Mad 723; and the ruling of this Court in Balkrishna Koundar Vs. Amirthavalli Ammal and Another, ; Karri Mahalakshmi and Others Vs. Satyavolu Venkata Bhaskara Umamaheswara Varaprasada Murthi and Others, .

8. Sri Manohar, on the other hand, contends that the view taken by Mr. Justice Venkatasubba Rao was not agreed to fay Mr. Justice Oldfield in Potti v. Suppammal and the same was not referred to Kurd Judge and the view taken by Venkatasubba Rao, J., is not in conformity with the provision of Rule 89 of Order 21 as existing by them. He also contends that the decision in Balkrishna Koundar Vs. Amirthavalli Ammal and Another, was rendered in a case where the property belonged to the person whose whereabouts were not known and his wife was holding the property and the was, therefore, treated as the person having interest in the property in order to invoke the benefit of Rule 89 of Order 21 and that decision cannot be applicable to the case on hand. He also contends that the ruling in Karri Mahalakshmi and Others Vs. Satyavolu Venkata Bhaskara Umamaheswara Varaprasada Murthi and Others, is also not applicable to the case on hand since the person that claimed the benefit of the provisions of Rule 89 of Order 21 was the person who obtained an agreement of sale and has been in possession of the property in pursuance of the agreement of sale.

9. Now there is no dispute that if a person has been in possession of the property in pursuance of an agreement of sale, he can be deemed to be a person having interest in the property and as such he is entitled to take the benefit of the provisions of Rule 89 of Order 21. This legal position is unanimously enunciated by all the High Courts in India. In Mundrika Singh and Others Vs. Nand Lal Singh and Others, the Patna High Court considered the scope of Order 21, Rule 89 and held that a person in possession of the properly under an agreement of sale from the judgment-debtor is a person having an interest in the property entitling him to apply for setting aside the sale under Order 21, Rule 89. This ruling was followed by the same High Court in Radharaman Choudhary Vs. Gulab Thakur and Others, .

10. In Kattikoolathil Mammu Vs. Vinayaka Kamath and Others, , the Madras High Court held that the words "holding any interest" in Order 21, Rule 89 should be given a more beneficent and wider meaning so as to enable even an attaching

creditor to apply under Order 21, Rule 89. The Calcutta High Court in Rabindra Nath Banerjee Vs. Harendra Kumar Chakravarty and Others, dealt with the application of a person who entered into an agreement of sale from the judgment-debtor and held that the word "title" in Order 21, Rule 89 includes not merely a completed and perfected title, but a title in the process of maturity. The Calcutta High Court followed the ruling of the Patna High Court in Mundrika Singh and Others Vs. Nand Lal Singh and Others, In Balkrishna Koundar Vs. Amirthavalli Ammal and Another, , the Madras High Court held that a wife in possession of the property of her husband who was missing is also a person having an interest in the property and entitled to have a sale set aside under Order 21, Rule 89. In Pandiri Viranna Vs. Grandhi Sattiraju and Others, , a mortgagee of the judgment-debtor's property was held to be entitled to apply under Rule 89 of Order 21 for setting aside a court-sale. This Court, as stated above, also held in Karri Mahalakshmi and Others Vs. Satyavolu Venkata Bhaskara Umamaheswara Varaprasada Murthi and Others, , that a person who has been in possession under the agreement of sale is entitled to invoke the benefit of Rule 89 of Order 21.

11. As stated above, the petitioner herein lays his claim on the basis of sale deed. But the Court held that the said sale deed was not supported by consideration and was therefore sham and nominal. He also lays his claim on the basis of agreement of sale dated 25-8-1977. But it was subsequent to sale held on 4-7-1977 and also subsequent to E. A. filed on 1-7-1977. Hence that document dated 25-8-1977 does not help him, as held by the lower Court. But now his claim is purely based on his possession of the property which is lawful and which is from 1966.

12. Sri Adinarayana Reddy contends that when a trespasser's possession was recognised by the Courts for granting benefit of Rule 89 of Order 21, the lower Court is not justified under law, in not recognising the petitioner, having interest in the property even at the time of the sale. In support of his contention, he relied upon the ruling of the Madras High Court in Si Potti Nayaker Vs. Suppammal and Another, .

13. In Potti's case the learned Judges differed from each other. While Venkatasubba Rao, J., held that even a trespasser who is in possession of property, sold in a Court auction, prior to the execution sale, is a person holding an interest in the property within Rule 89, Oldfield, J., held contra. The matter, however, was not referred to third Judge. But the view taken by Venkatasubba Rao, J., was not dissented by any Bench of the Madras High Court. On the other hand, it was considered and followed by the subsequent Benches.

14. The Division Bench of the Madras High Court in Balkrishna Koundar Vs. Amirthavalli Ammal and Another, considered the view taken by Venkatasubba Rao, J., in Si Potti Nayaker Vs. Suppammal and Another, The Division Bench did not differ from the same. Hence the decision in Potti v. Suppammal has binding effect on this Court. The ruling in Potti v. Suppammal was also considered "by a

learned single Judge of this Court, Krishna Rao, J., in Karri Mahalakshmi and Others Vs. Satyavolu Venkata Bhaskara Umamaheswara Varaprasada Murthi and Others, . Hence I have to hold that the ratio laid down by Venkatasubba Rao, J., in Potti's case holds the field as good law, having binding effect on this Court. When a trespasser who was in possession of the property, was held as a person having interest at the time of the sale of the property. I have to hold that the petitioner who has been in the possession of the property since 1966 in his own right stands on a better footing and he can, therefore, be treated as the person having interest in the property sold in the court auction both by the date of the sale and by the date of application filed by him for setting aside the sale and is therefore entitled to avail the benefit of the provisions of Rule 89 of Order 21 for setting aside the sale. Hence I find it difficult to confirm the decision of the lower appellate Court. Thus I find merits in the revision petition. The judgment of the lower appellate Court in C. M. A. No. 37/79 is set aside and the revision is allowed. No costs.