

(2001) 02 AP CK 0023
In the Andhra Pradesh High Court
Case No : CRP No. 254 of 1998

Tappala Annapurna and others

APPELLANT

Vs

Teppala Dasaradhi

RESPONDENT

Date of Decision : 09-02-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90, 115
Limitation Act, 1963 — Article 127

Citation : (2001) 2 ALD 508 : (2001) 2 ALT 456 : (2001) 1 AnWR 59 : (2001) 1 APLJ 436 : (2001) 2 CivCC 718 : (2001) 4 RCR(Civil) 156

Hon'ble Judges : S.B. Sinha, C.J

Bench : Single Bench

Advocate : Mr. K. Venkat Rao, for the Appellant; Mr. G. Vasantha Rayudu, for the Respondent

Judgement

S.B. Sinha, J.—This civil revision petition is directed against the order dated 2-9-1997 passed by the learned District Munsif, Sompeta in EA No.28 of 1995 whereby and whereunder he set aside the auction sale held on 3-2-1995 in EP No.27 of 1987 in OS No.168 of 1977.

2. The basic fact of the matter is not in dispute. A decree was passed in favour of the petitioners herein in OS No.168 of 1977 on 29-10-1979 which was marked as Ex.A2 in the order impugned. In execution of the said decree, they filed an execution petition being EP No.27 of 1987 before the executing Court and the auction of the suit schedule properties took place on 3-2-1995 and the sale was confirmed on 15-2-1995. On or about 19-4-1995, the respondent herein filed an application being EA No.28 of 1995 for setting aside the said sale on the ground that the EP schedule property covered by Ex.A3 sale deed dated 2-6-1975 was purchased by him for valid consideration from 6th respondent in the execution petition. The said application has been allowed by reason of the impugned judgment.

3. The learned Counsel appearing on behalf of the petitioners, inter alia,

submitted that the learned Court below erred in passing the impugned order insofar as it failed to take into consideration the fact that an application for setting aside the sale was filed beyond the period of limitation. The learned Counsel would urge that the learned trial Judge committed a serious error in taking into consideration a purported decree passed in favour of the respondent herein. In support of the said contention, strong reliance has been placed on the decision of the Karnataka High Court in *Siddegowda v. Lakkamma*, AIR 1991 Karn. 24.

4. The learned Counsel appearing for the respondent, on the other hand, pointed out that the property in question which was sold in auction was a charged property. The petitioners' claim being confined only in respect of an extent of Ac.0.50 cts of land, the entire "A" schedule property could not have been sold. It has further been pointed out that the auction purchaser is the mother of the petitioners herein and thus a fraud had been committed upon the Court.

5. It appears from the order under revision that Teppala's family partitioned their property orally and the family members had been enjoying their respective shares of property since 1955 and a memorandum of partition was also registered in 1975 to avoid future litigation wherein the factum of family partition was admitted. The 6th respondent before the learned trial Judge who is the father of the petitioners herein thereafter executed the sale deed dated 2-6-1975 covered by Ex.A3 to the extent of Ac.0.34 cts. in favour of the respondent herein and thus the property having been sold after the partition having taken place, the sale under Ex.A3 cannot be termed as sham or nominal.

6. The learned executing Court after recording the above finding of fact further took notice of the finding arrived at by a competent civil Court in OS No. 168 of 1977 that the 6th respondent before it was liable to pay maintenance that was awarded therein in favour of respondents 1 to 5 to a tune of Rs.200/- per month towards their maintenance. In the said, judgment, a finding was recorded to the effect that the 6th respondent was having interest only to the extent of Ac.0-50 cents which was liable for charge. The executing Court below further recorded that, however, while pronouncing the judgment in the operative portion of the order a mistake had crept in so far as therein the charge was shown to have been created in respect of entire "A" schedule properties of OS 168 of 1977 which consisted of seven items instead and place of item No.4 only which was the property purchased by the respondent herein under Ex.A.3 and was the subject-matter of charge. The learned Court below has considered the matter in depth and came to the conclusion that having regard to the said finding, the petitioners herein are not entitled to bring the entire "A" schedule properties for auction sale.

7. A decree as is now well known must be drawn up in consonance with the judgment. If a decree has not been drawn up in consonance with the judgment, the same cannot be given effect to. There is no dispute that in this case a genuine mistake has been crept in the decree.

8. Keeping in view the aforementioned finding as also having regard to the factum of the matter as noticed hereinbefore, this Court is of the opinion that a mistake having been crept in the decree, the decree holders could not take an undue advantage thereof. It is now a well settled principle of law that nobody can take advantage of any mistake on the part of the Court. Actus curiae neminem gravabit is a well known principle of law. The learned Court below has also observed that in the facts and circumstances of the case it was also the duty of the petitioners to bring the aforementioned mistake in the decree to the notice of the Court.

9. Having regard to the fact that by reason of the impugned judgment, the Court below had sought to rectify a genuine mistake of the Court and set aside the sale, it is not a fit case where this Court in exercise of its jurisdiction u/s 115 of the CPC should interfere therewith. In Siddegowda's case (supra) it was held that property can be charged for enforcing payment of maintenance granted by the Court. There cannot be any dispute with regard to the aforementioned proposition. But, as indicated hereinbefore the charge was only in relation to Ac.0.50 cents of lands and not in respect of any other "A" schedule properties.

10. As regards limitation, this Court is of the opinion that since the respondent herein is not a party to the suit proceedings and inasmuch he has filed the application for setting aside the sale within thirty days from the date of his knowledge, the same cannot be termed as beyond the period of limitation.

11. Thus, substantial justice having been done between the parties, this Court is of the opinion that it is not a fit case where the impugned order should be set aside. The CRP is accordingly dismissed. No order as to costs.