(1998) 07 KL CK 0020

In the High Court Of Kerala

Case No : C.R.P. No. 1725 of 1997

Thressiamma APPELLANT

Vs

State Bank of Travancore RESPONDENT

Date of Decision : 29-07-1998

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 95

Citation : (1999) 1 CivCC 355 : (1999) 1 RCR(Civil) 365

Hon'ble Judges : S. Sankarasubban, J

Bench : Single Bench

Advocate : N.P. Samuel and Mr. Dileep J. Akkara, for the Appellant; C.P. Damodaran Nayar, D. Kishna Prasad, Kundara L. Mathai and Mr. Gigi Varghese Mathai, for the Respondent

Judgement

S. Sankarasubban, J.—This revision petition is filed against the orders in E.A.Nos.125 of l992 and 343 if l997 in E.P.140 of 984 in O.S.116 of 1982 of the Sub Court, Irinjalakuda. 4th judgment debtor in E. A. 125 of 1992 and the petitioner in E. A.343 of 1997" are the petitioners in the C.R.P.

2. M/s St. Don Bosco Rice and Oil Mills was a partnership concern and the petitioners were partners of the firm. For the purpose of raising fund from the firm, a loan was availed of form the first respondent-Bank and as a Security 1 acre and 81/4 cents of property comprised in Survey, No.544/3 of Vadama Village was mortgaged by deposing the title deeds. The property belonged to the first petitioner. Since the loan amount could not be repaid, the first respondent instituted O.S. 116 of l982 before the Sub Court, Irinjalakuda. M/s St.Don Bosco Rice and Oil Mills and 6 others were made parties. The suit was filed for recovery of an amount of Rs.33,759.35.

3. For executing the decree, E.P. 140 of 1984 was filed by the Bank. The decree schedule property was put to auction and it was purchased by the decree holder Bank itself; The petitioners filed petition to set aside the sale, mainly on the ground that the property was worth nearly Rupees seventeen lakhs and it was

sold only for Rs.83,058/- While the petition to set aside the sale was pending, there was a negotiation with the petitioners and the decree holder-Bank to settle the matter after receiving the amount due. As per the agreement, the judgment debtors are to open a Saving Account in the Bank and the petitioners were directed to deposit amounts in the Bank. According to the petitioners, they have deposited so far Rs.1,73,000/- in that account. In the meanwhile the petition to set aside the sale was dismissed. But on behalf of the decree holder, the then Manager of the Bank promised to obtain sanction from the Head Office for reconveyance of the property to the petitioner No. 1. On calculation, it was found that an amount of Rs. 1,48,000/- was due as per the decree in O.S. 116 of 1982. The petitioners further assert that order from the Head Office was also issued to re-convey the property. But subsequently the Bank showed reluctance to re-convey the property. Then the Bank filed E.A. 125 of 1992 to get delivery of the property with the help of police. The petitioners objected to the delivery stating that the Bank had agreed to re-convey the property. The Bank took up the contention that the amounts were deposited not with a specific direction that it should be adjusted towards the decree debt in O.S. 116 of 1982. It was stated that there was another suit as O.S. 158 of 1982 and if the amount covered by that decree is also deposited, the Bank will think of re-conveyance. In E.A. 125 of 1992, the Court below ordered delivery with police help. Then the 2nd petitioner filed E.A.343 of 1997 to direct the first respondent-Bank to produce in the Court the files containing the sanction letter for re-conveyance of the property and the file relating to M/s St.Don Bosco Rice and Oil Mills. That application was dismissed, holding that the petition was not maintainable. It is against the above said two orders that the present revision is filed.

4. The learned counsel for the petitioners submitted that the Court below was wrong in holding that the petition, E.A.343 of 1997, was not maintainable. According to the petitioners, the parties could get into compromise at any time with regard to subject matter of execution. Here, the subject matter of execution was the property and the agreement was that if the decree amount was paid to the decree holder, the decree holder would re-convey the property. There was nothing wrong in reaching to the compromise arrived at. On the other hand, the counsel for the Bank submitted that it is a case where the decree holder brought the property into sale and has purchased the property. The sale has been confirmed and the only thing which is remaining is delivery of the property. The petitioners cannot contend for re-conveyance of property on the ground that there was a compromise.

5. After hearing the counsel for the parties, 1 am of the view that the lower Court was wrong in dismissing the petition as not maintainable. The Court should have directed the parties to adduce evidence regarding the compromise and if it is found that the compromise was valid, then it should have acted accordingly. A similar question arose in the decision reported in Ramaganesan Pillai and Others Vs. Rajah Ayyar and Others, . There the facts of the case were as follows: The Kumbakonam Bank Ltd. obtained a money decree against the appellants, who

constituted a joint Hindu Family. The house of the appellants, which was given as security, was sold in execution. The Bank purchased the undivided one forth share of the father in enforcement of the charge, and another person purchased the other three-fourth shares. The sales were confirmed. The purchasers obtained symbolic possession of property. The one-fourth share which was purchased by the Bank was purchased by the other suction purchaser. Then he applied for actual delivery of the entire property under O.21 R. 95. This petition was disposed of by a compromise between the parties. Under this compromise, the judgment debtors were enable to retain the property themselves it they were to pay a sum of Rs. 27,000/- to the auction purchaser in five instalments spread over nearly five years with an express stipulation that time formed the essence of the contract. The judgment debtor defaulted payment. Then the auction purchaser applied for delivery. Objections were filed by the judgment debtors on the ground that the auction purchaser is no entitled to get the entire rights. In the course of that, the court has to discuss the validity of the compromise and it held as follows:

".......a Court executing the decree will be competent to enforce an agreement entered into between the decree-holder and the judgment debtor in the course of execution proceedings if the agreement is a lawful one, not extraneous to the decree but on the other hand governs the liability under the decree and relates to the manner of the enforcement".

This decision is by a Full Bench of the Madras High Court. I respectfully follow the decision.

In the above view of the matter, the order in E. A.343 of 1997 has to be set aside and the matter re-heard. I set aside the order in E.A.343 of 1997. Consequently, the order in E.A.125 of 1992 is also set aside. The Court below will took into the validity or otherwise of the agreement set up by the petitioners with the Bank and pass appropriate orders.

The C.R.P. is disposed of as above.

