
(2014) 04 AP CK 0118

In the Andhra Pradesh High Court

Case No : Rev. C.M.P. No. 6345 of 2013 in Civil Revision Petition No. 870 of 2012

Vardhineedi Narasimha Rao

APPELLANT

Vs

Gadiraju Bapiraju

RESPONDENT

Date of Decision : 28-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 85, Order 47 Rule 1

Citation : (2014) 4 ALD 618 : (2014) 4 ALT 806

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Judgement

C.V. Nagarjuna Reddy, J.—This Petition is filed for reviewing order, dated 24.04.2012, in Civil Revision Petition No. 870 of 2012.

2. The brief facts leading to the filing of" this Petition are stated hereunder.

3. The petitioner is the decree-holder in O.S. No. 14 of 2003 on the file of the learned Senior Civil Judge, Kothapeta, East Godavari District. He has filed E.P. No. 1 of 2010 seeking execution of the decree. By order, dated 30.01.2012, the learned Senior Civil Judge dismissed the E.P. on the ground that the petitioner has deposited the stamps beyond the time stipulated under Rule 85 of Order XXI of the Code of Civil Procedure, 1908 (CPC). The petitioner therefore filed CRP. No. 870 of 2012. By order, dated 24.04.2012, this Court allowed the revision petition based on the judgment in Bathula Lakshmi Rajeswara Rao v. Thotakura Subba Rao and another C.R.P. No. 1491 of 2000, on the premise that by an amendment brought out to Rule 85 of Order XXI CPC, the deposit of stamps as required under Rule 94 was taken out of the purview of Rule 85 of Order XXI CPC. The respondent/judgment-debtor filed a SLP (SLP) against the said order before the Supreme Court. By order, dated 24.09.2012, the Supreme Court, after taking note of the plea of the respondent that no amendment was made to Rule 85 of Order XXI CPC, permitted him to withdraw the SLP and approach this Court by way of a review petition. Accordingly, the respondent filed the present review petition with a delay of 172 days in filing the same.

4. This Court by order, dated 25.09.2013, in CRPMP. No. 1394.of 2013 in Civil Revision Petition No. 870 of 2012, condoned the delay in filing the Review Petition. In consequence thereof, the Review Petition is registered and posted for hearing.

5. I have heard the learned counsel for both the parties and perused the record.

6. It is not in dispute that the order under review was passed based on the earlier order, dated 29.02.2012, of this Court in Bathula Lakshmi Rajeswara Rao (1-supra). A perusal of the said order would show that this Court while relying upon judgment, dated 12.01.2011, of the Division Bench of Kerala High Court in Kunhambu v. Geetha R.P. No. 78 of 1987, Dt. 12-1-2001 (Kerala High Court) and also the judgment of this Court in G. Venkata Reddy Vs. B. Venkata Reddy and N. Chinnappa Reddy, held that by Act 104 of 1976, the Parliament has amended Order XXI Rule 85 CPC, as per which, the words "general stamp for certificate under Rule 94 or the amount required for such stamp" have been deleted from Order XXI Rule 85 CPC.

7. In the SLP (SLP) filed against the order under review, it was specifically pleaded that Kunhambu v. Geetha (2-supra) was wrongly decided and that therefore, the judgment in Bathula Lakshmi Rajeswara Rao (1-supra), which was decided based on the erroneous judgment of Kerala High Court in Kunhambu v. Geetha (2-supra), was equally erroneous and consequently, the judgment under review which was solely based on the said judgments is liable to be set aside.

8. The Supreme Court without deciding this issue has permitted the petitioner to withdraw the SLP with liberty to the petitioner to file a Review Petition. The petitioner has accordingly filed the present Review Petition.

9. At the hearing, Sri P.V. Rama Sharma, the learned counsel for the respondent, while not disputing the fact that Kunhambu v. Geetha (2-supra) and Bathula Lakshmi Rajeswara Rao (1-supra) were wrongly decided as the amendment Act 104 of 1976 has not brought out any amendment to Order XXI Rule 85 CPC, however stated that a judgment delivered based on another judgment laying down an incorrect law is not liable for review. In support of his submission, he has placed reliance on the judgment of the Supreme Court in Kamlesh Verma Vs. Mayawati and Others, .

10. I am afraid, I cannot accept this submission of the learned counsel for the respondent.

11. One of the grounds for review under Order XLVII Rule 1 CPC is error apparent on the face of the record. If the judgment is decided based on another judgment which was found erroneous, in my opinion, it constitutes a serious error apparent on the face of the record.

12. At the cost of repetition, this Court may point out that Sri P.V. Rama Sharma, the learned counsel for the respondent, does not dispute the fact that there was no amendment to Order XXI Rule 85 CPC, as assumed by Kerala High Court in

Kunhambu v. Geetha (2-supra), this Court in G Venkat Reddy (3-supra) and Bathula lakshzru Rajeswara Rao (1-supra). Thus, all the three judgments have proceeded on an erroneous premise that the Amendment Act 104 of 1976 has amended Order XXI Rule 85 CPC and that as a consequence of the said amendment, there is no requirement for deposit of stamps within the stipulated time unlike the payment of full purchase money. The order under review was passed solely based upon the said erroneous judgments. Thus, there cannot be a better case containing error apparent on the face of the record inasmuch as the order under review was decided based on wrong judgments.

13. The judgment of the Supreme Court in Kamlesh Verma (4-supra), relied upon by the learned counsel for the respondent, has absolutely no relevance on the point and it does not in any manner support the submission of the learned counsel for the respondent.

14. For the above-mentioned reasons, the order under review is set aside and the Civil Revision Petition is restored to file.

15. The Registry is directed to post this Civil Revision Petition for final hearing at the top of the list before the Court having the provision to hear this subject on 02.06.2014. All the interlocutory orders passed in the Civil Revision Petition, if any, shall stand revived.