

(2007) 09 AP CK 0020

Andhra Pradesh High Court

Case No: Civil Revision Petition No. 3854 of 2007

Veerabathini Janardhan

APPELLANT

Vs

Terala Rajaiah (since died) per
Legal Representative and Others

RESPONDENT

Date of Decision: Sept. 12, 2007

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 100, Order 21 Rule 101, Order 21 Rule 102, Order 21 Rule 41, Order 21 Rule 94
- Transfer of Property Act, 1882 - Section 52

Citation: (2007) 6 ALD 605 : (2008) 1 ALT 47 : (2007) 3 APLJ 79

Hon'ble Judges: G. Rohini, J

Bench: Single Bench

Advocate: Vedula Srinivas, for the Appellant; B. Vijayasen Reddy, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

G. Rohini, J.

This Civil Revision Petition is directed against the order dated 19-4- 2007 in EA. No. 10/2007 in EP. No. 40/2006 in O.S. No. 16/1974 on the file of the Court of the Senior Civil Judge, Jangaon as confirmed on Appeal by order dated 14-8-2007 in CMA. No. 28 of 2007 on the file of the Court of the III-Additional District Judge, Warangal.

2. The 1st respondent, T. Rajaiah, during his lifetime filed O.S. No. 16 of 1974 in the Court of the Additional Sub-Judge, Warangal, seeking eviction of the 3rd respondent B. Nuruddin and for recovery of possession of 6 acres of land out of 12.23 acres in Sy. No. 540 of Cheriya Village, Warangal District. The said suit was dismissed by the trial Court by Judgment dated 27-2-1987. Challenging the same, he filed AS. No. 76 of 1987 in the Court of the Additional District Judge, Warangal, which was also dismissed by Judgment dated 20-8-1992. In the meanwhile, the sole plaintiff Rajaiah

died and the 2nd respondent herein was brought on record as the legal representative. He filed Second Appeal No. 249 of 1994 in this Court. The said Second Appeal was allowed by Judgment dated 19-7-2006 thereby decreeing the suit as prayed for. It is relevant to note that during the pendency of the Second Appeal, the sole defendant B. Nuruddin also died and the respondents 4 and 5 herein, being the legal representatives were brought on record. In pursuance of the Judgment of this Court in S.A. No. 249 of 1994, the 2nd respondent herein filed E.P. No. 40 of 2006 on the file of the Court of the Senior Civil Judge, Jangaon for delivery of possession of the suit schedule property.

3. In the said Execution Petition, the Revision petitioner who is a 3rd party to the suit proceedings, filed EA. No. 10/2007 under Order 21 Rule 58 of C.P.C. claiming that he is the absolute owner and possessor of the E.P. Schedule property. It is claimed that his father purchased the E.P. schedule property from Mohd. Nuruddin (sole defendant in O.S. No. 16/1974) under a Registered Sale Deed, dated 27-3-1981. His father died on 3-3-2005 and by virtue of a Registered Will executed by him, the petitioner got Ac.6-11 guntas of land i.e., the EP schedule property covered by Sy. No. 540. It is stated that his name was mutated in the revenue records and pattadar pass book was also issued in his favour. It is contended that the decree in O.S. No. 16 of 1974 obtained by the 2nd respondent herein was not binding on him since he was not a party to the said proceedings. It is also alleged that in O.S. No. 16 of 1974 no boundaries were shown to the suit schedule property and in the Execution Petition the boundaries of the petitioner's property were shown for the first time by inventing the same. Contending that the same is nothing but abuse of process of law, it has been prayed in E.A. No. 10/2007 that the schedule property, which is in his possession cannot be delivered to the decree-holder.

4. A counter was filed by the decree-holder pleading that the sale transactions which took place between the father of the claim petitioner and the deceased defendant, being transactions pendente lite, the claim petitioner was bound by the decree and he cannot claim any independent right to the E.P. Schedule property. It is also pleaded that there was absolutely no dispute about the identity of the E.P. schedule property.

5. The Executing Court, after hearing both the parties, by order dated 19-4-2007, dismissed the claim petition holding that the claim petitioner was bound by the decree and the objections raised by him were untenable. Aggrieved by the same, the petitioner herein preferred CMA. No. 28 of 2007 in the Court of the III-Additional District Judge, Warangal under Order 43 Rule 1 of C.P.C. The lower Appellate Court dismissed the said Appeal and confirmed the order dated 19-4-2007. Hence, this Revision Petition.

6. I have heard the learned Counsel for both the parties and perused the material on record.

7. The learned Counsel for the petitioner contended that since there was no description given to the suit property either in the plaint or in the decree, the decree-holder cannot describe the land by boundaries for the first time in the Execution Petition. While relying upon the decision in [Thota Venkatanamma and Another Vs. Eruva Enna Reddy](#), it is further contended that it is nothing but inviting the Executing Court to identify the suit property on the imaginary boundaries. It is also contended that the conclusion of the Court below that the land described in the Execution Petition tallied with the schedule in the sale deeds in favour of the petitioner's father was factually incorrect. Thus, according to the learned Counsel for the petitioner, the decree itself is a nullity and cannot be enforced against the petitioner who is in actual possession of the property in question.

8. On the other hand, the learned Counsel for the 2nd respondent contended that the orders under Revision do not suffer from any infirmity warranting interference by this Court.

9. It is not in dispute that the petitioner's father by name V. Vittal purchased the entire extent of land in Sy.No.540 under three different sale deeds from B. Nuruddin (sole defendant in the suit) during his lifetime while O.S. No. 16 of 1974 was pending before the trial Court. Since the land in Sy. No. 540 was the subject-matter of O.S.No.16/1974 and since the vendor Nuruddin was also a party to the suit, the sale transaction was hit by the principle of lis pendens u/s 52 of the Transfer of Property Act, 1882. Consequently, though the petitioner or his father was not a party to the suit, they are bound by the decree passed against their vendor. Therefore, the decree in O.S. No. 16 of 1974 cannot be held to be null and void merely on the ground that the petitioner's father who was pendente lite transferee was not added as a party to the suit. Coming to the maintainability of the claim petition made by the petitioner under Order 21 Rule 58 of C.P.C., at the outset it is to be noted that Rules 41 to 94 of Order 21 of C.P.C. exclusively deal with attachment of the property in execution proceedings. Therefore, there can be no dispute that Rule 58 of Order 21 of CPC is applicable only to adjudication of claims to the attachment of property. Since in the case on hand the decree is for recovery of possession of immovable property, on the face of it, Rule 58 of Order 21 of C.P.C. is not attracted and both the Courts below have rightly held so.

10. The trial Court, in the circumstances, though entertained the application under Order 21 Rule 99 of C.P.C., which entitles any person other than the judgment-debtor to make an application complaining of his dispossession from the immovable property by holder of a decree for possession of such property, dismissed the same both on merits and also holding that the application itself is not maintainable. The said order was confirmed by the lower Appellate Court. Though the learned Counsel for the petitioner made elaborate submissions on merits, the learned Counsel for the respondent while relying upon Order 21 Rule 102 of C.P.C. contended that the application under Order 21 Rule 99 of C.P.C. itself was not

maintainable in view of the express bar provided under Rule 102.

11. In this context, it is essential to extract Rules 99, 100 and 102 of Order 21 of C.P.C. which run as under:

99. Dispossession by decree holder or purchaser

(1) Where any person other than the judgment debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the court complaining of such dispossession.

(2) Where any such application is made, the court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

100. Order to be passed upon application complaining of dispossession Upon the determination of the questions referred to in Rule 101, the court shall, in accordance with such determination,-

(a) make an Order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other Order as, in the circumstances of the case, it may deem fit.

102. Rules not applicable to transferee pendente lite Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Explanation : In this rule, "transfer" includes a transfer by operation of law.

12. A perusal of the above rules shows that an application made under Rule 99 shall be adjudicated upon and an order shall be made under Rule 100 either allowing or dismissing the application. However, as rightly contended by the learned Counsel for the respondents, by virtue of the prohibition under Rule 102 of Order 21 of C.P.C., such adjudication under Rule 100 is not available to a person to whom the judgment-debtor in the suit has transferred the property after institution of the suit. Thus, it is clear that Rule 99 does not come to the rescue of a person who purchases the property from the judgment-debtor during the pendency of the suit. Since admittedly the petitioner is a transferee pendente lite, it is not open to him to maintain an application under Order 21 Rule 99 of C.P.C. Even on merits, the Court below on appreciation of the material on record, particularly the specific recital in the sale deed about the litigation pending in the Court of law at the relevant point of time, recorded a clear finding that the boundaries mentioned in the Execution Petition were tallying with the boundaries of the land which was sold to the petitioner's father under Sale Deed dated 27-3-1981. I do not find any justifiable reason to interfere with such a concurrent finding of fact recorded by the Courts

below. Even otherwise, as expressed above, the petitioner, who is claiming title from a transferee pendente lite, is not entitled to resist the execution of a decree for possession since by virtue of prohibition under Order 21 Rule 102 of C.P.C. he cannot maintain an application under Rule 99 of C.P.C. on any ground whatsoever.

13. For the aforesaid reasons, the Courts below cannot be held to have committed any error in dismissing E.A. No. 10 of 2007 filed by the petitioner.

14. Accordingly, the Civil Revision Petition which is devoid of any merit is hereby dismissed. No costs.