

(2001) 09 AP CK 0063

Andhra Pradesh High Court

Case No: C.R.P. No. 2994 of 2001

Jammigumpula Bala Masthaniah
Naidu

APPELLANT

Vs

Gadamsetty Rama Rao and
Others

RESPONDENT

Date of Decision: Sept. 26, 2001

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 100, Order 21 Rule 101, Order 21 Rule 102, Order 21 Rule 97, Order 21 Rule 98
- Transfer of Property Act, 1882 - Section 52

Citation: (2002) 1 ALT 67

Hon'ble Judges: D.S.R. Varma, J

Bench: Single Bench

Advocate: K. Someshwar Kumar, for the Appellant; P. Sridhar Reddy, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

D.S.R. Varma, J.

This revision petition is filed challenging the order and decree dated 22-6-2001 passed by the Court of Principal Junior Civil Judge, Kavali in E.A. No. 550/2000 in E.P. No. 191/2000 in O.S. No. 285/1983. By the impugned order, the Court below, allowed the execution application filed by the decree-holders under Order 21 Rule 97 C.P.C. and overruled the objections filed by the 3rd party objector and ordered for removal of the obstruction or resistance offered by him and deliver the possession of the suit schedule property to the decreeholders. Aggrieved by this order, the 3rd party objector has filed this revision petition.

2. Heard Sri K. Someshwar Kumar, learned Counsel appearing for the petitioner-3rd party objector and Sri P. Sridhar Reddy, learned Counsel appearing for the

respondents 1 to 3 (plaintiffs)-decreeholders.

3. Before referring to the relative contentions, it is necessary to note few admitted facts on record.

4. The respondents 1 to 3 herein filed the suit in O.S. No. 285/1983 on the file of the Principal Junior Civil Judge, Kavali for delivery of possession of items 1 and 2 of the suit schedule property against respondents 4 to 6 herein and obtained a decree in their favour. Aggrieved by that order, the respondents 4 to 6 herein filed an appeal in A.S. No. 52/1992 on the file of the Senior Civil Judge, Kavali. The lower appellate Court on appreciation of evidence and material available on record dismissed the appeal and confirmed the decree of the trial Court, by judgment dated 28-9-1999. The respondents 4 to 6 herein again carried the matter in second appeal to this Court. In the meanwhile, the respondents 1 to 3 herein filed the execution petition for delivery of possession. When the trial Court entrusted the warrant to Amin for delivery of possession of the suit schedule property and when the Amin went to the suit schedule property on 29-9-2000 for execution of the warrant, the petitioner herein who is the 3rd party to the proceedings, objected the execution, stating that he has purchased the suit schedule property under an agreement of sale dated 18-6-1999 from the respondents 5 and 6 herein. Thereupon the respondents 1 to 3 herein filed the present E.A. No. 550/2000 under Order 21 Rule 97 read with Section 151 C.P.C. for removal of obstruction and for delivery of the suit schedule property. The trial Court allowed the said E.A. by order dated 10-11-2000 holding that the petitioner herein need not be heard. Impugning that order, the petitioner herein filed a revision before this Court in C.R.P. No. 5052/2000. This Court by order dated 23-1-2000 set aside the impugned order dated 10-11-2000 and directed the Court below to give an opportunity to the petitioner herein to file his objections and dispose of the E.A. on merits. Thereupon the Court below received the objections from the petitioner and passed the impugned order. In the impugned order, the Court below held that the enquiry is not necessary under Order 21 Rule 102 C.P.C. It also held that the agreement of sale under which the petitioner is claiming, is hit by the doctrine of lis pedens u/s 52 of the Transfer of Property Act and also following the decision of this Court in J.P. Shankar Singh Pacha Bee, 1985 (2) ALT 428 allowed the E.A. Aggrieved by that order, the petitioner herein who is the 3rd party objector, filed the present revision petition.

5. Sri K. Someshwar Kumar learned Counsel for the petitioner placing heavy reliance on Order 21 Rules 97 to 102 C.P.C. submitted that the petitioner herein is a bona fide purchaser of the suit schedule property for a valuable consideration under an agreement of sale, without the notice of litigation and he has every right to file an application under Order 21 Rule 99 C.P.C. and the Court shall determine the right, title or interest in the property arising between the parties as contemplated under Order 21 Rule 101 and shall pass an order under Order 21 Rule 100 C.P.C. He further submitted that as a separate suit is barred under Order 21 Rule 101, if the Court

does not determine the right, title and interest in the suit schedule property between the parties, by giving sufficient opportunity to the petitioner i.e., by way of adducing evidence and producing documents, petitioner would suffer an irreparable loss. He further submitted that the Court below has misconstrued the provisions of Order 21 Rules 97 to 102 C.P.C. while holding that no enquiry is contemplated under Rules 98 to 100 of Order 21 C.P.C. In support of his contentions, he relied on the decision of the Supreme Court in Brahmdeo Chaudhary, Adv. Vs. Rishikesh Prasad Jaiswal and another, . With these submissions, he sought for setting aside of the impugned order and allowing of revision.

6. On the other hand, the learned Counsel for the respondents Sri P. Sridhar Reddy submitted that the petitioner is claiming the property through the judgment-debtors, who have already suffered a decree at the hands of the plaintiffs-respondents 1 to 3. He further submitted that when the vendors of the property have no right title, the petitioner who is the alleged vendee, that too under an agreement of sale, cannot have better title than his vendors. He also submitted that the petitioner is said to have purchased the property under an agreement of sale on 18-6-1999 i.e., during the pendency of the appeal filed by the judgment-debtors before the lower appellate Court, which was dismissed on 28-9-1999 and, therefore as the sale transaction was pendente lite, it is hit by doctrine of *lis pendens* as envisaged u/s 52 of the Transfer of Property Act and hence the Court below taking into consideration this fact and also the provisions under Order 21 Rule 102 and also relying on the decision of this Court in J.P. Shanker Singh's case (cited "I supra), has overruled the objections of the petitioner and allowed the E.A. for delivery of possession. He further submitted that the plaintiffs filed the suit for delivery of possession of the suit schedule property against respondents 4 to 6 herein in the year 1983 and they succeeded only in the year 1999 i.e., after a period of about sixteen years and even after succeeding after a long period, the respondents 4 to 6 herein in order to frustrate the cause of the respondents 1 to 3 - decreeholders, have intentionally sold the suit schedule property to the petitioner herein, during the pendency of appeal, only to see that second round of litigation is cropped up between the petitioner and the plaintiffs and the same is illegal and contrary to canons of law and justice. He also stated that if the claim of the petitioner whose purchase and possession of the property is itself illegal, is dealt with like a regular suit under Rule 101 Order 21, on the ground that a separate suit is barred, the cause of real beneficiary who obtained a decree, will be defeated and the plaintiffs will be embroiled in unwarranted litigation. Finally he submitted that the argument of the petitioner that adjudication under Rule 101 is mandatory holds good, had the petitioner set up an independent title other than from the judgment-debtors who have suffered a decree. With these submissions, he sought for dismissal of the revision and confirmation of the impugned order.

7. Before advertizing to the respective submissions, it is necessary to extract Rules 97, 98, 99, 100, 101 and 102 of Order 21 C.P.C. on which, both sides placed heavy

reliance, as under:

97. Resistance or obstruction to possession of immovable property:-

(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under Sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

98. Orders after adjudication:-

(1) Upon the determination of the questions referred to in Rule 101, the Court shall, in accordance with such determination and subject to the provisions of Sub-rule (2)-

(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.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceedings, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

99. Dispossession by a decreeholder 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.

101. Questions to be determined:- All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application, and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

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 dispossessing of any such person.

From the above provisions it is clear that under Rule 97, when a decreeholder or the purchaser of such property, in the execution of the decree, is resisted from obtaining the possession of the property, the decreeholder or the purchaser of a property in execution of the decree, as the case may be, can file an application before the Court complaining such resistance or obstruction and upon such an application being filed, the Court shall adjudicate the application in accordance with the provisions therein contained.

8. In the present case, as the petitioner herein objected for delivery of possession, the decreeholders - respondents 1 to 3 herein filed the application in accordance with this rule. As per Rule 98, on an application being filed under Rule 97, the Court shall determine the questions as contemplated under Rule 101 and pass orders either allowing or dismissing the application and in the course of enquiry if the Court is satisfied that resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person and further if it is found that such transfer was made during the pendency of the suit or execution proceedings, it shall direct that the applicant be put into possession and if there is still resistance, it shall order imprisonment to such person who is illegally resisting.

9. Further under Rule 99, where any person other than the judgment-debtor is dispossessed of the immovable property by the decreeholder for the possession of such property, he may make an application to the Court complaining such dispossession and the Court shall adjudicate all questions as contemplated under Rule 101 and pass orders under Rule 100. Here the learned Counsel for the petitioner renewed his submission stating that when the petitioner was sought to be dispossessed, he filed his objections before the Court below in E.A. No. 550/2000 and, therefore, the Court shall determine all the questions including right, title or interest in the property and pass orders under Rule 100 and unless that is done, since a separate suit is barred, the Court has no power to pass order under Rule 102, without complying with the procedure under Rule 101. Accordingly he sought for setting aside the impugned order. Before meeting this contention, it is relevant

to go little ahead and refer to Rules 100, 101 and 102 of Order 21, which makes the situation clear.

10. Rule 100 only postulates the procedure to pass orders upon the applications complaining of dispossession are filed and Section 101 contemplates for determination of all questions including questions relating to right, title or interest in the property arising between the parties to a proceedings on the applications under Rules 97 and 99. However, Rule 101 puts an embargo on filing a separate suit for determination of the above questions.

11. Rule 102 is an overriding rule to all the previous rules. Under this rule, if a resistance or obstruction is offered by any person in execution of the decree, to whom the judgment-debtor has transferred the property after the institution of the suit, Rules 98 and 100, under which the Court has to determine all questions as contemplated under Rule 101 and pass orders, shall not apply.

12. In the instant case, the judgment-debtors-respondents 4 to 6 herein have transferred the suit schedule property in favour of the petitioner under an agreement of sale, pending the appeal before the lower appellate Court. As the transaction is pendente lite, Rule 100, will not come to the rescue of the petitioner for determination of questions under Rule 101 of Order 21, C.P.C., as enshrined under Rule 102. Further as per Section 52 of the Transfer of the Property Act, no one who is a party to a litigation can transfer the property in dispute affecting the right of the other party to the suit and further, the transferee of the property cannot also take the defence that he has no notice of the pendency of a suit. Since the present sale transaction is pending litigation, it is perfectly hit by Section 52 of the Transfer of Property Act.

13. Nextly the decision of the Supreme Court in *Brahmdeo Chaudhary*'s case (cited 2 supra), which the learned Counsel for the petitioner relied on, is absolutely not applicable to the present set of facts. In the said case, the applicant who filed Order 21, Rule 99 application is a total stranger to the proceedings and he had set up independent right, title and interest in the decadal property and when he was sought to be dispossessed, he filed objection under Order 21 Rule 99 C.P.C. Of course in that case, the decreeholder first filed the application under Order 21 Rule 97 C.P.C. and taking the facts and circumstances into consideration the Hon'ble Supreme Court held that it cannot be said that the stranger can get his claim adjudicated only after losing possession and he can get his claim adjudicated even prior to losing possession to the decreeholder and further the Supreme Court held that Court cannot re-issue warrant for possession with police assistance. In those circumstances, the Supreme Court held that determination as contemplated under Rule 101 was mandatory. There is no dispute with regard to this position of law.

14. In the instant case, as contended by the learned Counsel for the respondents-decreeholders, the petitioner has not set up any independent title to

the decretal property and he is tracing the title only through the judgment-debtors, who suffered a decree.

15. Further the opening words of Rule 99 of Order 21 that "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" mean that any person who is in possession, if likely to be dispossessed by the decree-holder and who is other than the judgment-debtor, alone can seek the aid under Rule 99. Further the expression "other than the judgment-debtor" shall mean that such person shall not claim either title or possession from the judgment-debtors. In other words, the person claiming protection under Rule 99 shall be totally an alien to the suit proceedings and shall set up an independent title other than from the judgment-debtors.

16. In the instant case, the petitioner is apparently claiming the title and possession of the schedule property under an agreement of sale entered into between him and the judgment-debtors. Therefore, it is not open for him to make a counter claim against the decreeholders on the ground that he has purchased the suit property for a valuable consideration, without the knowledge of lis between the plaintiffs and the judgment-debtors and as already observed that ground is also not available to the petitioner u/s 52 of the Transfer of Property Act. Therefore, in my view, the Court below, on a combined reading of Section 52 of T.P. Act and Order 21 Rule 102 C.P.C. and in a proper perception has rightly rejected the claim of the petitioner.

17. Here it is necessary to extract the excerpts of the judgment of this Court in J.P. Shankar Singh's case (cited 1 supra), which covers and answers the present situation, as under:

A combined reading of Section 52 of the Transfer of Property Act and Order 21 Rule 102 C.P.C. postulates that a purchaser pendente lite does not acquire any title to the property to the detriment of the rights of other party and if such a purchaser makes any obstruction or resistance to the execution of the decree so passed, any enquiry is not contemplated under Order 21 Rules 99 and 100 C.P.C. Therefore, the objections in that regard cannot be entertained.

18. Therefore, as per Order 21 Rule 102 C.P.C. and Section 52 of the Transfer of Property Act and also in view of the decision of this Court cited 1 supra, I am of the view that the Court below has rightly allowed the present E.A. and I do not find any illegality or jurisdictional error or any other valid ground to interfere with the same.

19. Accordingly I pass the order as under:

The revision petition is dismissed. No costs.