

## Kodidasu Venkataramana Murthy and Others Vs Bethapu Gangaraju and Others

**Court:** Andhra Pradesh High Court

**Date of Decision:** Oct. 12, 2004

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€" Order 21 Rule 97

**Citation:** (2005) 2 ALD 75 : (2005) 2 ALT 206

**Hon'ble Judges:** L. Narasimha Reddy, J

**Bench:** Single Bench

**Advocate:** K.V. Subrahmanya Narasu, for the Appellant; A. Ravishankar, for the Respondent

**Final Decision:** Allowed

### Judgement

L. Narasimha Reddy, J.

This CMSA presents one more illustration, as to what amount of hardship, the plaintiff, in a suit can be made to

undergo, after the suit is decreed. The facts of the case speak for themselves.

2. The appellants filed OS No. 105 of 1985, in the Court of the Principal Junior Civil Judge, Parvathipuram, for the relief of eviction of the second

respondent, and recovery of mesne profits. It was pleaded that the second respondent is their tenant, and that he continued in possession of the

property, even after termination of the lease. The second respondent contested the suit, and denied the existence of relationship of lessor and

lessee. The suit was partly decreed by the Trial Court, through judgment, dated 20-12-1989. The relief of recovery of possession was granted,

but the prayer for mesne profits was rejected. The first respondent filed A.S. No. 3 of 1990 in the Court of the Senior Civil Judge, Parvathipuram,

aggrieved by the decree, in OS No. 105 of 1985. The appellants, in turn, filed cross-objections, insofar as, the Trial Court denied the relief of

mesne profits. Through its judgment, dated 15-3-1994, the lower Appellate Court dismissed the appeal, and allowed the cross-objections. The

same became final.

3. The appellants filed E.P. No. 3 of 1993, under Order XXI, Rule 35 CPC for delivery of possession of them. The Executing Court issued a

warrant of delivery of possession. On the ground that the first respondent herein obstructed the Amin of the Court did not deliver possession and

reported the matter to the Court. That necessitated filing of E.A. No. 59 of 1985, by the appellants, under Order XXI Rule 97 CPC for removal

of the obstruction, against the respondents. The first respondent is the alleged obstructer. The second respondent is judgment-debtor and the third

respondent is an advocate, who is said to have instigated the first respondent to cause obstruction. The Executing Court ordered E.A.59 of 1995,

by directing detention of the first respondent in civil prison. The E.A. was dismissed against the third respondent.

4. The first respondent filed AS No. 13 of 1998, against the order in E.A. No. 59 of 1995. The lower Appellate Court allowed the appeal,

through its judgment, dated 31-3-2000, by observing that the nature of disposal given by Executing Court to E.A. No. 59 of 1995, does not fit

into the purport of Rule 97 of Order XXI CPC. This CMSA arises out of the said order.

5. Sri K. V. Subramanya Narasu, learned Counsel for the appellants submits that the Executing Court has undertaken extensive discussion, with

reference to oral and documentary evidence in E.A. No. 59 of 1995, and has recorded a finding that the claim put forward by the first respondent

is without any basis. He submits that the direction for detention of the first respondent in civil prison has to be treated as one of the measures of

removal of obstruction. He submits that the lower Appellate Court had gone on hyper technicalities and had virtually defeated the benefit of the

decree passed almost a decade ago.

6. Though Respondents 1 and 2 are served, they have not chosen to enter appearance. The third respondent is represented by Sri A. Ravi

Shankar. No relief is claimed in this CMSA against the third respondent. Hence, it is not necessary to refer to any contentions made on his behalf.

7. It is a matter of record that the decree in favour of the appellants, for eviction of the 2nd respondent from the suit schedule property and for

recovery of mesne profits, became final. The record discloses that the second respondent did not offer any resistance for execution of the decree,

except praying for extension of time, by filing E.A. No. 17 of 1995. The necessity for the appellants to file E.A. No. 59 of 1995 arose, because of

the resistance offered by the first respondent to the Bailiff, when possession was being delivered to the appellants.

8. E.A. No. 59 of 1995 was dealt with elaborately as required under Rule 101 of Order XXI CPC, almost as an independent suit. Extensive oral

and documentary evidence was adduced by the parties. PW1 was examined and Exs.A-1 to A-8 were marked for the appellants. On behalf of

the respondents, RWs.1 to 7 were examined and Exs.B-1 to B-4 were marked. The first respondent resisted the application by pleading that he

was a tenant of RW-7, and that he cannot be evicted on the basis of a decree obtained against the second respondent herein. On a consideration

of the entire oral and documentary evidence before it, the Executing Court recorded a finding that there is no basis for the claim of the first

respondent. The second respondent, the sole judgment-debtor has deposed before the Executing Court as RW-1, and stated that he has already

delivered the possession of the suit schedule property. It was elicited from the first respondent, who examined himself as RW-2 that he worked as

servant under RW-1. RW-7 who is the alleged lessor of the first respondent was not able to place any record before the Executing Court in

support of his claim to the property. It clearly emerged that the claim of the first respondent was without any basis.

9. The Executing Court, obviously, enraged by the conduct of the first respondent, directed his detention in civil prison, for a period of four weeks.

Understandably, in view of this extreme step, it did not give any other directions for removal of obstruction. It is possible to treat the detention of

an obstructer in civil prison as one of the effective methods of removal of obstruction. The fact that a further direction was not issued by the

Executing Court for removal of obstruction, cannot by itself, render the order passed by the Executing Court under Rule 97 of Order 21 CPC,

ineffective or invalid. The lower Appellate Court was too hyper technical, when it taken the view that unless there is a direction for removal of

obstruction, the order passed by the Executing Court cannot be sustained. Such an approach, in a way, would defeat the very rights created in the

decree holder, even after a finding emerges that the obstructer does not have any valid claim or interest in the property.

10. For the foregoing reasons, the CMSA is allowed, and the order under appeal, is set aside. To avoid further complications and to save time, it

is directed that the order in E.A. No. 59 of 1995 in E.P. No. 3 of 1995, shall be read as the one for removal of obstruction, and the Executing

Court shall take immediate steps to put the appellants in possession of the suit schedule property, within four weeks from the date of receipt of this

order, by removing obstructions of any kind. There shall be no order as to costs.