
AIR 1970 AP 446

Andhra Pradesh High Court

Case No: Second Appeal No. 227 of 1968

Gajula Abdul Jabbar

APPELLANT

Vs

Rayachoty
Co-operative Society

RESPONDENT

Date of Decision: April 2, 1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Section 47, 9

Citation: AIR 1970 AP 446

Hon'ble Judges: Sriramulu, J; A. Kuppuswami, J

Bench: Division Bench

Advocate: E. Subramanya, for the Appellant; K. Siva Prasada Rao, for the Respondent

Judgement

A. Kuppuswami, J.

The appellant who is the defendant in O. S. No. 161 of 1966 District Munsif's Court, Nandalur, became indebted to

the plaintiff which is a Co-operative Society. There was an award for Rs. 1256-06 by the Deputy Registrar of Co-operative Societies, Cuddapah

on 13-7-53. The Society enforced the said award by bringing the appellant's property to sale in E. P. No. 278 of 1953-54 and the property was

purchased by the Society itself and a sale certificate was duly granted in favour of the plaintiff on 3-6-1956. The appellant, however, did not

deliver possession and therefore the Society filed several Execution Applications for the delivery of the suit property through Court. In the first E.

A. No. 346 of 1959 delivery was ordered, but the petition was dismissed on the ground that the decree-holder was away from town. E. A. No.

682 of 1961 was dismissed, as batta was not paid in time. E.A. No. 290 of 1962 was dismissed on the ground that the application was barred by

limitation under Article 181 of the Limitation Act. After the dismissal of the last execution petition, the Society filed the suit, O. S. No. 161 of 1966

before the District Munsif's Court, Nandalur, for recovery of possession of the property.

2. The main contention of the defendant was that the suit was not maintainable. This contention was accepted by the learned District Munsif who

dismissed the suit with costs. On appeal by the plaintiff, the lower appellate Court took a different view and held that the suit was maintainable. The

decree of the trial Court was set aside and the appeal was allowed with costs throughout. The defendant has preferred the appeal to this Court.

3. The principal contention reiterated before us by Mr. Subrahmanyam on behalf of the appellant is that the suit is not maintainable in views of

Section 47 of the Code of Civil procedure. His contention is that the only remedy of the Society, which is in the position of a decree-holder

purchaser, when an obstruction is caused by the judgment-debtor, is to file an execution petition and no suit lies to recover possession of the

property. In order to appreciate this contention, it is necessary to refer to the relevant provisions of the Co-operative Societies Act.

As the award is of the year 1953, both the Advocates stated before us that the case is governed by the Andhra Pradesh (Andhra Area) Co-

operative Societies Act of 1932 and not by the new Act, viz., the Andhra Pradesh Co-operative Societies Act, 1964, Section 51 of the old Act

provides for the decision of any dispute by the Registrar, Section 57-A provides:

The Registrar or any person subordinate to him empowered by the Registrar in this behalf may subject to such rules as May be prescribed by the

State Government and without prejudice to any other mode of recovery produced by or under this Act recover---

(a) any amount due under a decree or order of a Civil Court, ad decision or an award of the Registrar or arbitrator, or an order of the Registrar,

obtained by a registered society including a financial bank or liquidator.

(b) xx xx

(c) xx xx

(d) xx xx

It is well settled that u/s 9 of the CPC a person has a right to resort to a Civil Court by means of a suit unless such a suit is barred expressly or by

necessary implication. the contention of the appellant is that the enforcement of the award is a process in execution of a decree and Section 47, C.

P.C. applies and therefore the suit is barred. No section of the Act or any rule was brought to our notice which states that Section 47, C. P. c. is

applicable to any proceeding to enforce an award. There is no provision in the Act or in the rules which says that to generally the provisions of the

CPC are applicable to proceedings taken under this Act, nor is there any provision which says that an award obtained u/s 151 of the Act is

executable as if its were a decree of court. In these circumstances, it is not possible to accept the argument that an award is in the nature of a

decree, that proceedings to enforce the award are in the nature of execution proceedings and Section 47 is applicable to such proceedings. We

have, therefore, no hesitation in rejecting the contention that the suit is barred by reason of Section 47, C. P. C.

4. Reliance was placed on Rule XXII of the Rules. Rule XXII deal generally with the procedure in execution of the decree, decision, award or

contribution order. It provides for the attachment and sale of movable and immovable property and the procedure in connection with such

attachment and sale. Sub-rule (12) of Rule XXII provides as follows:----

Where any lawful purchaser of immovable property is resisted and prevented by any person other than a person (not being the defaulter) claiming

in good faith to be possession of the property of his own account form obtaining possession of the immovable property purchase, any court of

competent jurisdiction, on application, and production of the certificate of sale provided for by sub-rule (10) shall cause the proper process to be

issued for the purpose of putting such purchaser in possession, in the same manner as if the immovable property purchased had been decreed to

the purchaser by a decision of the Court".

It was argued that this sub-rule provides for the obtaining of possession from a person other than the defaulter who resists delivery of possession,

but there is no provision in the rules for recovering possession from the defaulter himself when he resists such a delivery. In our opinion this has no

reliance to the question with which we are concerned viz., whether a suit lies for recovery of possession of the property which the society had

purchased while enforcing an award in its favour. On the other hand, the fact that this rule does not provide for any remedy against the obstruction of

a defaulter goes to a certain extent against his submission. As no remedy is provided under the rules to remove the obstruction caused by a

defaulter it follows that a suit to recover the property which he purchased in execution, will lie in such a case.

5. In *Samudrala Srinivasacharyulu Vs. Marripati Hanumantha Rao and Others*, it was held that the provisions of S. 56, C. P. C. are not applicable

of proceeding under the Co-operative Societies Act. Though that decision does not deal directly with the question at issue, the decision is based

upon the principle that the provisions of the C.P.C are not generally made applicable to proceedings under the Co-operative Societies Act. In the

same way as Section 66, C. P. C. was held not applicable to proceeding under the Act as there is no provision making that section applicable.

6. We agree with the view of the learned Additional District Judge that the suit is maintainable.

7. Another contention was raised that one of the items viz., Item no. 1 had been purchased by a third party in execution of another decree and

therefore, he was a necessary party. We do not understand how the appellant can have any grievance at that their party not being made a party to

these proceedings. If according to him the property has already been purchased by a third person he is not interested in the same. There are no

merits in this objection.

8. In the result the appeal is dismissed with costs.

9. Appeal dismissed.