
E. Aruna Vs Vemala Sreenu and Others

C.R.P. No. 1291 of 2015

Court: Andhra Pradesh High Court

Date of Decision: July 17, 2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) - Order 21 Rule 21, Order 21 Rule 58, Order 21 Rule 58(1), Order 21 Rule 59, Order 21 Rule 89

Citation: (2015) 5 ALD 676 : (2015) 6 ALT 214

Hon'ble Judges: S.V. Bhatt, J

Bench: Single Bench

Advocate: N. Vijay, for the Appellant; A.V.V.S.N. Murthy, Advocates for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S.V. Bhatt, J

Auction purchaser in the pending proceedings in E.P. No. 99 of 2009 in O.S. No. 389 of 2006 in the Court of Principal

Junior Civil Judge, Kavali, is the revision petitioner. The C.R.P. is directed against the order in E.A. No. 252 of 2014 dated 19.12.2014.

2. The 1st respondent in the C.R.P. filed E.A. No. 252 of 2014 in E.A. No. 96 of 2013 under Order XXI Rule 59 of Civil Procedure Code (for

short "CPC") for stay or to stop the delivery proceedings pending in E.A. No. 96 of 2013 in E.P. No. 99 of 2009. The executing Court through

docket order dated 19.12.2014 ordered thus:

To avoid the un-necessary complications in the interest of justice, the delivery proceedings in E.A. 96/2013 in E.P. 99/2009 in O.S. 389/2006 is

hereby stayed, call on 31.12.2014, meanwhile issue notice to Respondents 1 to 3.

3. The revision petitioner being aggrieved by the grant of stay of delivery of E.P. schedule property pending in E.A. No. 96 of 2013 filed the

present C.R.P.

4. The circumstances necessary for disposing of instant revision are as follows:

The 2nd respondent in the revision filed O.S. No. 389 of 2006 in the Court of Principal Junior Civil Judge, Kavali to recover a sum of Rs.

43,000/- and odd from 3rd respondent herein. On 05.09.2006, the trial Court ordered attachment before judgment of the following property:

Sri P.S.R. Nellore District Registration-Kavali Sub Registration-Jaladanki Mandal-Chamadala Village an extent of Ac. 1.30 cents in S. No.

522/8 and an extent of Ac. 0.20 cents in S. No. 522/9 in total Ac. 1.50 cents of land out of Ac. 1.53 cents within the following boundaries.

5. O.S. No. 389 of 2006 was decreed on 02.07.2009. The 2nd respondent is executing the Decree in E.P. No. 99 of 2009 by putting to sale the

attached property. On 06.11.2012, the property was sold and the revision petitioner purchased the E.P. Schedule in the auction conducted by the

Court. On 31.01.2013, sale certificate was issued in favour of revision petitioner. On account of resistance, in one form or the other, for actual

delivery of E.P. schedule property the E.P. is pending. The revision petitioner filed E.A. No. 96 of 2013 for appropriate orders from the executing

Court. While the matters stood thus, the 1st respondent filed E.A. Nos. 251 and 252 of 2014 under Order XXI Rules 58 and 59 CPC

respectively. The case of 1st respondent is that on 07.06.2006, agreement of sale was entered into between the 1st and 3rd respondents in the

revision petition and a regular sale deed was executed on 01.04.2011 between them. The 1st respondent is unaware or ignorant of either the

attachment order dated 05.09.2006 in O.S. No. 389 of 2006 or knows anything about the pending execution proceedings. The 1st respondent

with the above contentions filed claim and stay petitions in E.A. Nos. 251 and 252 of 2014 as stated above.

6. Sri N. Vijay, learned counsel for the revision petitioner contends that the executing Court committed serious illegality by ordering stay of delivery

under Order XXI Rule 59 CPC in E.A. No. 252 of 2014. According to the learned counsel, the executing Court can certainly entertain an

application filed under Rule 59 of Order XXI CPC provided the petition filed under Order XXI Rule 58 CPC in E.A. No. 251 of 2014 is

maintainable. The learned counsel relies upon the proviso to Order XXI Rule 58 CPC and submits that once the E.P. schedule property is not only

sold, but sale certificate is issued in favour of revision petitioner herein, prohibition in law for entertaining the claim petition at the instance of any

one much less the 1st respondent who claims to be a purchaser of suit schedule property when the attachment is in force is attracted.

7. The learned counsel places strong reliance upon the decisions reported in P.M. Doraswamy Reddy v. T.M. Gowri Sanker 1987 (1) ALT 583 ,

M. Jayamma Vs. J. Nadamuni Reddy and Others, (2002) 2 ALD 305 Supp : (2002) 1 AnWR 374 , Gangineni Damodar Naidu and Another Vs.

Kurapati Kondaiah Naidu, (2007) 1 ALD 106 : (2006) 3 APLJ 329 , Singirkonda Surekha Vs. G.V. Sharma and Others, (2003) 1 ALD 803

and Kancherla Lakshminarayana Vs. Mattaparthi Syamala and Others, AIR 2008 SC 2069 : (2008) 2 CTC 774 : (2008) 3 SCALE 641 : (2008)

14 SCC 258 : (2008) 1 UJ 570 : (2008) AIRSCW 2800 .

8. The learned counsel while challenging the docket order dated 19.12.2014 contends that having regard to the facts and circumstances of the

present case, the prayer in E.A. No. 252 of 2014 is not maintainable and consequently no order under Rule 59 can be granted. In other words,

the objection raised by the petitioner goes to the maintainability of applications in E.A. Nos. 251 and 252 of 2014 and the jurisdiction of the Court

to grant stay of delivery of sold property.

9. On the other hand, Sri A.V.V.S.N. Murthy submits that the 1st respondent on 07.06.2006 entered into agreement of sale with judgment debtor

and a registered sale deed was executed by judgment debtor on 01.04.2011. The 1st respondent is not aware of the attachment order dated

05.09.2006, or sale of the property in E.P. No. 99 of 2009. Alternatively he submits that as a regular sale deed is obtained by the 1st respondent,

the 1st respondent is a person having interest in the E.P. schedule property and the claim petition under Rule 58 of Order XXI CPC is

maintainable. The learned counsel when confronted with stark fact of auction held on 06.11.2012 and issue of sale certificate dated 31.01.2013

replies by placing reliance upon the decision in Magunta Mining Cp. Vs. M. Kondamireddy and Another, AIR 1983 AP 335 : (1983) 1 APLJ

267 that a claim petition even after sale is completed can be maintained in law and the instant applications are accordingly maintainable. The

learned counsel alternatively submits that the executing Court can certainly consider the maintainability of E.A. Nos. 251 and 252 of 2014 and no

ground is made out by the revision petitioner for interference at this stage in E.P. No. 99 of 2009.

10. Perused the material available on record and noted the rival submissions of learned counsel appearing for the parties.

11. Now the point for consideration is whether the executing Court is competent to pass the order dated 19.12.2014 in E.A. No. 252 of 2014?

12. At the outset, it is noted that C.R.P. is directed against the order dated 19.12.2014 in E.A. No. 252 of 2014. Consideration of legality or

otherwise of the prayer in E.A. No. 252 of 2014 and/or the order dated 19.12.2014 is depending upon consideration of the primary objections

raised by the revision petitioner under Order XXI Rule 58 CPC against the very maintainability of E.A. No. 251 of 2014.

13. Order XXI Rule 58 Sub Rule (1) reads thus:

Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that

such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim, or objection in accordance with the provisions

herein contained:

Provided that no such claim or objection shall be entertained-

(a) Where, before the claim is preferred or objection is made, the property attached has already been sold; or

(emphasis added)

(b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

14. The above Rule provides for adjudication of claims or objections on attached property in E.P. The Rule enables maintaining a claim or

objection to the attachment of a property in execution of a decree by contending that the property so attached is not liable for attachment or further

proceedings against the property covered by attachment cannot be proceeded with in pending E.P. The claim is decided under Sub Rules 2 to 5 or

Order XXI Rule 58. Proviso (a) to Order XXI Rule 58 Sub-Rule 1 CPC reads thus:

No such claim or objection shall be entertained where, before the claim is preferred or objection is made,"" the property attached has already been

sold"".

(emphasis added).

15. In other words, by operation of proviso (a), the executing Court cannot entertain a claim petition if the execution proceedings have culminated

in sale of attached property and a sale certificate is issued by the executing Court. The learned counsel appearing for the 1st respondent places

reliance upon Magunta Mining Cp. Vs. M. Kondamireddy and Another, AIR 1983 AP 335 : (1983) 1 APLJ 267 stating that a claim petition is

maintainable even after the property is sold and issuance of sale certificate by the executing Court. The learned counsel relies upon the following

paragraph in Magunta Mining Cp. Vs. M. Kondamireddy and Another, AIR 1983 AP 335 : (1983) 1 APLJ 267 .

Whenever a claim is preferred under O. 21, R. 58 against attachment of immovable properties, the fact that the properties are sold or the sale

confirmed will not deprive the Court of its jurisdiction to adjudicate on the claim. The inquiry into the claim can be proceeded with by the trial

Court of the appellate Court (under the Amended Code) and in the event of the claim being allowed, the sale and the confirmation of sale shall to

that extent be treated as a nullity and of no effect.

16. Magunta Mining Cp. Vs. M. Kondamireddy and Another, AIR 1983 AP 335 : (1983) 1 APLJ 267 was decided by a Division Bench of this

Court. The ratio of M/s. Mangunta Mining Co's case has been the subject matter of the decisions in P.M. Doraswamy Reddy 1987 (1) ALT

583 (supra) and Singirkonda Surekha Vs. G.V. Sharma and Others, (2003) 1 ALD 803 . I consider it appropriate to refer to the observations in

these two decisions to ascertain the ratio laid in Magunta Mining Cp. Vs. M. Kondamireddy and Another, AIR 1983 AP 335 : (1983) 1 APLJ

267 .

17. The distinguishing feature in Magunta Mining Cp. Vs. M. Kondamireddy and Another, AIR 1983 AP 335 : (1983) 1 APLJ 267 and P.M.

Doraswamy Reddy 1987 (1) ALT 583 (supra) and Singirikonda Surekha 2003 (1) An.W.R. 401 (A.P.) (supra) cases is that in M/s. Magunta

Mining Co's case, the claim petition was filed before auction was held and during the pendency of the appeal filed against rejection of claim

petition, the property was sold. The distinguishing fact situation of Magunta Mining Cp. Vs. M. Kondaramireddy and Another, AIR 1983 AP 335

: (1983) 1 APLJ 267 is considered in P.M. Doraswamy Reddy's case 1987 (1) ALT 583 (supra) and Singirkonda Surekha Vs. G.V. Sharma

and Others, (2003) 1 ALD 803 . Relevant Paras read as follows:

P.M. Doraswamy Reddy's case 1987 (1) ALT 583 (supra):

The Division Bench is concerned with a situation whether appeal is maintainable and in the context of considering this aspect two aspects namely

the sale after interim order was passed and the stay of confirmation of sale were adverted to. Whatever be the effect of sale subsequent to grant of

interim stay the stay of confirmation of sale is not a bar to the maintainability of appeal in view of second limb of clause (B) of Order 21 Rule 59

CPC. It is obvious that the conclusion is based upon this crucial aspect as evident from the categorical observation, ""But it is clear that so long as

the sale is not confirmed the status quo ante can be restored in case the claim is allowed."" After adverting to the legal position hereinbefore with

reference to the facts in the case the Court adverted to the legal effect of allowing the claim petition and in the context of considering this aspect

made general observations in para 15. For the purpose of considering the contention of maintainability of the petition founded upon the operation

of proviso to Order 21 Rule 58 the impact of Order 21 Rule 59 has already been considered with reference to facts in the case and as such the

general observations in Para 15 are not intended to cover the situation when the sale is held before filing the claim petition. It is obvious that these

observations echoed the prevalent enunciation of legal position that the sale of the attached property is null in the event of allowing the claim

petition and these observations are sought to be unduly stretched to the maintainability of claim petition, notwithstanding the anterior sale. It may be

reiterated that the non-maintainability of the claim petition under proviso to Rule 58 can be impugned by recourse to remedy by way of suit under

clause 5 of Rule 58 and this route of questioning the maintainability of the claim petition is not concerned with the issue of adjudication of claim petition

in event of sale before filing the petition. Therefore, the conclusion of the lower court that the application under Order 21 Rule 58 CPC is

maintainable even when the sale is held before filing the claim petition is in teeth of proviso to Order 21 Rule 58 CPC and the decision referred to

is not applicable to the situation in the instant case.

Singirikonda Surekha's case 2003 (1) An.W.R. 401 (A.P.) (supra)

M/s. Magunta Mining Co. 1987 (1) ALT 583 (supra), relied on by the learned counsel for the revision petitioner, has no application to the facts

of this case. In that case claim petition, in respect of the properties attached in March, 1980, was filed on 25.04.1980. After enquiry that petition

was dismissed on merits. Appeal against that order of dismissal was filed in this Court on 18.05.1980 and interim stay was granted on

22.08.1980. But, even before the order of stay was communicated to it, the Executing Court held the auction. Therefore, a contention was raised

during the course of hearing of the appeal that the appeal is liable to be dismissed inasmuch as the sale was already held. Therefore, one of the

points for consideration framed was whether the appeal can be proceeded with even though the property was sold during the pendency of the

appeal. Holding that the appeal can be heard on merits, the Bench held in para 15 of its judgment as under:

Whenever a claim is preferred under Order 21 Rule 58 C.P.C. against attachment of immovable properties, the fact that the properties are sold

or the sale confirmed will not deprive the Court of its jurisdiction to adjudicate on the claim. The inquiry into the claim can be proceeded with by

the trial Court or the appellate Court (under the amendment Code) and in the event of the claim being allowed, the sale and the confirmation of sale

shall to that extent be treated as a nullity and of no effect, as the judgment-debtor had no title which could pay to the Court auction-purchaser.

Therefore, the ratio in that decision is that if sale was held during the pendency of the ""appeal"" against the order of dismissal of a petition filed under

Rule 58 of Order 21 C.P.C. the appeal does not become infructuous. The Bench was not deciding the question as to whether a claim petition can

be filed after the sale was held. So, the said decision has no application to the facts of this case.

18. In Kancherla Lakshminarayana Vs. Mattaparthi Syamala and Others, AIR 2008 SC 2069 : (2008) 2 CTC 774 : (2008) 3 SCALE 641 :

(2008) 14 SCC 258 : (2008) 1 UJ 570 : (2008) AIRSCW 2800 , the Apex Court considered the meaning of the word ""sold"" in proviso (a) to

Sub Rule I of Rule 58 of Order XXI and held as follows:

Mere holding of auction sale does not bar the raising of objection to attachment of property. The word ""sold"" in Clause (a) of the proviso to Rule

58 has to be read meaning thereby a complete sale including the confirmation of the auction. In considering the ""time factor"" of challenging the sale,

the ""locus standi factor"" on account of any prior interest of the objector in the suit property has also to be considered. The attachment cannot be

free from the prior obligations. The necessary sequatur is that even after the factum of sale the objection would still lie before the sale is made

absolute.

19. This Court in the instant C.R.P. is concerned with proviso (a) to Sub Rule 1 of Rule 58 of Order XXI CPC and maintainability of claim

petition after the property is sold and a sale certificate is issued. To complete the narration the consideration on this aspect, the following paragraph

in Gangineni Damodar Naidu and Another Vs. Kurapati Kondaiah Naidu, (2007) 1 ALD 106 : (2006) 3 APLJ 329 is excerpted.

Rule 58 of Order XXI directs that all claims, or objections to, attachment of any property, in execution of a decree, must be preferred before the

Executing Court itself. This provision is mainly intended to deal with the claims, or objections of third parties. The reason is that, a judgment-debtor

cannot object for proceeding against an item of property, if he has right and title in it, and he should not bother himself much, if he does not hold

title, upon it. Apart from enabling third parties, to put forward their claims in the execution proceedings, Rule 58 prohibits filing of separate suits.

However, the rule draws a dead line, in the matter of presentation of the claims. No claim can be entertained, after the attached property is brought

to sale.

20. The facts and circumstances are not in dispute and the outcome of C.R.P. depends on maintainability of claim petition after the property is sold

and a sale certificate is issued by the executing Court. The 1st respondent places strong reliance upon *Magunta Mining Cp. Vs. M.*

Kondaramireddy and Another, AIR 1983 AP 335 : (1983) 1 APLJ 267, as already noticed *M/s. Magunta Mining Co's* case is distinguished by

P.M. Doraswamy Reddy 1987 (1) ALT 583 (supra) and *Singirkonda Surekha Vs. G.V. Sharma and Others*, (2003) 1 ALD 803 cases and the

contention basing upon *Magunta Mining Cp. Vs. M. Kondaramireddy and Another*, AIR 1983 AP 335 : (1983) 1 APLJ 267 has to be negated

and accordingly rejected. Now, I proceed to examine effect of proviso (a) to Order XXI Rule 58(1) CPC.

21. From the scheme of Order XXI Rule 58 CPC, it is clear that the Rule firstly provides for adjudication of claims at the instance of a third party

and the remedies against adjudication to an aggrieved party. The proviso (a) to Sub-Rule 1 of Order XXI Rule 58 prohibits the executing Court

from entertaining claim or objection against the property attached has already been sold. The purpose of imposing prohibition to entertain claim

petitions in matters which have been processed up to the stage of issuance of sale certificate are easily discernable. In construing the scope of

prohibition to entertain the claim petition under Order XXI Rule 58, sub-rule (1) can be examined by reference to other relevant provision viz.,

Rules 92 and 94 of Order XXI CPC and read thus:

Rule 92 of Order XXI:

Sale when to become absolute or be set aside.-(1) Where no application is made under Rule 89, Rule 90 or Rule 91, or where such application is

made and disallowed, the Court shall make an Order confirming the sale, and thereupon the sale shall become absolute:

Provided that, where any property is sold in execution of a decree pending the final disposal of any claim to, or any objection to the attachment of,

such property, the Court shall not confirm such sale until the final disposal of such claim or objection.

(2) Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made

within 1 [sixty days] from the date of sale, or in cases where the amount deposited under Rule 89 is found to be deficient owing to any clerical or

arithmetical mistake on the part of the depositor and such deficiency has been made good within such time as may be fixed by the Court, the Court

shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby:

Provided further that the deposit under this sub-rule may be made within sixty days in all such cases where the period of thirty days, within which

the deposit had to be made, has not expired before the commencement of the Code of Civil Procedure (Amendment) Act, 2002.

(3) No suit to set aside an order made under this rule shall be brought by any person against whom such order is made.

(4) Where a third party challenges the judgment-debtor's title by filing a suit against the auction-purchaser, the decree-holder and the judgment-

debtor shall be necessary parties to the suit.

(5) If the suit referred to in sub-rule (4) is decreed, the Court shall direct the decree-holder to refund the money to the auction-purchaser, and

where such an Order is passed the execution proceeding in which the sale had been held shall, unless the Court otherwise directs, be revived at the

stage at which the sale was ordered.

Rule 94 of Order XXI:

Certificate of purchaser:-Where a sale of immovable property has become absolute, the Court shall grant a certificate specifying the property sold

and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale

became absolute.

22. Proviso to Rule 92 sub-rule (1) of Order XXI CPC refers to a situation where the sale is held and a claim is made by a third party, the

executing Court is directed not to confirm the sale till the disposal of such claim by the executing Court.

23. Sub-rules (4) and (5) deal with a situation where a third party is compelled to challenge by way of a suit, the judgment-debtor's title to the

property sold in execution proceedings and who are the necessary parties and what is the jurisdiction of Court to grant comprehensive reliefs in the

suit filed by a third party.

24. Rule 94 enables issuance of sale certificate to the auction purchaser after completing various stages under different rules of execution.

Therefore the procedure stipulated in the rules has forward march with the completion of a particular stage and not intended to reopen the Court

concluded actions viz., sale certificate is issued. The important words to attract prohibition, in the proviso to Rule 58(1) CPC are that the property

attached has already been sold. The words are simple and convey full meaning in the application of proviso to completed sale transactions. From

literal construction of these words it can be held that once the sale certificate is issued to the property sold in auction held by the Court, the proviso

to Rule 58(1) is attracted and no claim petition is maintainable against such property. From a conspectus of the above provisions, it can be held

that Order XXI CPC is a stand alone provision comprehensively dealing with execution of decrees and orders. The various stages of the execution

provides for objection by respondent/third party to execution and the executing Court decides these objections. With a decision at appropriate

stage by the executing Court the next step is followed. Therefore, at the instance of a third party the completed stages are not revisited. Therefore,

with the issuance of sale certificate the property is said to be sold by the executing Court and no claim petition under Order XXI Rule 58 CPC is

maintainable.

25. The executing Court with the issuance of sale certificate completes the process of auction initiated under Order XXI and thereafter, a further

stage in execution proceedings arises. It cannot be the intention of Parliament to go forwards and come backwards in deciding the execution

proceedings with the filing of claim petition. Therefore, prohibition in complete terms is attracted to entertain a claim petition by the proviso when

the property is sold by the executing Court. Therefore, in my considered opinion the prayer in E.A. No. 251 of 2014 is not maintainable.

26. Having regard to the findings recorded on the maintainability of E.A. No. 251 of 2014, I have to consider the legality of docket order dated

19.12.2014. The executing Court prima facie has committed an illegality in entertaining E.A. No. 251 of 2014 and that E.A. No. 96 of 2013 is

pending for delivery of possession. The order impugned is erroneous and unsustainable. Once the claim petition is not maintainable in law, the

question of granting stay of delivery of possession does not arise. Hence, the order impugned is set aside and C.R.P. allowed. The revision

petitioner is given liberty to bring to the notice of executing Court the observations on the maintainability of E.A. No. 251 of 2014 and obtain

appropriate orders.

27. It is made clear that the E.As filed by the 1st respondent are considered from the limited perspective of maintainability and not on merits. The

dismissal or rejection of E.A. Nos. 251 of 2014 or 252 of 2014 shall not be treated as foreclosing the remedies, if any, available to the 1st

respondent.

28. With the above observation, the C.R.P. is allowed. No order as to costs.

29. Miscellaneous petitions pending, if any, shall stand closed.