

HONOURABLE SRI JUSTICE S.RAVI KUMAR
CIVIL REVISION PETITION No.1104 OF 2003

Dated 13-7-2016

Between:

N.Janardhan Reddy and others.

..Petitioners.

And:

Pasula Hanmantha Reddy and others.

..Respondents.

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ORDER:

This revision is preferred against orders dated 24-7-2002 in E.P.No.21 of 1989 on the file of Junior Civil Judge, Kalwakurthy, Mahabubnagar District.

Revision petitioners herein filed E.P.21 of 1989 under Section 40 of Andhra Pradesh Revenue Recovery Act, 1964 (hereinafter referred to as 'Act') seeking delivery of possession of schedule land on the ground that they are the lawful purchasers of schedule property in an open auction held on 28-7-1965 for a sum of Rs.2,900/- which was confirmed and sale certificate was issued in favour of revision petitioners.

The claim of revision petitioners was resisted by the respondents mainly on the ground that the claim is barred by limitation and that the auction proceedings conducted by Revenue Divisional Officer are illegal as the proceedings were conducted against a dead person without bringing the legal representatives and that the sale itself is void. They also resisted the claim, on the ground that the court below has no jurisdiction to entertain the E.P. for want of pecuniary jurisdiction and on considering the contentions and rival contentions of both parties, trial court dismissed the application holding that the claim is

barred by limitation and that the sale is void as it was conducted against a dead person and the court has no pecuniary jurisdiction. Aggrieved by the same, present revision is preferred.

Heard both sides.

Both sides advocates submitted arguments supporting respective contentions of their clients and also referred to some decisions which were considered by trial court.

The main argument of advocate for revision petitioners is that court below erred in holding that the claim was barred by limitation. He submitted that though sale was conducted on 28-7-1965 and confirmed on 23-3-1966, sale certificate was obtained only on 24-8-1989 and the proceedings are launched immediately after obtaining sale certificate and as per the provisions of the Act, enclosing sale certificate to the E.P. proceedings is mandatory, therefore, the Limitation has to be counted from the date of issue of sale certificate and as the E.P. is filed within time, the finding of court below on the point of limitation is not correct and the same has to be set aside. He further submitted the evidence on record will disclose that late Butchi Reddy was very much alive on the date of auction and the material produced on behalf of Decree Holder has clearly rebutted the objection of the respondents but the court below has not properly appreciated the same. He further submitted that the other findings of the court below are absolutely untenable and contrary to the evidence on record, therefore, order of the court below is liable to be set aside.

On the other hand, advocate for respondents submitted that period of limitation would start from the date of confirmation of the sale and simply because petitioners have not obtained the sale certificate that cannot be a ground to exempt from counting period of limitation. He further submitted that petitioners have not assigned any reason as to why sale certificate is not obtained

immediately after the confirmation of sale and why they have waited for more than 24 years and these aspects were considered by trial court and rightly recorded a finding that claim is barred by limitation. He further submitted that the other findings of the trial court are also on the basis of evidence though there was no necessity for the trial court to examine objections like pecuniary jurisdiction validity of the sale etc., once it held that claim is barred by limitation, still it considered those points and recorded findings based on material and that there are absolutely no grounds to interfere with the well reasoned order.

As seen from the record, E.P. was once dismissed earlier against which a revision was preferred and the matter was remitted back to examine certain aspects and decide the matter and then the trial court conducted a detailed enquiry and decided the matter.

Now the point that would arise for my consideration in this revision is whether the order of court below is legal, correct and proper?

POINT:

Even according to petitioners, the sale was conducted on 28-7-1965 and it was confirmed on 23-3-1966 and sale certificate was obtained on 24-8-1989. It is the contention of the petitioners that as there was no prescribed time for obtaining sale certificate, respondents cannot question it. As rightly pointed out by respondents counsel, simply because there was no time limit prescribed for obtaining sale certificate, parties cannot be allowed to wait as they choose. Once the sale is confirmed, it is the duty of the auction purchasers to get the sale certificate within a reasonable time but not as per their choice like a long period of 24 years. It is expected from the petitioners to explain as to why they have not obtained sale certificate for such a long period of 24

years. Keeping silent without obtaining sale certificate which is title deed for them would amount to allowing opposite party to enjoy the property and perfect their title by adverse possession.

No doubt, issuing sale certificate is only an administrative act, but still, when property is purchased in an auction, the purchasers must show interest in getting the property otherwise it has to be presumed it is only “a make believe transaction”.

As seen from the document, Ex.B.1 is the proceedings for confirmation of sale in favour of late Janardhan Reddy. As per condition incorporated in it purchasers have to take steps as per rules after obtaining certificate. When such a specific condition is there, it is not known why steps are not taken for obtaining sale certificate for about 24 years and in between, there is every possibility of change of property into several hands including 3rd party who can perfect their title by adverse possession. Even otherwise, as per the limitation Act, period of limitation for recovery of possession in respect of sales conducted in auction is three years from the date of confirmation of sale.

Therefore, it indirectly mandates a party to get necessary sale certificate within that period. Further even the limitation period for execution of a decree is 12 years and even if it is taken in that sense, the execution petition is not filed either within the period of three years or within 12 years and it is only filed 24 years after the confirmation of sale. Both parties referred to some decisions supporting their respective contentions but here those decisions have no application because of clinching evidence that the execution was launched 24 years after confirmation of sale. As rightly observed by the trial court from the date of confirmation of sale, it has to be inferred that the auction purchasers have acquired rights over the property and from that date, period of limitation starts to enforce their rights over the property. Simply because

auction purchasers have not obtained sale certificate, it cannot be said that rights are not acquired over the scheduled property. It is the look out of the auction purchasers to get the sale certificate issued to enforce their rights over the property. For example, if 'A' purchased property from 'B' through a registered document and the registration has taken place on a particular day, and the purchaser did not get the document from the registration authorities immediately, and document was not delivered for years, it is the duty of the purchaser to take steps for collecting that document from the office. If the purchaser remains silent for years together and do not collect document, he cannot contend that the period of limitation would start with regard to his rights over the property only from the date he collects the document from the office. For the laches of not obtaining document, he alone has to suffer and cannot contend that limitation would not commence.

As rightly pointed out by advocate for respondents, issuance of sale certificate in cases of auctions conducted is only a subsequent ministerial act and that cannot prevent the purchaser from enforcing his rights over the property. Here the revision petitioners on the pretext that they have not obtained sale certificate till 1989, wants to enforce their rights after a period of 24 years which they acquired the moment sale is confirmed in their favour after the period to question the sale was expired. Trial court has elaborately considered each and every aspect with reference to material available on record and came to a right conclusion and that there are absolutely no grounds to interfere with the findings of the trial court.

With regard to other findings though there was no necessity to go into other aspects when the claim itself is barred by limitation, as this court remanded the matter directing the court below to enquire into those aspects, the learned judge enquired those aspects and recorded findings based on the material and I do not find any wrong

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