

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

C.M.A.No.112 OF 2013

ORDER:

This civil miscellaneous appeal is filed under Order 43 Rule 1 CPC assailing the order dated 03.01.2013 rejecting the un-numbered E.A.No.____of 2012 in E.P.No.30 of 2011 in O.S.No.156 of 2009 on the file of the Court of Senior Civil Judge, at Mangalagiri, Guntur District.

2. Heard learned counsel appearing for both parties.
3. The facts leading to filing of the present appeal are briefly as follows:

The respondent filed O.S.No.156 of 2009 against the petitioner on the file of the Additional Senior Civil Judge Court, Tenali, for recovery of suit amount of Rs.2,06,652/- with interest at 12% per annum. The trial Court after full fledged trial, decreed the suit in favour of the respondent on 15.04.2011. At the request of the respondent, the decree was transferred to the Court of Senior Civil Judge, Mangalagiri. The respondent filed E.P.No.30 of 2011 for realisation of the decretal amount and brought the E.P. schedule property for sale. The executing Court conducted sale on 02.07.2012 and confirmed the same on 10.09.2012. The petitioner, who is J.Dr., filed E.A.____of 2012 under Order 21 Rule 90 CPC and Section 47 of CPC to set aside the sale conducted on 02.07.2012. The executing Court at the time of numbering the said petition, took an objection that how the petition is maintainable under Order 21 Rule 90 CPC. The executing Court after hearing the learned counsel for the petitioner, dismissed the petition. Hence, the revision.

4. Learned counsel for the petitioner submitted that the respondent played fraud and the same was not considered by the executing Court and rejected the petition. He further submitted that though the petitioner has filed a petition under Order 21 Rule 90 and Section 47 CPC, the executing Court has not given any finding under Section 47 CPC.

5. Per contra, learned counsel for the respondent submitted that the provisions of the Limitation Act are not applicable to Order 21 CPC. He further submitted that the petitioner has not filed two separate applications, therefore, the executing Court rightly dismissed the petition under Section 47 CPC also.

6. Now, the point that arises for consideration is

‘Whether the order of the trial Court is sustainable?’

7. The petitioner contested the main suit. For one reason or other, the petitioner has not participated in execution proceedings till confirmation of the sale. The executing Court delivered the E.P. schedule property to the Decree-holder. It is not in dispute that the executing Court conducted sale on 02.07.2012 and the same was confirmed on 10.09.2012.

8. In order to appreciate the contention of the learned counsel for the petitioner, it is not out of place to extract hereunder Article 127 of the Limitation Act:

127.	To set aside a sale in execution of a decree, including any such application by a judgment-debtor.	1[Sixty days].	The date of the sale.
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9. A perusal of the above provision clearly demonstrates that one has to file an application under Order 21 Rule 90 CPC within a period

of sixty days from the date of sale. As observed earlier, the petitioner having received notices in execution petitions did not appear before the executing Court. The executing Court having no other alternative, proceeded further in accordance with law. The Court can presume that he is aware of the execution proceedings in view of service of notice on him. The sale was conducted on 02.07.2012, whereas the application under Order 21 Rule 90 CPC was filed on 17.12.2012. The petition was filed five months after conducting of sale. The petition filed by the petitioner is barred by limitation in view of Article 127 of Limitation Act. The executing Court considered the scope of Article 127 of Limitation Act in right perspective and rejected the petition. I am fully endorsing with the findings recorded by the executing Court so far as limitation aspect is concerned.

10. As rightly contended by the learned counsel for the petitioner, the trial Court has not given any finding on Section 47 CPC. If an application is filed under different provisions of law, a duty casts upon the Court to give a specific finding on each and every provision of law. Admittedly, the executing Court has not given specific finding as to whether the contentions raised by the petitioner will encompass in Section 47 CPC or not. If this Court considers this aspect in this miscellaneous appeal, one of the parties to the proceedings will lose the right of appeal, therefore, this Court is not inclined to express any opinion with regard to the applicability or non-applicability of Section 47 CPC. Taking into consideration the facts and circumstances of the case, this Court is of a considered view that it is a fit case to remand the matter to the executing Court to decide the issue involved between the parties so far as Section 47 CPC is concerned.

11. In the result, the appeal is allowed in part confirming the order of the executing Court so far as rejecting the petition under Order 21 Rule 90 CPC is concerned. So far as the other reliefs claimed under Section 47 CPC, the matter is hereby remanded to executing Court. The executing Court is hereby directed to number the E.A., if it is otherwise in order and dispose of the same without being influenced by the observations, if any, made by this Court. As a sequel, miscellaneous petitions, if any pending in this petition shall stand closed.

17th July 2018
Rns

T.SUNIL CHOWDARY, J

