

* _THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

+ CIVIL REVISION PETITION No.1419 of 2014

% 13-11-2018

Chunduru Abbaiah

... Petitioner

Vs.

\$ Garlapati Satyanarayana & 3 others

... Respondents

! Counsel for the Petitioner: Sri S.APPADHARA REDDY

Counsel for the Respondents: Sri P.ANIMI REDDY

Sri SAI GANGADHAR CHAMARTY

Sri KRISHNA MURTHY DEVARAKONDA

< Gist:

> Head Note:

? Cases referred:

1. 1999 (3) ALT 136
2. 1999 (4) ALT 306



IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

CIVIL REVISION PETITION No.1419 of 2014

Between:

Chunduru Abbaiah

..... PETITIONER

AND

Garlapati Satyanarayana & 3 others

.....RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 13.11.2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

D.V.S.S.SOMAYAJULU,J

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION No.1419 of 2014ORDER:

This civil revision petition is filed questioning the order that is passed on 24.04.2014, by the Additional Senior Civil Judge, Eluru, directing the return the claim petition filed under Order 21 Rule-58 CPC, vide E.A(SR) No.2378 of 2014.

This court has heard the learned counsel appearing for the petitioner and the respondent respectively.

The grievance of the petitioner before this court is that he has a claim in the suit schedule property, which is subjected to attachment in E.P.No.97 of 2012. According to the learned counsel for the petitioner, the petitioner filed an application under Order 21 Rule 58 CPC on 28.03.2014 claiming a right over the schedule property and seeking a vindication of his right and for raising attachment of the property that was scheduled to be auctioned on 24.04.2014. According to the learned counsel, the application was filed on 28.03.2014 itself, but the court returned the application granting 15 days time and posted the mater to 24.04.2014. The learned counsel submits that the petition was represented immediately annexing the judgment of this court in *Muvvala Ramachandra Rao v. Kuricheti Ravi*¹. Despite the same, the court below returned the application and the sale was conducted on 24.04.2014 and the property was sold to the highest bidder on the same day. The grievance of the learned counsel is that once the petitioner has made a claim, his claim to be adjudicated under Order 21 Rule 58 CPC.

¹ 1999 (3) ALT 136

Learned counsel for the respondent, on the other hand, argues that the entire exercise leading up to filing the claim petition is a collusive exercise between the judgment debtor and his brother-in-law, who is the claim petitioner. He points out that only a nominal amount was left towards sale consideration and the whole idea is to ensure that the sale of the property does not occur.

Sri Sai Gangadhar Chamarty, learned counsel, appearing for Judgment Debtor, argues that his client filed an application before the court below expressing his willingness to satisfy the decretal debt and is prepared to pay the decretal amount and the same is pending.

After hearing all the learned counsel, this court is of the opinion that at this stage it cannot go into the merits and demerits of the matter as to whether the transactions are collusive and whether the agreement of sale confers any right on the petitioner to agitate his claim in the schedule property by filing a claim petition. These issues are to be decided by the court below. This court, particularly in revision, cannot decide all these matters. However, when an application is filed under Order 21 Rule 58 CPC claiming any right or raising any objection to the attachment of the property, the court shall have to proceed to adjudicate upon such claim. Under Order 21 Rule 58 CPC, the executing court is bound to enquire into and decide the validity or otherwise of the claim that is made. Therefore, this court is of the opinion that the procedure that has been adopted by the court below in summarily rejecting the application filed by the petitioner is not correct.

In matters of this nature, if the claim petitioner is not a *pendente lite* purchaser, the executing Court should give an opportunity to both

parties to adduce oral and documentary evidence. The entire procedure for trial of civil suits however need not however be adopted. The parties cannot be allowed to go on a roving enquiry to establish their rights. If the parties wish to proceed with the enquiry on the basis of documents the same should be noted clearly. If a request for oral evidence is made, a strict timetable must be fixed. List of witnesses must be filed in advance and the procedure under Order 14 should be adhered to strictly. In addition, requests for any adjournment must be dealt with strictly. The Executing Court should be conscious of the fact that the difficulty of the decree holder often commences when he obtains a decree and puts it to execution. At the same time as the 1976 amendment to CPC empowers the Executing Court to decide all questions it must proceed to do so in a quick but sure manner.

The following passages from the judgment of this court in *Arif Abdul Ghani and others v Maheshwar Rao and others*² should be guiding beacon for the executing Court.

The claim petition is required to be heard and decided as if it is a suit. That is the scope of the proceedings. But, it does not mean that the Court is required to follow the same procedure as provided for in the enquiry and trial of a suit. The procedure prescribed for the trial and disposal of the suit, ultimately resulting in judgment and decree may be applicable for the disposal of the claim petition. But neither the result, nor the proceedings would be vitiated, if the entire procedure as such is not followed in a given case, by the Court. Wherever it is necessary for the effective disposal of the claim petition, the civil Court may follow the same procedure for the disposal of the claim petition, as is applicable for the disposal of the suit. The extent of applicability of the procedure may vary and depend upon the facts situation. Mere failure to frame issues or points for consideration would not vitiate the proceedings nor the

² 1999 (4) ALT 306

decision itself. May be it is better and advisable for the civil Courts to reduce the controversy between the parties by focusing the same and by framing issues or points for consideration. The very purpose of the amendment dispensing with the requirement of filing of another suit to go into the question relating to right, title and interest in a claim petition is with a view to provide cheap and speedy justice. Therefore, the proceedings may not be converted into a cumbersome one by compulsorily applying the entire procedure applicable for the disposal of the suit. Such a view would defeat the very purpose and object of the amendment. It would be sufficient if the civil Court decides the matter after referring to the pleadings and the evidence available on record. Of course, it is needless to observe that whole of the Code of Civil Procedure would be applicable depending upon the facts situation and desirability of such an application. The Courts below can always insist upon for compliance of such provisions of the Code of Civil Procedure, which may be necessary for the disposal of the case. But, the parties to the claim petition cannot insist upon the Court to follow the entire procedure commencing right from Order 1 to Order XX of the Code of Civil Procedure, which is applicable for the disposal of a suit

As the civil revision petition is allowed and the impugned order is set aside, the court below is directed to conduct an enquiry into the matter and decide the claim petition filed by the petitioner keeping in view the settled law on the subject. Whether a full fledged trial like in a civil suit is necessary or not is a matter of the lower court to be exercised according to the principles of law.

As this case is of the year 2014, the learned counsels agreed to cooperate for disposal of the matter as early as possible. The court below is directed to dispose of the matter on a priority basis, preferably, within a period of three months from the date of receipt of a copy of this order, without in any way being influenced to what is stated in this order. In the circumstances, there shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

D.V.S.S.SOMAYAJULU,J

Date: 13.11.2018
Dsr

Note:
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