

A U. SOWRI REDDY (DEAD) BY LRS.
v.
B. SUSEELAMMA AND ORS.
(Civil Appeal No. 6322 of 2004)

APRIL 4, 2011

B [MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

Code of Civil Procedure, 1908 – s.115 – Suit for recovery of principal amount and interest due on pronote executed by the appellant – Decreed ex-parte – Respondent-plaintiff filed Execution Petition for realization of the decretal amount by sale of the immovable property of the appellant – Sale held in favour of the respondents – Appellant filed application to set aside the sale of the property – Application dismissed – Multiple rounds of litigation – Matter remanded to trial court for fresh disposal – Sale set aside with direction to appellant to deposit a sum of Rs.18,000/- – Order set aside by High Court in Civil Revision – Held: High Court ignored the deposit of Rs.18,000/- in pursuance of the court order, and also failed to take into account earlier orders in the matter – High Court was not justified in interfering in a Civil Revision Petition under s.115 CPC, when the amount of Rs.18,000/- was already deposited.

The predecessor of the respondents had filed a suit against the appellant for recovery of the principal amount and interest due on a pronote executed by the appellant. The suit was decreed ex-parte and the plaintiff-respondent filed an Execution Petition for realization of the decretal amount by sale of the immovable property of the appellant. The sale was held in favour of the respondents. The appellant filed an application under Order 21 Rule 90 C.P.C. to set aside the sale of property. The application was dismissed on which the appellant

filed a Civil Revision Petition whereupon the High Court gave an opportunity to the appellant-judgment debtor to pay the decretal amount. The appellant deposited the decretal amount. However, subsequently the Executing Court dismissed the application to set aside the sale of the property in question. Against that order a Civil Revision was filed. The High Court allowed the Civil Revision Petition and remanded the matter to the trial court for fresh disposal. Thereafter the application of the appellant was allowed and the sale was set aside with a direction to the appellant to deposit a sum of Rs.18,000/- . That order was set aside by the impugned order of the High Court and hence the present appeal.

Allowing the appeal, the Court

HELD:1. The impugned order of the High Court cannot be sustained. It appears that the High Court ignored the deposit of Rs.18,000/- in pursuance of order dated 2.11.2001, and failed to take into account the order dated 11.12.2001 of the Additional Senior Civil Judge dismissing the Execution Petition No.17 of 1996 and also did not take into consideration the earlier order dated 10.4.1998 in Civil Revision Petition. The High Court was not justified in interfering in a Civil Revision Petition under Section 115 C.P.C. when the amount of Rs. 18,000/- was deposited on 06.11.2001 as per order dated 02.11.2001. [Paras 7, 8] [235-C-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6322 of 2004.

From the Judgment & Order dated 12.4.2002 of the High Court of Andhra Pradesh at Hyderabad in Civil Revision Petition No. 5939 of 2001.

A. Subba Rao for the Appellants.

A A.T.M. Rangaramanujam, V. Sridhar Reddy for Abhijit Sengupta) for the Respondents.

The Judgment of the Court was delivered by

B **MARKANDEY KATJU, J.** 1. This appeal has been filed against the order dated 12.4.2002 in C.R.P. No.5939 of 2001 of the High Court of Andhra Pradesh at Hyderabad.

2. Heard learned counsel for the parties and perused the record.

C 3. The facts have been stated in detail in the impugned order and hence we are not repeating the same here except where necessary.

D 4. One B. Chandrasekhara Reddy, the predecessor of the respondents herein filed suit no.23 of 1992 before the Subordinate Judge, Gooty against the appellant herein for recovery of an amount of Rs.26,720/- being the principal amount and interest due on a pronote dated 3.4.1991 executed by the appellant herein for Rs.24,000/- payable with interest at E 12% per annum. That suit was decreed ex-parte by the learned Subordinate Judge, Gooty on 10.2.1995 and the plaintiff-respondent filed an Execution Petition for realization of the decretal amount by sale of the immovable property of the F appellant. On 15.9.1997 the sale was held in favour of the respondents herein. It is alleged that the property was worth of Rs.15 lacs but was sold for Rs.3,15,000/- to realize the decretal amount of Rs.40,364/-.

G 5. The appellant herein filed an application under Order 21 Rule 90 C.P.C. to set aside the sale of property. That application was dismissed by the trial court. A Civil Revision Petition No.1423 of 1998 was filed by the appellant in the High Court against that order. The High Court by order dated 10.04.1998 gave an opportunity to the judgment debtor to pay the decretal amount.

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6. It is alleged that on 16.4.1998 in pursuance of the High Court order dated 10.4.1998 the appellant herein deposited the decretal amount. However, on 22.7.1998 the Executing Court dismissed the application to set aside the sale of the property in question. Against that order a Civil Revision was filed and on 9.10.1998 the High Court allowed the Civil Revision Petition No.3957 of 1998 and remanded the matter to the trial court for fresh disposal. Thereafter on 2.11.2001 the application of the appellant was allowed and the sale was set aside with a direction to the appellant to deposit a sum of Rs.18,000/-. That order has been set aside by the impugned order of the High Court and hence this appeal.

7. In our opinion the impugned order of the High Court cannot be sustained. It appears that the High Court ignored the deposit of Rs.18,000/- on 06.11.2001 in pursuance of order dated 2.11.2001, and failed to take into account the order dated 11.12.2001 of learned Additional Senior Civil Judge dismissing the Execution Petition No.17 of 1996 and also did not take into consideration the earlier order dated 10.4.1998 in Civil Revision Petition No.3957 of 1998.

8. In our opinion the High Court was not justified in interfering in a Civil Revision Petition under Section 115 C.P.C. when the amount of Rs. 18,000/- was deposited on 06.11.2001 as per order dated 02.11.2001.

9. For the reasons given above this appeal is allowed and the impugned order of the High Court is set aside.

B.B.B.

Appeal allowed.