



HIGH COURT OF ANDHRA PRADESH
WEDNESDAY ,THE TWENTY NINETH DAY OF JUNE
TWO THOUSAND AND TWENTY TWO

PRSENT

THE HONOURABLE MS JUSTICE B S BHANUMATHI
CIVIL REVISION PETITION NO: 3503 OF 2019

Between:

1. POTNURU RAMESH S/o Late Dalisetty, Hindu, Age 45 years, Occ.
Business, Permanent Resident of Konchada Village, Ponduru Mandal,
Srikakulam District, Presently residing at Chaitanya Nagar, Maddilapalem,
Visakhapatnam.

...PETITIONER(S)

AND:

1. CHINTADA RAJA RAO , S/o Late Gaddeppa, aged 56 years, Occ.
Business,
R/o Konchada village, Ponduru Mandal, Srikakulam District.

...RESPONDENTS

Counsel for the Petitioner(s): V SUDHAKAR REDDY

Counsel for the Respondents: Y NAGI REDDY

The Court made the following: ORDER

**THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI****Civil Revision Petition No.3503 of 2019****ORDER:**

“Procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree-holder starts in getting possession in pursuance of the decree obtained by him. The judgment-debtor tries to thwart the execution by all possible objections.” (**Babu Lal v. Hazari Lal Kishori Lal and others**)¹.

“Procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleadings in civil cases are meant to give to each side intimation of the case of the other so that it may be met, to enable Courts to determine what is really at issue between parties, and to prevent deviations from the course which litigation on particular causes of action must take.” (**M/s. Ganesh Trading Co. v. Moji Ram**)².

“The rules of procedure are the handmaid of justice and not its mistress. In the present context, the strict interpretation would defeat justice.” (**Salem Advocate Bar Association, T.N v. Union of India**)³.

2. This revision petition is filed against order, dated 24.10.2019, in I.A.No.27 of 2015 (old I.A.No.1139 of 2010) in O.S.No.46 of 2001 on the file of the Court of Junior Civil Judge, Pondur.

3. Heard *Sri V.Sudhakar Reddy*, learned counsel for the revision petitioner/1st defendant and *Sri Y. Nagi Reddy*, learned counsel for the

¹ AIR 1982 SC 818

² (1978) 2 SCC 91

³ (2005) 6 SCC 344



that the matter was already disposed of, whereas the docket order produced before the High Court shows that the petition was pending as on 03.06.2016, and therefore, the impugned order was set aside by remanding the petition to the trial Court with a direction to consider the grounds and pass appropriate orders afresh. Meanwhile, the trial Court executed a sale deed on 14.06.2016. However, in view of the direction by the High Court, I.A.No.70 of 2016 was heard afresh and the petition was allowed on 17.07.2018. Thereby, counter of the 1st respondent in I.A.No.27 of 2015 was received on file. The 1st respondent opposed the petition mainly on the grounds that the petition under section 28(3) of the Act is not maintainable to direct this respondent to execute a sale deed, but the petitioner has to take appropriate proceedings under Order XXI CPC and that the *ex parte* decree was obtained behind the back of the respondent, in collusion with the 2nd defendant and that he had never executed the agreement of sale.

6. The order dated 24.10.2019 in I.A.No.27 of 2015, which is now under challenge in this revision petition, was passed observing that the decree against the 1st respondent is binding on the parties, since no steps were taken to set aside the same and further regarding the maintainability of the petition, observing that the petition was filed under Section 28(3) (sic.c) i.e., recession of the contract of sale, but the petition was numbered and the registered sale deed was also executed by that Court. The Court below further observed that the plaintiff, after obtaining the registered sale deed, filed E.P.No.5 of 2016 for delivery of possession and since the main purpose of registration of sale deed was served, any contentions raised by the 1st



respondent could not be entertained and that execution court cannot go beyond the decree and the contention of the 1st respondent is misconceived and must fail. Noting that the 1st respondent is at liberty to raise his contentions in the pending execution petition, I.A.No.27 of 2015 was disposed of holding that as the sale deed was already executed, the proceedings for delivery of the property would be adjudicated in the pending execution petition filed for delivery of the property, and two petitions for the same relief cannot be kept pending as it would lead to confusion.

7. Feeling aggrieved by the order, the 1st respondent therein preferred the revision on the grounds that the trial Court erred in not dismissing the petition in I.A.No.27 of 2015 filed under Section 28(3) of the Act, since the petition ought to be under Order XXI Rule 34 of CPC as held by the High Court of Andhra Pradesh in **Balasa Sarada vs. Talluri Anasuyamma (died) and others**⁴, and that when I.A.No.70 of 2016 was allowed setting aside the *ex parte* order 14.10.2011, all the consequential proceedings that have taken place in I.A.No.27 of 2015 are deemed to be set aside, but the same was not done by the court below.

8. *In reply*, leaned counsel for the 1st respondent herein submitted that the Supreme Court interpreted the word 'in the same suit' used in Section 28(3) of the Act in **Babu Lal v. Hazari Lal and others** (1 supra) and Section 28(1) of the Act in **Ramakutty Guptan v. Avara**⁵ and held that it would obviously mean in the suit itself and not in the execution proceedings and further it is equally settled law that after passing the decree for specific performance, the Court does not cease

⁴ 2007(3) ALT 4

⁵ AIR 1994 SUPREME COURT 1699



to have any jurisdiction and the Court retains control over the decree even after the decree has been passed.

9. Learned counsel for the revision petitioner submitted that the decision in the case of **Ramakutty Guptan** (5th supra) does not apply to the present case as the decision was recorded in the context of recession of contract under Section 28(1) of the Act whereas, the present case relates to specific performance of contract covered by Section 28(3) of the Act, and more particularly, in view of the decision of the High Court of Andhra Pradesh in **Balasa Sarada vs. Talluri Anasuyamma (died) and others** (4th supra) interpreting the provision under Section 28(3) of the Act itself.

10. Countering the arguments, learned counsel for the 1st respondent herein submitted that though the context is different, viz., Section 28(1) with reference to recession of contract and Section 28(3) with reference to performance of contract, the words under interpretation, viz., 'in the same suit', and the context and purport of using those words by the legislature either under Section 28(1) or 28(3) of the Act is the same and thus, the decision of the Supreme Court is applicable to the case on hand and more particularly, since the High Court in **Balasa Sarada** case (4th supra) has not considered the previous decisions of the Supreme Court rendered on the same subject, though not exactly the same provision of law.

11. Learned counsel for the 1st respondent further placed reliance on the decision of the Supreme Court in **Manickam @ Thandapani v. Vasantha**⁶, wherein the Supreme Court dealt with the expression 'at any stage of the proceeding' used in Section 22(2) of the Act and held

⁶ 2022 Live Law (SC) 395



that it is wide enough to allow the plaintiffs to seek relief of possession even at the appellate stage or in execution, even if such prayer was required to be claimed but not prayed nor was granted in decree. The decision of the Supreme Court in **Babu Lal v. Hazari Lal Kishori Lal and others** (1st supra) is followed. He has also drawn the attention of this Court to the principle of interpretation of statutes dealt with by the Supreme Court in the said decision, i.e., to examine whether a provision is directory or mandatory, one of the tests is that the Court is required to ascertain the real intention of the legislature by carefully attending to the whole scheme of the statute.

12. Before proceeding further, for purpose of better understanding, Section 28 of the Act and Order XXI Rule 34 CPC are excerpted hereunder:

“28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.—

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the court—

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor; and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and, if the justice of the case so requires, the refund of any sum paid by the vendee or the lessee as earnest money or deposit in connection with the contract.

(3) If the purchase or lessee pays the purchase money or other



sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:—

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court."

Order XXI Rule 34 CPC:

"34. **Decree for execution of document, or endorsement of negotiable instrument.**-(1) Where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.

2) The Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf.

3) Where the judgment-debtor object to the draft, his objections shall be stated in writing within such time, and the court shall make such order approving or altering the draft, as it thinks fit.

4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered.

(5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely-

"C.D., Judge of the Court of (or as the case may be), for A.B. in suit by E.F. against A.B."

and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same.

(6) (a) Where the registration of the document is required under any law for the time being in force, the Court, or such officer of the court as may be authorized in this behalf by the Court, shall cause the document to be registered in accordance with such law.

(b) Where the registration of the document is not so required, but the decree-holder desires it to be registered, the Court may make such order as it thinks fit.



(c) Where the Court makes any order for the registration of any document; it may make such order as it thinks fit as to the expenses of registration.”

13. The Supreme Court, in **Babu Lal v. Hazari Lal Kishori Lal and others** (1st supra), at paragraph Nos.28 and 29, examined the scope of Section 28(3) of the Specific Relief Act and it was held clearly that an application thereunder may be filed in the same suit. It further held at para 30 that the reasoning given by that Court with regard to the applicability of sub-section (1) of Section 28 equally applies to the applicability of sub-section (3) of Section 28. In the said decision, the earlier decision of the Supreme Court in **Hungerford Investment Trust Ltd. V. Haridas Mundhra and others**⁷ has been referred at paragraph No.29 to note the observation that the Specific Relief Act, 1963, is not an exhaustive enactment and under the law relating to specific relief a Court which passes a decree for specific performance retains control over the decree even after the decree has been passed. The decision in the case of **Babu Lal v. Hazari Lal Kishori Lal and others** (1st supra) has been followed by the High Court of Andhra Pradesh in **Smt. Suluguru Vijaya and others v. Pulumati Manjula**⁸.

14. In **Manickam** case (4th supra), the Supreme Court held that Section 22(2) is procedural law and taking aid from the principle that procedure is handmaid of justice and not to defeat justice, held that delivery of property can be given even in the absence of a direction in a decree for specific performance.

⁷ [1972] 3 SCR 690

⁸ 2006 SCC Online AP 981



Section 22 of the Act reads as follows:

“22. Power to grant relief for possession, partition, refund of earnest money, etc.—(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—

(a) possession, or partition and separate possession, of the property in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21.”

Both Sections 22 and 28 of the Act prescribe procedure. Therefore, drawing the same analogy, Section 28 which is also procedural law, must be interpreted in such a way as to advance cause of justice.

15. In view of the decisions of the Supreme Court dealing with interpretation of words ‘in the same suit’, both under Section 28 (1) and (3) of the Act, as rightly submitted by the learned counsel for the 1st respondent herein, the context in which the said words are used in different sub-sections of the same section, the scope and meaning remain the same and an interlocutory application in a suit is maintainable for execution of a sale deed and delivery of possession of property.



16. Insofar as maintainability of the petition under Section 28(3) of the Act, instead of giving a finding, the trial Court adopted a cut and run approach by observing that the petition was registered, purpose of registration of sale deed was served and that any contentions raised by the 1st respondent can be entertained in the execution petition filed for delivery of the property. There is an erroneous observation that the petition was filed under Section 28(3) of the Act, i.e., recession of the contract. Though Section 28 of the Act starts with recession of contract and its sub-sections (1) and (2) deal with it, sub-section (3) deals with performance of contract by (a) execution of proper conveyance etc., (b) delivery of possession of the property etc. Anyhow, since interlocutory petition under Section 28(3) of the Act is maintainable, there is no merit in the revision. Accordingly, the revision is devoid of merits and the same is liable to be dismissed.

17. Accordingly, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

B.S.BHANUMATHI, J

29th June, 2022

Note: - L R Copy to be marked
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