

Talari Thippeswamy Vs. Doddappa

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Court : Karnataka

Decided On : Oct-16-1995

Reported in : ILR1996KAR750; 1996(1)KarLJ89

Judge : Hari Nath Tilhari, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 104 and 115(2) - Order 21, Rules 89, 90, 91, 92 and 92(1) - Order 43, Rule 1

Appeal No. : C.R.P. No. 3236 of 1995

Appellant : Talari Thippeswamy

Respondent : Doddappa

Advocate for Def. : Basavaraja Kareddy, Adv.

Advocate for Pet/Ap. : K. Nageswarappa, Adv.

Disposition : Revision petition dismissed

Judgement :

ORDER

Hari Nath Tilhari, J.

1. This Revision is directed against the Judgment and Order dated 18th September, 1995, whereby the learned Munsiff, Bellary, dismissed the Revision

petitioner's application for setting aside the sale under Order 21 Rule 90 read with Section 151 of Code of Civil Procedure. A preliminary objection had been raised on behalf of Respondent by Sri Basavaraja Kareddy that the order is appealable and the present Revision is not maintainable in view of provision of Sub-section (2) of Section 115 of the Code of Civil Procedure. He submitted that the order impugned herein is appealable and the appeal lies to the District Court. The learned Counsel for the applicant tried to meet the objections by submitting that expression of Section 47 has been removed from the definition of the decree and as the order does not amount to decree, there is no question of appeal being filed and as such the Revision is entertainable. Later on the learned Counsel for the petitioner invited my attention to Order 43 Rule 1(j) and submitted that there is thin margin and it is a case of order in substance under Order 47. I have considered respective contentions and applied my mind. That an application for setting aside the sale on the grounds not covered by provision of Order 21 Rules 89, 90 or 91 may be said to have been moved under Section 47 CPC, but where the contents of the application appear to be covered by Order 21 Rules 89, 90 or 91, in that case it cannot be said be treated to be objection under Section 47 of the Code, A perusal of the facts given in the judgment and particularly the allegations made in support of the application by applicant in the affidavit sworn by the applicant, it has been stated that further he learnt that the sale paper notice have been allegedly served on him dated 24.12.1994 and thereafter sale by auction on spot was fixed dated 27.3.1995 the same was not known to him and thereby the confirmation of sale by auction before the Court on 3.4.1995 was also not known to him. He learnt that - by perusing the records - the alleged auction at spot dated 27.3.1995 the same is behind his back by colluding and fraud. That he further submitted that no such auction was held at the spot, no bidders participated, and bidding papers, mahazar are manipulated intentionally and that the same is created behind his back by colluding with the decree holder to grab the property..... The amount fixed by the Court Amin and the highest bidder is colluded one at meagre rate, whereas the value of the land is much higher and costly one. That the grave irregularity have been committed colluding with the decree-holder and he has not at all been served the sale notice nor he has signed on the notice summons.

2. These facts themselves clearly indicate that the objection which the applicant had filed was one which can be said to be covered under Order 21 Rule 90 of the C.P.C. Order 21 Rule 90 provides for application for setting aside the sale on the ground of material irregularity or fraud in publishing or conducting the sale. The Order 21 Rule 92 provides as per Sub-rule (1) 'where no application is made under Rule 89, Rule 90 or Rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale and thereupon the sale shall become absolute.' Reading of Sub-rule 1 of Rule 92 per se reveals that the application under Order 21 Rule 90 is to be disposed of and if even dismissed or disallowed by the Court, then the Court will make order making the sale absolute. The order passed under Rule 92 disposing of the application or objection under Order 21 Rule 90 and thereafter confirming the sale has been declared to be appealable order under the provisions of Order 43 Rule 1 (j) read with Section 104 of C.P.C. The order impugned herein is appealable under Section 104 read with Order 43 Rule 1 (j) and so in view of the provision of Sub-section 2 of Section 115 of C.P.C. which reads as under:-

'The High Court shall not, under this Section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto'

3. This Revision in my opinion is not worth being entertained and admitted, because admitting the Revision will not serve any purpose and even if the Court feels that the order suffers from illegality or irregularity, it cannot be interfered with or varied or reversed. The proper remedy for the applicant is to file an appeal before the Appellate Court. If there has been any delay, it may be condoned if and when shown to be on account of mistaken opinion of the Counsel the same has occurred due to that and I am quite sure the Tribunal will consider the same in condoning the delay. With these observations, the Revision Petition is dismissed as not maintainable. The Petitioner may file an appeal within a period of four weeks and during this period the status-quo existed regarding the property in dispute is to be maintained and when the appeal is filed, it will be open to the Appellate Court to pass suitable orders. Subject to the above observations, the Revision Petition is dismissed.

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