

B. Kamala Devi Vs. Ramachandrigee and ors.

B. Kamala Devi Vs. Ramachandrigee and ors.

SooperKanoon Citation : sooperkanoon.com/427019

Court : Andhra Pradesh

Decided On : Apr-09-1963

Reported in : AIR1964AP222

Judge : P. Chandra Reddy, C.J. and ;Gopala Krishnan Nair, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rule 100

Appeal No. : Civil Revn. Petn. No. 526 of 1962

Appellant : B. Kamala Devi

Respondent : Ramachandrigee and ors.

Advocate for Def. : K. Madhava Reddy, Adv.

Advocate for Pet/Ap. : P. Ramachandra Reddy, Adv.

Disposition : Petition dismissed

Judgement :

1. The question that arises for consideration in this civil revision petition is whether a person claiming to be in possession of a property as a protected tenant and dispossessed in execution of a decree, could invoke Order 21, Rule 100 C.P.C. and whether the court could direct restoration of possession to such a person.

2. The facts leading to this litigation are in order as follows:

A protected tenancy certificate was issued to dents 1 and 2 in or about the year 1952. It is anegeu on their behalf that they had been in possession of the property both before and after the issue of the certencare. The pattadar sold the hording on 23-10-1960 for an aneged consideration of Rs. 8,000/- to the petitioner. On the basis of the sale, an action Was raised by the petitioner on 31-3-1961. On receipt of summons, the venaor appeared in Court and submitted to a decree and it was passed on 19-4-1361. It appears that execution was not men out immediately for the reason that the crops raised by the respondents were on the land and these crops were harvested only sometime in June 1961. Execution was levied in June 1961 and a report was sent by tne palliff out 20-6-1961 that delivery was effected. It is the case or respondents 1 and 2 that they had no notice of the alleged delivery and that they came to know of it only a few days thereafter when they went to the fields to cultivate the lands. Subsequently, seeing the real position, they filed a petition under Order 21, Rule 100 C.P.C. in the City Civil Court, Hyderabad.

3. The First Additional juage, City Civil court, directed the claimants (respondents 1 and 2) to be restored to possession as on enquiry he found that they were in possession ot this properly when the direction for Dispossession was given by the court. It is this order that forms me subject-matter of the present revision.

4. What is urged on behalf of the petitioner is tnat as the question whether a particular person is a protectedtenant or not cannot be adjudicated by a civil Court, a Civil Court cannot entertain an application under Order 21, Rule 100 C.P.C., and that it is only after getting a decision on the question as to whether respondents 1 and 2 are pre-ected tenants or not that they seek the aid of a Civil Court. We do not think that we can share the view con-tended for by ths learned counsel tor tne pttmoner. unaccount-edly, it was in the execution of the decree that assistance, ot the Court was sought and respondents 1 and 2 were deprived of possession of the property. In other words, dispossession was effected through the machinery of the Court, it that were so, could it be posited that the same machinery could not be used for being restored to possession? In our opinion, resort could be had to the provisions of Order 21, Rule 100 C.P.C. for the purpose of re-gaining possession. Surely, a person deprived of pos-session under orders oi a civil Court cannot seen tne assistance of a revenue court to vacate that order. It is any the Court that

passed an order under Order 21, C.P.C. that could direct restoration of property to the person actually in possession of the property.

5. It is true that it is not within the province of the civil Court to consider whether the person in possession of the property was a protected tenant or not. That matter may have to be agitated in another forum. Whatever that be, in our considered opinion, recourse could be had to Order 21, Rule 100 C.P.C. by the person in possession of the property not on behalf of the judgment-debtor but on his own account. Therefore, the order under revision cannot be successfully impugned.

6. The learned counsel for the petitioner wants us to observe that if the civil Court has jurisdiction to make an order under Order 21, Rule 100, C. P. C., the petitioner is entitled to invoke Order 21, Rule 103 C.P.C. surety, that result follows because it is only under Rule 103 that an order passed under Rule 101 could be vacated or set aside. In fact, that position is not contested by the learned counsel for the respondents.

7. In the result, the civil revision petition is dismissed with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com