

K. Peerareddy Vs. Commissioner of Endowments and ors.

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Court : Andhra Pradesh

Decided On : Oct-18-2005

Reported in : 2006(2)ALD95; 2006(2)ALT222

Judge : Ghulam Mohammed, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 80

Appeal No. : AS No. 2757 of 1989

Appellant : K. Peerareddy

Respondent : Commissioner of Endowments and ors.

Advocate for Def. : V. Venugopala Rao, Adv.

Advocate for Pet/Ap. : V. Jagapathi, Adv.

Disposition : Appeal allowed

Judgement :

Ghulam Mohammed, J.

1. The appellant is the plaintiff, who filed O.S. No.42 of 1989 before Additional Subordinate Judge, Tirupathi, seeking a declaration that he is entitled to entire stock of old wooden material stipulated in notice dated 3-1-1983 and auction conducted on 25-1-1983 and further direction to deliver the entire stock. The suit

was dismissed.

2. The facts necessary for disposal of the appeal may be stated thus: The respondent-Endowment Department issued notice dated 3-1-1983 proposing to auction the wooden material like beams, doors, windows etc., pursuant to the demolition of certain buildings belonging to Sri Hathiramjee Mutt and the auction was fixed on 25-1-1983. One of the conditions of auction is that each intending bidder participating in the auction has to deposit a sum of Rs. 1,000/- towards initial deposit and further deposit one-third of the auction amount on bid being accepted. The plaintiff submitted the highest bid by quoting at Rs.20,000/- and the same was accepted and thus, he deposited a sum of Rs.5,000/- and the balance was deposited after the auction was confirmed by the first defendant. One of the conditions of the auction was that the third defendant auctioning authority has to obtain permission from T.T. Devasthanams to transport the wooden material from Tirumala to Tirupathi through toll gate, which was not done and hence, the plaintiff has not paid the balance amount.

3. While so, it is alleged that a petition was sent to first defendant to defer the auction, which was sent to second defendant, who has not taken any action. The first defendant confirmed the auction, but the second defendant seized the stock, which was auctioned. The plaintiff filed the writ petition seeking release of the stock and the writ petition was disposed of giving liberty to him to file civil suit seeking items mentioned in the auction notice.

4. The first defendant filed written statement contending that notice under Section 80 of Code of Civil Procedure to the defendants was not given and also denied that the wooden material preserved in the Mutt premises were put to public auction on 25-1-1983. It is further stated that only 249 items were proposed for auction and thus, only the iron beams and wooden material in the compound of the Mutt premises were put to public auction, but not the wooden and other material kept inside the Mutt building. Apart from this, the plaintiff had also acknowledged and signed the list of items put to auction and never raised any objection at the time of payment of sale price and kept quiet until the confirmation order. Thus, the plaintiff is estopped from contending that the articles kept inside the building were sold in

auction. The second defendant adopted the written statement filed by the first defendant.

5. The third defendant filed separate written statement stating that only 249 articles stated in the bid list were put to auction. The permission of T.T. Devasthanams for transporting the auctioned articles is not a condition precedent for confirmation of sale. The plaintiff has not deposited the balance amount and he has not given the particulars of the items, which were auctioned.

6. The trial Court after considering the above pleadings framed the issues as to whether the entire stock of the material as per notice dated 3-1-1983 was put to auction conducted on 25-1-1983 and whether the defendants are liable to deliver the stock to the plaintiff. On behalf of the plaintiff, PWs.1 to 4 were examined and Exs.A-1 to A-9 marked while DW-1 was examined for defendants and Exs.B-1 to B-12 were marked. The trial Court after considering the evidence on record held that the plaintiff is entitled to 249 items alone as specified in Ex.B-2, which were auctioned on 25-1-1983 and not the entire stock, but dismissed the suit on the ground that no notice was issued under Section 80 of Code of Civil Procedure to the defendants.

7. Heard learned Counsel for the appellant and Sri V. Venugopala Rao, learned Counsel appearing for respondents and also perused the record.

8. Learned Counsel for the appellant, Sri V. Jagapathi, has drawn my attention to the provisions of Section 80 of Code of Civil Procedure and contended that the notice under Section 80 C.P.C. is to caution the Government about its liability in advance. Learned Counsel further contended that the Government having filed counter-affidavit and contested the writ petition, must be deemed to have notice in the suit and the Government has also admitted that the appellant-plaintiff is entitled to 249 wooden articles, which were auctioned.

9. On the other hand, Sri V. Venugopala Rao appearing the Government contended that notice under Section 80 C.P.C. is required with reference to particulars of the claim and the relief sought for.

10. The point that arises for consideration is whether the notice under Section 80 C.P.C. is required to be given in the facts and circumstances of this case ?

11. In the instant case, the plaintiff earlier approached this Court by filing writ petition being W.P. No.4733 of 1983 before this Court and the respondents Government have contested the matter and also filed counter-affidavit admitting that the plaintiff is entitled to 249 wooden articles, which were subject-matter of auction and the consequent sale confirmed by the Commissioner of Endowments. In the writ petition, the plaintiff sought a direction to the respondents to release the auctioned material, but the writ petition was disposed of giving liberty to the plaintiff to file a civil suit as the disputed questions of fact were involved in the writ petition. Thus, the suit came to be filed. The respondents in the counter-affidavit admitted that the plaintiff is entitled to 249 wooden articles since he became the highest bidder and part of the amount has already been deposited. The object of issuing notice under Section 80 C.P.C. is to inform the Government in advance about the claim particulars of the party before any legal action is taken. By doing so, the Government will have prior notice of the case of plaintiff and in case the Government accepts the liability, then the dispute will be resolved at the level of the Government thereby the party can avoid institution of the civil proceedings which take considerable time. The appellant's case cannot be thrown out merely because notice under Section 80 C.P.C. was not given since the respondent officials were aware of the dispute when they filed counter-affidavit in the said writ petition and contested the matter, and also admitted that the plaintiff is the highest bidder and therefore entitled to 249 items, which were put to auction. In these circumstances, I find some force in the contention of the learned Counsel for the appellant that the notice under Section 80 C.P.C. is to caution the other side. The notice in the instant case is not necessary for the reason that the respondent officials have contested similar claim in the writ petition and admitted the appellant's entitlement of 249 auctioned items only. Therefore, the trial Court erred in dismissing the claim in toto. Accordingly, the judgment and decree of the trial Court is set aside and the respondents are directed to deliver only 249 auctioned items to the plaintiff on deposit of the balance amount, if any, payable to the respondents in respect of the transaction, within a period of four weeks from the date of receipt of a copy of this judgment.

12. The appeal is allowed to the extent indicated above. No order as to costs.

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