

B. Ramakrishna Setty and ors. Vs. B. Sreenivasa Murthy and ors.

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Court : Andhra Pradesh

Decided On : Aug-14-2006

Reported in : 2007(1)ALD369

Judge : C.Y. Somayajulu, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21; Andhra Pradesh Civil Rules of Practice and Circular Orders, 1990 - Rule 278(1); Process Fee Rules, 1965 - Rules 3(5) and 5

Appeal No. : CRP No. 3675 of 2004

Appellant : B. Ramakrishna Setty and ors.

Respondent : B. Sreenivasa Murthy and ors.

Advocate for Def. : M.R.S. Srinivas, Amicus Curiae

Advocate for Pet/Ap. : J. Narayana Swamy, Adv.

Judgement :

ORDER

C.Y. Somayajulu, J.

1. Aggrieved by the order directing them to pay poundage, revision petitioners preferred this revision.

2. First respondent filed the suit for partition and separate possession of his 8/42nd share in the plaint schedule properties. After contest a preliminary decree was passed on 8-7-1993. In a petition filed by the first respondent for passing a final decree in terms of the preliminary decree the trial Court appointed a Commissioner. He filed a report informing the Court that it is not practicable to divide item Nos. 1 to 4 of plaint schedule, and so the trial Court, with the consent of the parties, held an auction in between the parties to the suit in respect of those items, in which the first respondent became the highest bidder in respect of items 1, 2 and 4 for Rs. 26,25,000/-. That sale was confirmed later. Thereafter some events took place. But they are not relevant for disposal of this revision. When the second revision petitioner took an objection that inasmuch as the first respondent did not deposit the non judicial stamps and as no poundage was collected from him, the sale is liable to be set aside, the trial Court refused to set aside the sale, but held, by the order under revision, that in view of Rule 5 of the Process Fee Rules all the parties are liable to pay the poundage and issued notice to all the parties to pay the poundage into Court on or before 28-8-2003. Questioning the said order revision petitioners, who are defendants 1, 3 to 5 in the suit, preferred this revision.

3. The contention of the learned Counsel for the revision petitioners is that since poundage would be collected for the service rendered and since the Court did not render any service to the revision petitioners and inasmuch as the auction was held in view of the provisions of the Partition Act in between the parties to the suit and was not a public auction, under Order XXI CPC in execution of a decree, revision petitioners are not liable to pay any amount towards poundage and even if any poundage has to be paid, it is the highest bidder that has to pay the poundage but not all the parties to the suit in proportionate to their shares, and strong reliance is placed on *Aziz Khatoon v. Surayya Begum* 1962 (2) ALT 414 (DB) and *Anantha Sambaiah v. V. Venkobu Rao* 1967 (2) ALT 267 (DB) in support of the said contention. There is no representation on behalf of the respondents though served. Therefore, I requested Sri M.R.S. Srinivas, Advocate, to assist the Court as *Amicus Curiae*. He also contended that the order passed by the trial Court appears to be erroneous and is not in consonance with the ratio in *Aziz Khatoon's* case (*supra*) relied on by the learned Counsel for the revision petitioners, which

was referred to and followed in Anantha Sambaiah's case (supra).

4. Aziz Khatoon's case (supra), is a case where the property of the judgment debtor was got sold through a private auctioneer, but not by the Court itself. So it was held that as no service was rendered by the Court it cannot collect any amount as poundage because auctioneer gets his commission for the auction conducted by him. In Antha Sambaiah's case (supra), an Advocate Receiver (who, must have been paid fees for doing the work entrusted to him) conducted the auction and so it was held that no poundage can be collected from the auction purchaser. So both the above cases, in my considered opinion, have no application to the facts of this case. In those cases the Court did not spend any time for holding the auction. In this case, the Court itself, held the auction between the parties to the suit. The time spent by the Court in conducting the auction could have been spent for some other judicial work. By holding the auction all by itself, but not through an auctioneer or an Advocate Commissioner the Court did render service to the parties to the suit. The fact that the auction was confined to the parties to the suit and is not a public auction cannot make any difference.

5. Rule 3(5) of the Process Fee Rules 1965 contemplates poundage being paid at the rates specified therein, in respect of 'all sales whether conducted by the Court or its officers' and so all sales conducted by the 'Court' or its officers, whether it be by way of auction between the parties to the suit, or a public auction, attract poundage. Therefore, the contention that no poundage need be paid for the sale held by the Court cannot be accepted.

6. There appears to be force in the contention of the learned Counsel for the revision petitioners that poundage, if payable, has to be collected from the highest bidder but not from all the parties, because in sales held under Order 21 CPC, it is the highest bidder that should pay the poundage as per Rule 278(1) of the AP Civil Rules of Practice and Circular Orders, 1990. The said Rule 278(1) also lays down that the amount of poundage shall form part of the costs and expenses of the sale. Since first respondent is the highest bidder in respect of item Nos. 1, 2 and 4 of the plaint schedule, initially he has to pay the poundage payable in respect of sale of item Nos. 1, 2 and 4, and the highest bidder in respect of item No. 3, has to pay

the poundage. Since amount paid on account of poundage forms part of the costs and expenses of sale, whether first respondent can claim reimbursement of the poundage paid by him from the sale proceeds deposited in Court or not depends on the order of the Court relating to costs of the suit.

7. Therefore, the order under revision is modified and the amount of poundage payable on sale has to be collected initially from the highest bidders. The revision is ordered accordingly. No costs.

8. Before parting with the case, I place on record my appreciation for the assistance rendered by Mr. M.R.S. Srinivas.

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