
(2007) 03 AP CK 0037
In the Andhra Pradesh High Court
Case No : C.R.P. No. 6426 of 2006

Alia alias Pentakota Satyanarayana and Others	APPELLANT
Vs	
Pentakota Krishna Bhagavan and Another	RESPONDENT

Date of Decision : 08-03-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 35, Order 21 Rule 35(1), Order 21 Rule 36, 144, 144(1)
Constitution of India, 1950 — Article 142
Hindu Adoptions and Maintenance Act, 1956 — Section 22

Citation : AIR 2007 AP 208 : (2007) 3 ALD 682 : (2007) 3 ALT 103

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : Vedula Venkataramana, for the Appellant; M. Laxmana Sarma, for the Respondent

Final Decision : Dismissed

Judgement

D.S.R. Varma, J.—Heard both sides.

2. This Civil Revision Petition is directed against the order dated 4-12-2006, passed by the II Additional Senior Civil Judge, Kakinada, East Godavari District, directing to issue warrant for delivery of the properties mentioned in the "Will" under Ex.B-9, to the decree-holders, in E.P. No. 78 of 2006 in O.S. No. 7 of 1984, filed under Order 21 Rules 35 and 36 read with Section 144 of the CPC (for brevity "the C.P.C.").

3. Petitioners are the judgment-debtors and the respondents are the decree-holders, in the E.P., before the executing Court.

4. For the sake of convenience, in this order, the petitioners and the respondents will be referred to as "the judgment-debtors" and "the decree-holders", respectively.

5. The brief and relevant facts are that one Pentakota Krishna Bhagavan - the

judgment-debtor No. 1, claiming to be the adoptive son of the P. Sree Rama Murthy, filed a suit O.S.No. 7 of 1984 for partition of the suit schedule properties and for allotment of half share thereof; that during the pendency of the suit, the said P. Sree Rama Murthy died on 20-11-1985; that by virtue of a "Will", dated 20-2-1980, under Ex.B-9, the decree-holders came on record as the legal representatives of the said P. Sree Rama Murthy and contested the suit and that the suit was decreed eventually. Aggrieved by the same, the judgment-debtor No. 1 had preferred an appeal A.S. No. 720 of 1997, which was dismissed by a Division Bench of this Court, by judgment and decree, dated 20-6-2003, which were carried in appeal Civil Appeal No. 5941 of 2005, before the apex Court, by the judgment-debtor No. 1.

6. In the meanwhile, another litigation was initiated by the judgment-debtor No. 2, for maintenance against the said P. Sree Rama Murthy, in O.S.No. 287 of 1984. The facts and the result of the said suit are not relevant nor have any bearing on the present controversy. The apex Court had allowed the Civil Appeal No. 5941 of 2005, which resulted in reversal of the judgment and decree, passed by the trial Court and this Court, and the net result is, execution of the decree passed by the apex Court. In the meanwhile, it appears that, possession of the suit schedule properties had been taken over by the judgment-debtors. However, in order to have the decree, passed by the apex Court, executed, the present E.P.No. 78 of 2006 has been filed by the decree-holders under Order-XXI Rules 35 and 36 read with Section 144 of the CPC.

7. The trial Court, having considered the material, available on record, held that the E.P., is maintainable and the delivery of the properties can be effected and eventually allowed the said E.P., directing to issue a warrant for delivery of the properties mentioned in the Will, under Ex.B-9, to the decree-holders, as per the said will. Aggrieved by the same, the present Civil Revision Petition has been filed by the decree-holders.

8. The contentions of the judgment-debtors, before the executing Court, were that the E.P., was not maintainable for restitution of the properties; that for restitution of the properties, the decree-holders have to file a separate petition u/s 144 of the CPC, but not an execution petition and hence, in the present E.P., they are not entitled to seek restitution of the properties u/s 144 of the CPC.

9. Sri Vedula Venkataramana, the learned Counsel appearing for the decree-holders, contends that in view of the language employed in the decree, passed by the apex Court, it amounts to a declaratory decree and since definite determination is not made u/s 144 of the CPC, the question of delivery of possession by way of restitution in favour of the judgment-debtors does not arise. It is his further contention that the executing Court went wrong in allowing the E.P., filed under Order-XXI Rules 35 and 36 of the CPC, instead of allowing the same u/s 144 of the CPC, in which event, their valuable right, to file an appeal, is lost, since the order passed u/s 144 of the CPC, is a deemed decree, as envisaged u/s 2(2) of the CPC.

10. Per contra, Sri M. Laxmana Sarma, the learned Counsel appearing for the judgment-debtors, contends that, in fact, Section 144 of the CPC, need not be resorted to in the light of the language employed by the apex Court in the decree and, only as an abundant caution, in view of the fact that the suit schedule properties, some time back were taken possession by the judgment-debtors. Section 144 of the CPC, was also taken recourse to. He does not contradict the view of the learned Counsel appearing for the decree-holders that any order passed u/s 144 of the CPC, is an appealable order.

11. In view of the above relative contentions, I feel it appropriate to extract the decree, passed by the apex Court, to the extent relevant, which is thus:

In the result, we hold that the Will Ex.B-9 is a true and genuine document and the appellants and Seetharatnam will be entitled to the properties respectively allotted to them under the said Will. We also hold that the alleged adoption is not true and, therefore, the alleged adopted son Krishna Bhagavan has no right or any interest in any of the suit properties. In view of the fact that P. Seetharatnam has been given some properties under the Will u/s 22 of the Hindu Adoption and Maintenance Act, she is not entitled to any maintenance.

(emphasis supplied by me)

12. From the above, it is abundantly clear that the apex Court has held that the judgment-debtors are entitled to the properties allotted to them under the Will (Ex.B-9). Further, there is no dispute that above is the decree, passed by the apex Court, in the Civil Appeal No. 5941 of 2005.

13. Now, incidentally, the questions that arise for consideration in the present Civil Revision Petition are; firstly, what would be the effect of the decree passed by the apex Court and secondly, what is the procedure to be adopted to have the decree of the apex Court executed.

14. In this connection, for better appreciation and ready reference, it is apt to extract Section 51 of the CPC, which is thus:

Powers of Court to enforce execution:

Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree holder, order execution of the decree-

(a) by delivery of any property specifically decreed;

(b) by attachment and sale or by the sale without attachment of any property;

(c) by arrest and detention in prison, for such period not exceeding the period specified in Section 58, where arrest and detention is permissible under that section;

(d) by appointment of receiver; or

(e) in such other manners the nature of the relief granted may require;

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment debtor an opportunity of showing cause why he should not be committed to prison, the Court, of reasons recorded in writing, is satisfied-

(a) that the judgment debtor, with the object or effect of obstructing or delaying the execution of the decree,-

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property; or

(b) that the judgment debtor has, or has since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment debtor was bound in a fiduciary capacity to account.

Explanation-In the calculation of the means of the judgment-debtor for the purposes of Clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.

15. A reading of the above provision makes it further clear that the decree of a Court can be executed in different ways, depending upon the nature of the suit and the relief sought for and granted by the Court. Order XXI of the CPC, deals with different ways of execution of decrees and orders and the procedure prescribed there for.

16. Further, for better appreciation and ready reference, it is also apt to extract Order XXI Rule 35 of the CPC, which is thus:

Decree for immovable property:

(1) where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to

withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

17. The above provision deals with the procedure to execute the decree for immovable property. Sub-rule (1) of Rule 35 of the CPC, deals with the decree for delivery of any Immovable property. It is further made clear that consequently possession thereof shall be delivered to the party, in whose favour the decree has been passed.

18. In the light of the said provision, the language employed by the apex Court - "will be entitled to the properties respectively allotted to them under the said "Will"" - gains the significance. However, the learned Counsel appearing for both the parties are relying on the said language.

19. The learned Counsel appearing for the judgment-debtors contends that in view of the said language, the decree of the apex Court shall be treated as a "declaratory decree". In which case, such a decree is inexecutable. On the other hand, the learned Counsel appearing for the decree-holders contends that consequent upon such entitlement, as regards the properties, by virtue of the "Will", under Ex.B-9, in favour of the decree-holders, they are entitled to the possession of the suit schedule properties, as a matter of imperative corollary and, in such a case, Order XXI Rule 35 of the CPC, is the only enabling provision.

20. In this connection, I am of the view that, inasmuch as, Order XXI Rule 35 of the CPC, enables the decree-holders, who obtains a decree, to have possession of the Immovable property delivered in their favour, by virtue of the entitlement declared in their favour, it would and should result in delivery of possession of the property, which has been indisputably in possession of the judgment-debtors. Even assuming that it sounds as though the apex Court had declared the rights over the properties in favour of the judgment-debtors, in my view, it cannot automatically be declared as a declaratory decree. I am conscious that this Court is not venturing to interpret the judgment and the decree passed by the apex Court.

21. But, I am of the view that, by virtue of the entitlement declared in favour of the judgment-debtors, as a natural corollary, the admitted possession of the judgment-debtors shall have to be taken possession by the decree-holders by two modes; firstly, either under Order XXI Rule 35 of the CPC, or secondly, u/s 144 of the CPC.

22. It is noteworthy fact, which is not on record, as to exactly when the possession of the suit schedule properties was taken by the judgment-debtors. But, the undisputed fact is that the suit schedule properties, which are in possession of the judgment-debtors, are now declared as the entitlement of the decree-holders, by the executing (sic. apex) Court. In such a case, Section 144 of the CPC, need not necessarily be invoked. In other words, if it is absolutely an undisputed fact that earlier the decree-holders were in possession of the suit schedule properties and, subsequently, may be, during the pendency of the suit

or the appeal or Civil Appeal before the apex Court, the possession was taken away by the judgment-debtors, by virtue of the judgment and decree passed by the lower appellate Court, then perhaps Section 144 of the CPC, may be the appropriate provision to be applied. In other words, Section 144 of the CPC, deals with the restitution jurisdiction of the Court.

23. For convenience, better appreciation and ready reference, it is apt to extract Section 144 of the CPC, which is thus:

Application for restitution:- (1) Where and in so far as decree or an order is varied or reversed in any appeal, revision or other proceedings or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied, reversed, set aside or modified, and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation, reversal, setting aside or modification of the decree or order.

Explanation: For the purpose of Sub-section (1), the expression "Court which passed the decree or order" shall be deemed to include:

(a) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance,

(b) where the decree or order has been set aside by a separate suit, the Court of first instance which passed such decree or order;

(c) where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute it, the Court which, if the suit wherein the decree or order was passed, were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under Sub-section (1).

24. In this context, it is brought to the notice of this Court that in T. Penchalaiah Vs. Jaladanki Saroja (died) and Others, , a learned single Judge of this Court held that even though the restitutorial jurisdiction u/s 144 of the CPC, is not available, still, having regard to the facts of the case, inherent jurisdiction u/s 151 of the C.P.C., can be invoked. It was observed that such a power of the civil Court was based on the maxim act us curiae neminem gravabit. It was further held that the power can be exercised by the civil Court to order restitution u/s 151 of the C.P.C., to ensure that no person - whether such a person is a party to the suit or not - gets undue advantage by its order and also to prevent gross prejudice to the affected party.

25. I am informed that the said judgment, dated 15-9-2006, rendered by the learned Single Judge of this Court, in C.R.P.No. 463 of 2006, has been approved by the apex Court, when the same was challenged by way of SLP No. SLP(C) 199177/06, which was dismissed on 1 -2-2007. It appears that a Review Petition has been filed before this Court again, which also was dismissed.

26. Therefore, I am of the view that though Section 144 of the C.P.C., is one remedy provided attaching the right of appeal, treating the same as a decree u/s 2(2) of the C.P.C., still, in order to avoid undue advantage, prejudice to the affected party and also to avoid proliferation of the litigation, inherent jurisdiction can also be invoked.

27. In such a case, there is absolutely no impediment for the Court to invoke Order XXI Rule 35 of the C.P.C., which is the specific provision to execute the decree of the apex Court.

28. Reliance is also placed on Article 142 of the Constitution of India, which reads thus, to the extent relevant:

Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.:

(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) ...

29. It is the contention of the learned Counsel appearing for the decree-holders that, from the above, a decree, passed by the Court, can be enforced in the manner as may be prescribed by any law. In view of the said provision, it is again abundantly clear that the decree or order passed by the apex Court can be enforced as per the law prescribed. The only law, that is available and prescribed in the present facts and circumstances, is either under Order XXI Rule 35 or u/s 144 of the CPC.

30. In the light of the view already taken, in order to avoid multiplicity and undue advantage to either party to the litigation, even inherent jurisdiction can also be taken recourse of by the Courts, I do not find any apparent error in the order passed by the executing Court, invoking the jurisdiction under Order XXI Rule 35 of the CPC, in ordering delivery of possession of immovable property by virtue of the decree, passed by the apex Court, inasmuch as, the same is susceptible for enforcement under the said provision.

31. Furthermore, what would happen if the decree-holders are asked to file an application u/s 144 of the C.P.C., or the executing Court is compelled to

invoke only Section 144 of the C.P.C., is an incidental question. The answer is - if an appeal, against such an order, is filed, it would certainly result in consumption of further considerable time and expense to the party, who succeeded and obtained the decree from the apex Court.

32. If we put it in a slightly different way, the decree, be of any Court, including the apex Court, can be subjected to execution and enforced by different modes, may be, under the provisions of Order XXI Rule 35 or Section 144 or Section 151 of the C.P.C., depending upon the facts and circumstances of each case, and the imperative need to give quietus to the litigation expeditiously and for ever.

33. Therefore, I am of the considered view that a conjoint reading of Sections 51, 144, 151 and Order XXI Rule 35 of the C.P.C, and Article 142 of the Constitution of India makes it abundantly clear that the decree of a Court can be enforced by filing appropriate application under any of those provisions. In a way, it is the option of the person who succeeded in the litigation - decree holder, and it is for the Court to execute such a decree by applying appropriate provisions for effective enforcement of the decree in an expeditious manner by invoking appropriate provisions, depending upon the facts and circumstances of each case.

34. Therefore, I do not find any illegality, irregularity much less jurisdictional error in the impugned order, passed by the executing Court, warranting interference by this Court.

35. For the foregoing, the Civil Revision Petition fails and is liable to be dismissed.

36. In the upshot, the Civil Revision Petition is dismissed, at the stage of admission. However, there shall be no order as to costs.

37. This order is suspended only for a period of fifteen (15) days from the date of receipt of the same.

38. Registry is directed to issue copy of this order, to the parties, forthwith.