
(2006) 07 AP CK 0045

In the Andhra Pradesh High Court

Case No : C.R.P. No's. 2957 and 2959 of 2006

E. Subba Reddy

APPELLANT

Vs

G. Dhananjay and Another

RESPONDENT

Date of Decision : 28-07-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 73

Citation : AIR 2007 AP 16 : (2006) 6 ALT 98

Hon'ble Judges : Gopala Krishna Tamada, J

Bench : Single Bench

Advocate : C. Narender, for the Appellant; M.S. Ramachandra Rao, for the Respondent

Final Decision : Dismissed

Judgement

Gopala Krishna Tamada, J.—As the point involved and the parties in these two revision petitions are one and the same, they are taken up together for disposal by this common order.

2. A short but interesting point that falls for consideration in these revision petitions is as to whether a decree holder can maintain a petition u/s 73 C.P.C. in an Execution Petition to which the balance sale proceeds of the judgment-debtor in another Execution Petition are transferred?

3. Brief facts are that the 2nd respondent herein is the judgment-debtor against whom a decree was passed by the Senior Civil Judge, Nizamabad in O.S. No. 168 of 2001 which was filed by some third party. Similarly, the 1st respondent herein instituted O.S.No. 351 of 2001 and the learned Principal Junior Civil Judge, Nizamabad, decreed the suit against the 2nd respondent herein on 3-7-2002. The suit in O.S.No. 341 of 2001 instituted by the petitioner herein was also decreed against the 2nd respondent i.e. the judgment-debtor on 14-11 -2001. It appears that the decree holder in O.S. No. 168 of 2001 instituted E.P.No. 67 of 2002 and got the properties belonging to the 2nd respondent-J. Dr sold in an

auction and realized the sale proceeds. However, it appears, that an amount of Rs. 1,00,000/- Rupees One Lakh Only was left over and the 1st respondent herein, who is the decree holder in O.S.No. 351 of 2001, filed E.P.No. 18 of 2003 u/s 73 C. P.C. seeking transfer of the outstanding amount of Rs. 1,00,000/- from E.P.No. 67 of 2002 from the Court of the Senior Civil Judge at Nizamabad to the Court of Principal Junior Civil Judge, Nizamabad and that petition was ordered. At a stage when the 1st respondent was about to realize the amount, the petitioner, who is the decree holder in O.S.No. 341 of 2001, came forward and filed two applications i.e. E.A. No. 188 of 2006 and E.A.No. 189 of 2006 purported to have been filed u/s 73 C.P.C. seeking to stay the disbursement of amount of Rs. 1,00,000/- in E.P. No. 18 of 2003 to the 1st respondent herein and rateable distribution of the said amount respectively. Both the reliefs sought for were negatived by the Principal Junior Civil Judge, Nizamabad. Aggrieved by the same, the petitioner has preferred these Civil Revision Petitions.

4. Heard Sri C. Narender, learned Counsel for the petitioner and Sri M.S. Ramachandra Rao, learned Counsel for the respondents.

5. According to the learned Counsel for the petitioner, after the decretal amount was realized in O.S. No. 168 of 2001, the Court has become a trustee for the balance amount, and thus, there is no embargo for the petitioner to come forward for rateable distribution of the amount. However, the learned Counsel for the respondents has strenuously opposed the said contention stating that the petitioner has no locus standi and the petitions are not maintainable and he has drawn my attention to Section 73 C.P.C.

6. Section 73 C.P.C. deals with proceeds of execution sale to be rateably distributed among decree-holders and according to the said provision of law, where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons.

7. From the above provision of law, it is clear that if there are more decree-holders than one and the amount is not sufficient to satisfy or realize to all the decree-holders, the Courts can pass orders rateably, but that does not mean a situation like this. Here is a case where the petitioner totally a stranger to E.P. No. 18 of 2003 can maintain a petition u/s 73 C.P.C. only in E.P. No. 67 of 2002, but not in E.P. No. 18 of 2003, which was filed by the 1st respondent herein. Instead of resorting to filing an application in E.P.No. 67 of 2002, for obvious reasons, the petitioner has chosen to file an application in E.P. No. 18 of 2003, which according to me, is totally like an intervention in the matter. It is not known as to how the petitioner can invoke the jurisdiction of the Court below u/s 73 C.P.C. As already observed, Section 73 C.P.C. empowers the decree-holders to file an application in the so-called E.P. No. 67 of 2002 for rateable distribution of the auction sale proceeds, but not in E.P.No. 18 of 2003 to which the 1st

respondent herein, who is the decree-holder in O.S.No. 351 of 2001 got the balance sale proceeds i.e. an amount of Rs. 1,00,000/- transferred invoking the powers u/s 73. C.P.C.

8. In my considered view, the observations made by the learned Principal Junior Civil Judge at Nizamabad are perfectly justified in holding that the Execution Applications filed by the petitioner are without any locus standi.

9. Hence, these Civil Revision Petitions are devoid of merits, and accordingly, the same are dismissed. No costs.