
(2005) 07 AP CK 0099

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 587 of 2005

K. Bhaskaram and Another

APPELLANT

Vs

Mohammad Moulana and Others

RESPONDENT

Date of Decision : 25-07-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 10, Order 21 Rule 11(2), Order 21 Rule 15, Order 21 Rule 16, Order 21 Rule 35
Registration Act, 1908 — Section 17, 17(1)
Stamp Act, 1899 — Section 35

Citation : AIR 2005 AP 524 : (2006) 1 ALD 102 : (2005) 6 ALT 670

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : T. Venugopal Reddy, for the Appellant; Mohammed Imran Khan, for the Respondent

Final Decision : Allowed

Judgement

V. Eswaraiah, J.—The appellants herein are the respondents-judgment debtors in E.A.No. 14 of 2004 in E.P.No. 107 of 2003 in O.S.No. 641 of 1994 on the file of the III Senior Civil Judge, City Civil Court, Secunderabad.

2. The suit O.S.No. 641 of 1994 was initially filed by the respondents 1 and 2 herein, who are the wife and husband. During the pendency of the said suit, the first plaintiff died, and therefore, his legal representatives were brought on record as plaintiffs 3 to 8, who are the respondents 3 to 8 in the appeal. The suit is filed for specific performance of agreement of sale and the same was decreed by the trial Court, which was also confirmed by this Court in the appeals. There is no dispute that the decree is joint and indivisible. During the pendency of the C.C.C.A. on the file of this Court, the second plaintiff, who is the wife of the first plaintiff, died and therefore, the plaintiffs 3 to 8 were also shown as her legal representatives. There is no dispute that the respondents 3 to 8 herein are the plaintiffs 3 to 8, who are the legal representatives of the plaintiffs 1 and 2. When the decree was passed by the trial Court, there were 7 decree holders and after

the death of the second plaintiff, during the pendency of the appeal before this Court, they are remain only 6 decree holders, who are the respondents 3 to 8 herein. The appeals filed on the file of this Court in C.C.C.A.Nos.206 of 1994 and 158 of 1995 were dismissed on 31-03-2003 confirming the judgment and decree passed by the trial Court. The plaintiffs-respondents 3 to 8 herein are therefore entitled to get the execution of the decree passed for specific performance. Therefore, E.P.No. 107 of 2003 on the file of the III Senior Civil Judge, City Civil Court, Secunderabad, was filed by the respondents 3 to 8 herein against the judgment debtors, who are the appellants herein. The relief claimed in the said E.P. is to direct the judgment debtors to execute the sale deed in favour of the decree holders jointly in their names under Sections 47, 51 and Order 21 Rule 35 C.P.C and in case the judgment debtors refuses or fails to execute and register the sale deed, a request was also made to execute the sale deed by the Court itself and register the same in favour of all decree holders jointly and severally.

3. The suit schedule property was admeasured 125.50 Sq. mtrs. in plot No. 8, situated at padmarao Nagar (Zamistanpur), Secunderabad. The E.P. was filed on 17-09-2003 signed by all the decree holders. One year thereafter, an application in E.A.No. 14 of 2004 in E.P.No. 107 of 2003 in O.S.No. 641 of 1994 was filed under Order 21 Rules 15 and 16 C.P.C. to direct the judgment debtors to execute and register the sale deed relating to the suit schedule property in favour of the plaintiff No. 4-Decree holder No. 4. In the said petition, the names of all the decree holders were shown and an affidavit was filed in support of the petition by the plaintiff No. 4-decree holder No. 4 alone stating that he is filing the said affidavit on his behalf and also on behalf of the other decree holders. It is stated that the said suit was filed by their parents for specific performance of agreement of sale entered into by the judgment debtors in favour of their parents. After the death of their parents, they were brought on record as legal representatives. Against the judgment and decree of the trial Court in the suit, the appeals in C.C.C.A.Nos.206 of 1994 and 158 of 1995 were filed on the file of this Court and both the appeals were dismissed confirming the judgment and decree of the trial Court. The judgment debtors did not execute and register the sale deed in favour of the Decree holders. Therefore, the decree holder No. 4 got issued a legal notice through his lawyer calling upon the judgment debtors to execute and register the sale deed in favour of the decree holders. Having received the notice, the judgment debtors did not either reply to the notice or comply with the demands set out therein and therefore, the E.P. was filed for execution. It is further stated that the decree holder No. 4 was looking after the entire proceedings of the case and he alone gave evidence in the said suit proceedings and all the expenses involved in the said litigation were borne by him and even the expenses involved in filing the E.P. were also incurred by him alone. In para-7 of the affidavit, it is stated that the other decree holders are willing for the sale deed in respect of the suit schedule property executed and registered in favour of decree holder No. 4 exclusively and in that connection they have executed separate affidavits. The original affidavits are filed in the

Court along with! the E.P. It is further stated that a counter affidavit was f! iled by the judgment debtors stating that they are required to execute and register the sale deed in favour of all the decree holders and not in favour of one person i.e., decree holder No. 4. If the judgment debtors executes and registers the sale deed in favour of all the decree holders, in turn they have to execute and register another deed of conveyance or transfer in faour of the plaintiff No. 4- decree holder No. 4 which would involve double expense, which sum will run to thousands. For the aforesaid reasons, it has been decided by the other decree holders to seek permission of the Court to permit the decree holder No. 4 alone to be the transferee or vendee in the proposed execution and registration of the sale deed relating to the suit schedule property. Accordingly, he has filed the said petition stating that by virtue of the assignment of the decree in his favour by other decree holders, assigning their interests in his favour by filing separate affidavits, he alone is entitle! d to get the sale deed executed and registered in his favour and the said fact of assignment could be acknowledged and registered by the Court. It is further stated that as per the provisions of Order 21 Rules 15 and 16 C.P.C, no prejudice would be caused to the judgment debtors, if such course is permitted. Accordingly, the plaintiff No. 4-decree holder No. 4 requested to get the sale deed executed and registered in his favour by the judgment debtors instead of executing in favour of all the decree holders.

4. A counter has been filed in the said E.A.No. 14 of 2004 denying the averments made in the affidavit filed in support of the petition stating that the decree was passed in joint, which was indivisible and the E.P. was filed by all the decree holders on 17-09-2003 for which a counter has been filed on 19-04-2004 and a year after filing the E.P., the E.A. was filed on 27-10-2004. It is stated that originally the plaintiff Nos.1 and 2, who are the wife and husband, filed the suit for specific performance of agreement of sale executed jointly in their favour and during the pendency of the suit, the first plaintiff died. Thereafter, during the pendency of the C.C.C.A. on the file of this Court, the second plaintiff died, and therefore, their children were brought on record as legal representatives, who are the decree holders to get the decree executed. It is stated that the legal notice dated 02-08-2003 issued to execute and register the sale deed by decree holder No. 4 is contrary to the decree. It is stated that in the absence of any acceptable proof of assignment or transfer of decree in favour of the decree holder No. 4 by the other decree holders, the decree holder No. 4 alone is not entitled to get the decree executed. After taking such an objection in the E.P., E.A.No. 14 of 2004 was filed. In para-6, it was specifically stated that the alleged affidavits of the other decree holders, of which the judgment debtors have no notice and the alleged affidavits said to have been filed by the other decree holders are false and infringed. Therefore, such alleged affidavits, which were not at all served on the judgment debtors, would not amount to transfer their interests in favour of the decree holder No. 4 alone. Any assignment must be in writing and the assignment of immovable property must be registered. Therefore, it is stated that the decree holder No. 4 is not en! titled to get the

execution of the registered sale deed.

5. The Court below by order dated 21-03-2005, allowed the E.A.No. 14 of 2004. The reasons that were given by the Court below are that the petitioners 3 and 5 to 8, who are the joint decree holders along with the petitioner No. 4, who is the decree holder No. 4, have transferred their rights by way of assignment in writing in favour of the decree holder No. 4. No particular form of assignment is prescribed in the case of decree and therefore what is required is an assignment in substance, which is in writing. Under Order 21 Rule 16 C.P.C., no particular form of assignment is required and on the contrary any document in, writing which clearly shows that the intention was to assign the decree, is sufficient compliance of Order 21 Rule 16 C.P.C. The decree holder Nos.3 and 5 to 8 have transferred their rights by executing affidavits-cum-declarations in favour of decree holder No. 4, as such, the decree holder No. 4 is to be treated as transferee of the decree and is entitled to execute the decree. Further, the assignment of a decree in respect of immovable property does not require any registration as what is required is only for assignment of a decree by way of writing. It is stated that after obtaining necessary permission from the other decree holders, the said application was filed and a notice of the said application has been given to the judgment debtors, and therefore, it is a sufficient notice of the judgment debtors. Accordingly, it was observed that the judgment debtors have to transfer their rights in the immovable property in terms of the decree in favour of the decree holder No. 4 alone. Assailing the said orders, the present appeal has been filed.

6. Heard the contentions of both the counsel at length.

7. The questions that arise for consideration are as follows: 1) Whether there was any assignment of decree transferring the rights of the other decree holders in the immovable property in favour of one of the decree holders? 2) Whether the decree holders 3 and 5 to 8 are entitled to transfer their rights by executing the so-called affidavits cum declarations in favour of the decree holder No. 4 by way of assignment? 3) Whether the assignment of decree in respect of immovable property requires registration?

8. It is not in dispute that there can be oral transfer of property without writing in every case, in which writing is not exclusively required under law. But, if it is an immovable property, the value of which is more than Rs. 100/-, such transfer deed will have to be reduced in writing and also it requires compulsory registration.

9. u/s 17 of the Indian Registration Act, 1908, the instruments such as gift of immovable property; other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property; leases of immovable property; non-testamentary instruments transferring or assigning any

decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future any right, title or interest, whether vested or contingent of the value of one hundred rupees and upwards, to or in immovable property; any decree or order or award or a copy thereof passed by a civil Court on consent of the defendants or on circumstantial evidence but not on the basis of any instrument which is admissible in evidence u/s 35 of the Indian Stamp Act, 1899, such as registered title deed produced by the plaintiff where such decree or order or award purports or operate to create, declare, assign, limit, extinguish whether in present or in future any right, title or interest whether vested or contingent of the value of one hundred rupees and upwards to or in immovable property; if it is an agreement of sale of immovable ! property in the value of one hundred and upwards, are compulsory registerable. Therefore, it is not in dispute that u/s 17(1)(e) and (f) of the Registration Act, the assignment and transfer of the decree relating to immovable property of the value of one hundred and upwards is compulsorily registerable.

10. It is not in dispute that all the decree holders are having a right jointly in respect of the decree passed by the trial Court in the suit for specific performance. It is not the case of the decree holder No. 4 that he alone got the right to the exclusion of the other decree holders to get the sale deed executed and registered from the judgment debtors.

11. Under Order 21 Rule 10 or 11 C.P.C., the decree can be executed on a written application and on oral application also subject to fulfilling the requirements under Order 21 Rule 11 (2) of C.P.C. Order 21 Rule 15 C.P.C. deals with the execution of the decree by the joint decree holders. Under Order 21 Rule 15 (1), where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased. Under Order 21 Rule 15 (2), where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order, as it deems necessary for protecting the interests of the persons who have not joined in the application. Therefore, the contention of the learned counsel appearing for the respondents that on the application filed by one of the joint decree holders, such a person is entitled to get the decree executed in exclusion of the others, cannot be accepted and the said contention is contrary to the stipulations contained in Order 21 Rule 15 C.P.C. The said Rule 15 only gives a power to one of the joint decree holders to file an application to execute the decree for the benefit of all the decree holders, but not for the exclusion of any of the decree holders. Even if one of the decree holders dies, the interests of the survivors and the legal representatives of such deceased decree holder are to be protected.

12. Under Order 21 Rule 16 C.P.C., when an application for issuance of the

transfer of the decree is filed by one of the joint decree holders disclosing that the other decree holders transferred their rights by assignment in writing and by operation of law, the transferee may apply for execution of the decree to the Court, which passed the decree, and the decree may be executed in the same manner and subject to the same conditions, as if the application were made by such decree holders who have transferred their right in the decree. But, under the first proviso to Rule 16, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment debtor, and the decree shall not be executed until the Court has heard their objections to its execution.

13. In the instant case, admittedly, the transfer of the decree by way of assignment by the decree holder Nos.3 and 5 to 8 in favour of the decree holder No. 4 requires registration u/s 17 of the Registration Act. If the said decree was transferred by a registered instrument by the other decree holders in favour of the decree holder No. 4, then under the first proviso to Rule 16 Order 21 C.P.C., the decree holder No. 4 shall file an application giving a notice to the other decree holders who have transferred their right of decree by way of assignment as well as the judgment debtors-appellants herein. Admittedly, no such notice has been issued to the transferors as well as the judgment debtors about the so-called assignment of the decree.

14. "Assignor" means who assigns or transfers the property to others. "Assignee" means one to whom the rights of the assignor have been transferred either by way of conveyance, gift legacy or other transfer. Here, the decree holder No. 4 claims himself to be an assignee of the decree by the decree holder Nos.3 and 5 to 8 by the assignment of decree in immovable property. There is no deed of assignment and more so, the assignment of the decree in respect of immovable property requires registration and such assignment of the decree is not admittedly registered.

15. Therefore, I am of the opinion that there is no assignment of the decree in the eye of law in the instant case and by the said mere filing of the affidavits-cum-declarations, the decree in respect of the immovable property cannot be transferred by way of assignment. Any transfer of property shall be reduced into writing and if the value of the immovable property is more than Rs. 100/-, it requires registration. Admittedly, there is no such deed stamped and registered transferring the right of the decree by the other decree holders and the so called affidavits-cum-declarations are not served on the judgment debtors and even by filing any such simple affidavits-cum- declarations, the decree cannot be transferred.

16. Therefore, the aforesaid points are accordingly answered in favour of the appellants herein and the findings of the trial Court that the decree in immovable property can be assigned by way of affidavits-cum-declarations is erroneous and contrary to the operation of law. Transfer of the right in a decree by way of assignment in immovable property requires stamp and registration. If there is a

valid assignment of decree by operation of law, then the assignee is entitled to get the decree executed in his favour after issuing a notice to the transferors and the judgment debtors.

17. It is also relevant to refer to various judgments of the Apex Court. In the case of P. Abdul Samad Saheb Vs. Sowcar Kamaruddin Saheb and Others, a Division Bench of the Madras High Court held that the non-compliance with proviso regarding notice, under Order 21 Rule 16 C.P.C., renders all subsequent proceedings void.

18. In the case of Vythinatha Padayachi Vs. Ammalu Ammal and Another, it was held that transfer of mortgage decree can be effected by a registered instrument only. Therefore, the application of the concerned claiming transfer through an unregistered instrument is not in accordance with law, and therefore, such transferor is not entitled to get the execution of the decree. In the instant case, it is the case of the decree holder No. 4 that he has got the assignment of decree in immovable property from other decree holders and admittedly, such transfer of decree by way of assignment, transferring the right in respect of the immovable property, requires registration and therefore, the said judgment also supports the contention of the learned counsel appearing for the appellants-judgment debtors.

19. A Division Bench of the Bombay High Court in the case of Kirtilal Jivabhai v. Chunilal Manilal AIR (33) Bom 27 held that Order 21 Rule 16 C.P.C. contemplates two cases of transfer of a decree-one by assignment in writing and the other by operation of law. If the transfer is by assignment in writing, then it is obligatory upon the Court to give a notice of the application to the transferor and the judgment debtor and the decree cannot be executed until the Court has heard their objections (if any) to its execution.

20. It is not in dispute that a right has been vested in other decree holders pursuant to the judgment and decree and they have a right to get the sale deed executed and registered in respect of the immovable property by the judgment debtors. As already stated, there is no valid transfer of the decree transferring the right in immovable property by way of assignment. It is not in dispute that during the pendency of the suit, if one of the plaintiffs dies, the legal representatives of the deceased plaintiff are entitled to come on record by operation of law. It is also not in dispute that during the pendency of the execution proceedings, if one of the decree holders dies, the legal representatives of the deceased decree holder are entitled to come on record by operation of law. Here it is the case that the decree holder Nos.3 to 8 are entitled to the right to get the sale deed executed and registered by the judgment debtors in their favour jointly and the said decree is inseparable and that there is no any valid transfer of the decree, which requires registration.

21. Relying on the decision of the Apex Court in Jugaleishore v. Raw Cotton Co. AIR 1955 SC 376 this Court in the case of Satyanarayan Vs. Sindhu Bai Sharma,

held that the decree holder or his assignee in writing or assignee by operation of law who can execute the decree under Order 21 Rule 16 C.P.C and the other persons can get the decree executed. But the third person to the decree will not entitle to get the decree executed, unless there is a transfer to him from the original decree holder.

22. Therefore, merely because the decree holder Nos.3 to 8 are the joint decree holders, it cannot be said that one of the decree holders is entitled to get the decree executed by the so called alleged affidavits-cum-declarations said to have been filed by the other decree holders assigning the right accrued with them in the said decree in favour of the decree holder No. 4. Insofar as the right said to have been transferred by the other decree holders in favour of the decree holder No. 4 is concerned, the decree holder No. 4 is to be treated as a third person, as there is no valid transfer of the right of the other decree holders transferring their right in respect of the immovable property accrued to them under the decree. Therefore, there cannot be any distinction to the third party purchasing the right of the other decree holders either by way of assignment or by way any other instrument.

23. For the aforesaid reasons, I am of the opinion that there is no valid transfer of the decree by assignment, in the eye of law, by the decree holder Nos.3 and 5 to 8 in favour of the decree holder No. 4. Therefore, the decree holder No. 4 is not entitled to get the sale deed executed and registered in his favour in the said E.P. Hence, the order under appeal is set aside and accordingly, the Civil Miscellaneous Appeal is allowed with costs.