(2010) 04 AP CK 0090

In the Andhra Pradesh High Court

Case No : C.R.P. No. 835 of 2010

Profit Shoe Company Pvt. Ltd. APPELLANT

Vs

M. Krishna Reddy and Others RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 100, Order 21 Rule 101, Order 21 Rule 102, Order 21 Rule 27, Order 21 Rule 97
Transfer of Property Act, 1882 — Section 52

Citation : AIR 2010 AP 163 : (2010) 2 APLJ 129

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : P. Venugopal, for the Appellant; V.L.N.G. Murthy, for the Respondent

Final Decision : Dismissed

Judgement

G. Rohini, J.—The Revision petitioner claims to be a Private Limited Company carrying on footwear business at Hindupur in the premises bearing Door No. 2-3-23. The petitioner company filed an application under Order 21 Rule 97 of C.P.C. in E.P. No. 50 of 1996 in O.S. No. 33 of 1985 on the file of the Court of the Senior Civil Judge, Hindupur with a prayer to record its resistance for delivery of the above said premises (E.P. schedule property) and to restrain the respondents 1 to 21 herein (decree-holders) from dispossessing the petitioner company from the said premises. The Court below declined to entertain the said application (C.F. No. 370/10.02.2010) and by order dated 11.02.2010 rejected the same holding that the petitioner had no locus standi and it was not entitled to raise any objection for execution of the decree in O.S. No. 33 of 1985. The said order dated 11.02.2010 is under challenge in this Civil Revision Petition filed u/s 115 of C.P.C.

2. I have heard the learned Counsel for both the parties and perused the material available on record.

3. O.S. No. 33 of 1985 filed for specific performance of agreement of sale, dated

19.04.1980, was decreed by judgment dated 11.08.1992. Pursuant thereto, the decree-holders/respondents 1 to 21 herein filed E.P. No. 50 of 1996 for execution of sale deed through the Court and for delivery of the suit schedule property. After hearing both the parties, the E.P. was ordered and a sale deed was executed in favour of the decree-holders. Thereafter, in execution of the delivery warrant issued by the Court below, when the Bailiff of the Court proposed to put the decree-holders in possession of the plaint schedule property, the Revision petitioner, who is in occupation of the said property, obstructed and filed the application in question under Order 21 Rule 97 of C.P.C. with a prayer to record the resistance and to restrain the respondents 1 to 21/decree-holders from dispossessing the petitioner company.

4. It was pleaded in the said application that the plaint schedule property (hereinafter referred to as ''schedule premises'') was leased out to the petitioner company by the judgment-debtors/respondents 22 to 28 herein under a rental deed dated 7.11.2000 and that the petitioner company was carrying on footwear business in the schedule premises. It was further pleaded that the petitioner company paid a sum of Rs. 5,00,000/- to the judgment-debtors towards advance on various occasions. It was also claimed that the petitioner company came to know of the decree in O.S. No. 33 of 1985 only on receiving a caveat petition sent by the respondents 1 and 2. It was contended that as the petitioner company was not a party, the decree in O.S. No. 33 of 1985 was not binding on it and cannot be executed under law.

5. In view of an objection raised by the office as to the maintainability of the said application, the Court below having heard the learned Counsel for the petitioner company on the maintainability of the petition under Order 21 Rule 97 of C.P.C. by a reasoned order dated 11.02.2010 rejected the application holding that the Revision petitioner who claimed to be the tenant of the judgment-debtors had no locus standi to file the application. The said order dated 11.02.2010 is under challenge in the present Civil Revision Petition.

6. It is vehemently contended by Sri P. Venugopal, the learned Counsel appearing on behalf of the Revision petitioner, that the Court below committed a grave error in rejecting the application at the threshold itself. While relying upon the decisions in N.S.S. Narayana Sarma and Others Vs. Goldstone Exports (P) Ltd. and Others, , Chalugu Basivi Naidu and Others Vs. Chalugu Bheemi Naidu and Others, and Ayireddy Lakshmi and Ayireddy Kamarajugadda Subba Lakshmi Vs. Pydah Subrahmanya Jagannadha Satya Prasad and Others, the learned Counsel further contended that any person in possession of the immovable property under execution was entitled to maintain an application under Order 21 Rule 97 of C.P.C. and therefore the Court below was bound to adjudicate the petitioner''s claim and pass appropriate orders on merits.

7. The scope and object of Rule 27 of Order 21 of C.P.C. was considered in detail by the Supreme Court in Shreenath and Another Vs. Rajesh and Others, and having interpreted the expression ''any person'' under Sub-clause (1) of Rule 97

it was held that Rule 97 includes all persons resisting the delivery of possession, claiming right in the property, even those not bound by the decree, including tenants or other persons claiming right on their own, including a stranger.

8. The same view has been reiterated in N.S.S. Narayana Sarma''s case (supra) and the ratio laid down may be extracted hereunder:

Rules 97 to 101 of Order 21 contain the provisions enabling the executing Court to deal with a situation when a decree holder entitled to possession of the property encounters obstruction from "any person". From the provisions in these rules which have been quoted earlier the scheme is clear that the legislature has vested wide powers in the executing Court to deal with all issues relating to such matters. It is a general impression prevailing amongst the litigant public that difficulties of a litigant are by no means over on his getting a decree for immovable property in his favour. Indeed, his difficulties in real and practical sense, arise after getting the decree. Presumably, to tackle such a situation and to allay the apprehension in the minds of litigant public that it takes years and years for the decree holder to enjoy fruits of the decree, the legislature made drastic amendments in provisions in the aforementioned rules, particularly, the provision in Rule 101 in which it is categorically declared that all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions. On a fair reading of the rule it is manifest that the legislature has enacted the provision with a view to remove, as far as possible, technical objections to an application filed by the aggrieved party whether he is the decree holder or any other person in possession of the immovable property under execution and has vested the power in the executing Court to deal with all questions arising in the matter irrespective of whether the Court otherwise has jurisdiction to entertain a dispute of the nature. This clear statutory mandate and the object and purpose of the provisions should not be lost sight of by the Courts seized of an execution proceeding. The Court cannot shirk its responsibility by skirting the relevant issues arising in the case.

9. In the light of the law laid down in the above decisions, there can be no dispute that any person claiming a right on his own or as a tenant can maintain an application under Order 21 Rule 97 of C.P.C.

10. However, this is a case where the suit was decreed on 11.08.1992. Even the execution petition was filed in the year 1996. As per its own plea in the application filed under Order 21 Rule 97 of C.P.C., the petitioner company came into possession of the schedule premises by virtue of a rental deed said to have been executed by the judgment-debtors on 7.11.2000.

11. Therefore, the question that arises for consideration is whether the petitioner company which came into possession after the initiation of execution proceedings has locus standi to maintain an application under Order 21 Rule 97 of C.P.C. and to resist the delivery of possession of the schedule premises to the decree-holders.

12. The learned Counsel for the respondents 1 to 21, while placing reliance upon Order 21 Rule 102 of C.P.C, submitted that the Revision petitioner being a transferee pendente lite was not entitled to seek adjudication by invoking Rule 97 of Order 21 of C.P.C.

13. Order 21 Rule 102 of C.P.C. may be extracted hereunder:

Rules not applicable to transferee pendente lite.

Nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Explanation: In this rule, "transfer" includes a transfer by operation of law.

14. In Silverline Forum Pvt. Ltd. Vs. Rajiv Trust and another, having considered the very same question the Supreme Court held as under:

No doubt if the resistance was made by a transferee pendente lite of the judgment-debtor, the scope of the adjudication would be shrunk to the limited question whether he is such a transferee and on a finding in the affirmative regarding that point the execution Court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of Property Act.

When a decree-holder complains of resistance to the execution of a decree it is incumbent on the execution Court to adjudicate upon it. But while making adjudication, the Court is obliged to determine only such question as may be arising between the parties to a proceeding on such complaint and that such questions must be relevant to the adjudication of the complaint.

The words "all questions arising between the parties to a proceeding on an application under Rule 97" would envelop only such questions as would legally arise for determination between those parties. In other words, the Court is not obliged to determine a question merely because of the resister raised it. The questions which the executing Court is obliged to determine under Rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration and determination between the parties, eg., if the obstructor admits that he is a transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. Similarly, a third party, who questions the validity of a transfer made by a decree-holder to an assignee, cannot claim that the question regarding its validity should be decided during execution proceedings. Hence, it is necessary that the questions raised by the resister or the obstructor must legally arise between him and the decree-holder. In the adjudication process envisaged in Order 21 Rule 97(2) of the Code, the execution Court can decide whether the question raised by a resister or obstructor legally arises between the parties. An answer to the said question also would be the result of the adjudication contemplated in the sub-section.

15. The ratio laid down in Silverline Forum Pvt. Ltd. Vs. Rajiv Trust and another, squarely applies to the instant case. As noticed above, the Revision petitioner has admittedly come into possession of the schedule premises by virtue of a rental deed said to have been executed by the judgment-debtors long after the initiation of the execution proceedings. Even assuming that the Revision petitioner was not aware of the decree in O.S. No. 33 of 1985 and the pendency of E.P. No. 50 of 1996, being a transferee pendente lite of the judgment-debtors, the Revision petitioner has no right to resist the execution proceedings in view of the clear language contained in Order 21 Rule 102 of C.P.C. As held by the Supreme Court in Silverline Forum Private Limited''s case (supra), since it was admitted by the Revision petitioner that he was a transferee pendente lite of the judgment-debtors, it was not necessary for the executing Court to determine the interest claimed by the Revision petitioner to continue in possession of the schedule premises.

16. For the aforesaid reasons, I am of the opinion that the Court below had rightly held that the Revision petitioner has no locus standi and the order under Revision rejecting the application made under Order 21 Rule 97 of C.P.C. does not suffer from any material irregularity in exercise of jurisdiction vested under law.

17. Accordingly, the Civil Revision Petition is dismissed. No costs.

