

(2007) 11 AP CK 0059
In the Andhra Pradesh High Court
Case No : C.R.P. No. 2732 of 2007

Raja Ratan Gopal Sainehar (died) per LRs.	APPELLANT
Vs	
Rajendra Pershad and Others	RESPONDENT

Date of Decision : 27-11-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 5, Order 47 Rule 7, Order 47 Rule 7(1), Order 47 Rule 7(2), 114
Specific Relief Act, 1963 — Section 18, 28(1)

Citation : (2008) 2 ALD 778 : (2008) 1 ALT 623

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Ch. Raghuveer Reddy, for the Appellant; P. Shiv Kumar, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—Respondents filed O.S. No. 544 of 1975 against the petitioners in the Court of II Senior Civil Judge, City Civil Court, Hyderabad, for the relief of specific performance of an agreement of sale dated 28-01-1974. The trial Court dismissed the suit on 26-12-1978. Thereupon, the respondents filed CCCA No. 49 of 1979 before this Court. The appeal was allowed through judgment dated 09-09-1986 and the suit was decreed. Respondents were directed to deposit the balance of consideration of Rs. 57,300/-, with interest at 6% per annum from 28-08-1974, within two months from the date of decree. A default clause was also incorporated. The said decree became final.

2. The respondents filed E.P. No. 81 of 1999 on 24-09-1999. Apart from raising several objections to the E.P., petitioners filed I.A.No.1182 of 2001, with a prayer to rescind the agreement of sale u/s 28(1) of the Specific Relief Act (for short "the Act"). The trial Court allowed the I.A., through its order dated 27-08-2002. The respondents filed C.R.P.No.4276 of 2002 before this Court. The C.R.P. was allowed vide order dated 08-09-2004. In view of this, it became necessary for

the Executing Court to proceed with the E.P.

3. The Executing Court allowed the E.P. through its order dated 03-02-2006, and directed the petitioners to execute the sale deed. Alleging that certain important contentions advanced by them, such as limitation and non-compliance with the conditions in the decree, were not taken into account by the Executing Court, the petitioners filed E.A. No. 88 of 2006, u/s 114, read with Order XLVII C.P.C., with a prayer to review the order dated 03-02-2006. The review petition was dismissed on 04-06-2007. Hence, this C.R.P., against the order in E.P. No. 81 of 1999.

4. Sri Ch. Raghuveer Reddy, learned Counsel for the petitioners submits that the E.P. was filed after a lapse of 12 years, and it was barred by limitation. He contends that the respondents failed to comply with the condition imposed by this Court, as to making of deposit of the balance of consideration, and on account of the same, the suit came to be dismissed, by operation of the default clause. He further contends that the Executing Court did not discuss any of these aspects in its order dated 03-02-2006, and the review petition was dismissed on technical grounds. Learned Counsel submits that neither the order dated 03-02-2006 passed in E.P. No. 81 of 1999, nor the one, dated 04-06-2007, rejecting the application for review, can be sustained in law, or on facts.

5. Sri P. Shiv Kumar, learned Counsel for the respondents, on the other hand, submits that the order dated 03-02-2006 passed in E.P. No. 81 of 1999 has merged in the order dated 04-06-2007, passed in E.A. No. 88 of 2006, and the present C.R.P, which is filed against E.P. No. 81 of 1999, is not maintainable in law. He contends that the Executing Court discussed all the points urged on behalf of the parties, in its order dated 03-02-2006, and no case was made out for reviewing the same. According to the learned Counsel, the E.P. is within the period of limitation, if the period during which an order of temporary injunction was obtained in O.S. No. 1466 of 1977 is taken into account. Learned Counsel further contends that deposit of the balance of consideration was made within the stipulated time, and certain omissions, on the part of the office of the trial Court, in bringing the deposits to the register, cannot be a ground to deny the execution of the decree.

6. Both the counsel have relied upon the precedents, in support of their contentions.

7. This Court cannot act as an Appellate Authority over an order passed by an Executing Court. Strong grounds must exist to interfere with such orders, particularly when the decree is very old. From the various contentions urged on behalf of the parties, the following questions arise for consideration:

(a) Whether the C.R.P. is maintainable against the order passed in E.P. No. 81 of 1999, in view of rejection of its review in E.A. No. 88 of 2006.

(b) Whether the order in E.P. No. 81 of 1999 suffers from any legal or factual

infirmity.

8. The respondents raised a strong objection, as to the maintainability of the C.R.P. According to them, the order dated 03-02-2006 passed in the E.P., merged into the one, dated 04-06-2007, passed in E.A. No. 88 of 2006, and revision, if at all, ought to have been filed against the one in the E.A. Reliance is placed upon a judgment of the Full Bench of the Supreme Court in Sushil Kumar Sen Vs. State of Bihar, .

9. Briefly stated, the facts that gave rise to the said judgment are: The land of the claimant therein was acquired by the State, by invoking the provisions of the Land Acquisition Act. The compensation was determined in the award, at Rs. 14/- per katha. In a reference made u/s 18 of the Act, the trial Court enhanced the same to Rs. 200/- per katha, through judgment dated 18-08-1961. The State filed a review, stating that certain important piece of evidence was not taken into account. The review was ordered on 26-09-1961, and the compensation was reduced from Rs. 200/- to Rs. 75/- per katha. While the State preferred an appeal to the High Court against the order dated 26-09-1961, seeking further reduction, the claimant filed a cross appeal, challenging the same order. The High Court found that there was no basis for reviewing the decree dated 18-08-1961. Therefore, it had set aside the order dated 26-09-1961. However, it proceeded to reduce the compensation from Rs. 200/- to Rs. 75 per katha, on being satisfied about the merits of the matter. The claimant carried the matter to the Supreme Court. The appeal was allowed, with the following observation:

Para-3: The respondent did not file any appeal from the decree dated 18-08-1961, awarding compensation for the land acquired at the rate of Rs. 200/- per katha. On the other hand, it sought for a review of that decree and succeeded in getting the decree vacated. When it filed Appeal No. 81 of 1962, before the High Court, it could not have filed an appeal against the decree dated 18-08-1961 passed by the Additional District Judge as at that time that decree had already been superseded by the decree dated 26-09-1961 passed after review. So the appeal filed by the respondent before the High Court could only be an appeal against the decree passed after review. When the High Court came to the conclusion that the Additional District Judge went wrong in allowing the review, it should have allowed the cross appeal. Since no appeal was preferred by the respondent against the decree passed on 18-8-1961 awarding compensation for the land at the rate of Rs. 200/- per katha, that decree became final. The respondent made no attempt to file an appeal against that decree when the High Court found that the review was wrongly allowed on the basis that the decree revived and came into life again.

10. This result emerged on account of the proposition of law, which was stated by the Hon''ble Supreme Court itself, as under:

Para 2: It is well settled that the effect of allowing an application for review of a

decree is to vacate the decree passed. The decree that is subsequently passed on review, whether it modifies, reverses or confirms the decree originally passed, is a new decree superseding the original one.

11. This observation in turn, was made on the basis of the law laid down by the High Courts of Calcutta and Allahabad in the judgments rendered between 1906 and 1928. The respondents want the principle laid down by the Supreme Court, in the said case, to be applied to the facts of the present case.

12. If the enacted law remained the same, as it existed, when the Hon'ble Supreme Court decided the matter, there should not be any difficulty in accepting the contention of the respondents. Subsequent to the judgment of the Supreme Court, the Parliament amended Rule 7 of Order XLVII CPC to the following effect,

Order XLVII. Rule 7: Order of rejection not appealable. Objections to order granting application:

(1) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to at once by an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit.

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(3) No order shall be made under Sub-rule (2) unless notice of the application has been served on the opposite party.

13. The result is that a party, which is not successful in its application, seeking review, can proceed to challenge the original order itself. The theory of merger virtually stands diluted. An order rejecting an application for review is made not appealable, and the only option left to such parties is, to avail the remedy, against the original order itself. Even where an application for review is ordered, the aggrieved party is given the option, either to challenge the order passed in the application for review, or the original order itself. Either way, merger does not take place, in view of Rule 7(1). Whatever applies for appeals would hold good for revisions also. In view of the prohibition contained in Rule 7(1), the petitioners are precluded from filing a revision against the order passed in E.A. No. 88 of 2006, refusing to review the order in the E.P. Naturally, they have to challenge the order passed in E.P. itself and that is what they have done. Therefore, the objection raised by the respondents, as to the maintainability of the revision, cannot be countenanced.

14. As to the second question: It has already been pointed out that the suit was

dismissed by the trial Court and a decree came to be passed in CCCA. No. 49 of 1979 on 09-09-1986. A specific condition was imposed to the effect that the balance of the sale consideration with interest at 6% per annum from 28-08-1974, shall be deposited within two months from the date of the decree. A default clause was incorporated. The limitation of 12 years, for enforcing this decree, ended with 09-09-1998. Except for a period of, about one month, in the form of stay, granted in LPA No. 239 of 1996, there was no impediment for enforcing the decree. The respondents sought to justify the filing of the E.P., in the year 1999 by taking the plea that an order of stay granted in O.S. No. 1466 of 1997, operated against them. Neither oral nor documentary evidence was adduced before the Court, in this regard.

15. The second aspect of the matter is that the petitioners strongly urged that the respondents did not comply with the condition, as to deposit, within the time stipulated by this Court, and thereby, no executable decree existed. Here again, serious controversy persisted. The petitioners pleaded that the Executing Court, as well as this Court, endorsed to the effect that the amount, as directed in the decree passed in CCCA No. 49 of 1979 was not deposited, at all. Respondents, on the other hand, took the plea that an amount of Rs. 99,842/- was deposited on 19-09-1986 through challan No. 434. When such a serious controversy existed, heavy burden rested upon the respondents, to lead evidence and to satisfy the Court that the condition was complied with. Here again, no evidence was forthcoming.

16. This Court would have decided the matter, one way or the other, particularly, in view of the fact that the litigation started way back in the year 1975; had the Executing Court recorded findings in favour of the respondents, on the two aspects, referred to above, before it allowed the E.P. In fact, desparate search was made in the order under revision, which runs into 16 typed pages, to see, whether any such findings were recorded, the basis there for apart. Paragraphs 1 to 9, run into 7 pages, were devoted to state the introductory facts and pleadings. In paragraph 10, the Court framed the point, viz., "whether the E.P. is not executable and whether the decree-holder is not entitled for the relief". Paragraphs 11 to 20 deal with the contentions, advanced on behalf of the parties, on various aspects.

17. The actual discussion of the matter, on the merits, if one may say so, is contained in paragraphs 21 and 22, which reads as under:

Para-21: As found from the contention of the both parties the suit OS 544/75 was filed for specific performance in respect of the building being constructed in accordance with any regulation such construction and the appurtenant land. Therefore, in the said circumstances, the Prohibition under ULC is not applicable. Further it appears that the same was contended in CCCA and LPA. Further as per the contention of the DHR the JDR herein were punished for their alleged demolition of the EP schedule property. Therefore in the said circumstances the JDRs are not entitled to raise such objections.

Para-22: Thus from the above said circumstances, I hold that the EP filed by the DHR is within limitation and there is no illegality in execution. Thus in view of the above findings the DHR is entitled for execution of the decree.

18. It is surprising to note that not even a reference was made to the question of limitation, or the compliance with the condition incorporated in the decree. Though it may appear some-what extraordinary, this Court felt it necessary to extract the first sentence in paragraphs 11 to 20, lest an impression be not gathered, that the discussion undertaken by the Executing Court, in the said paragraphs, is not taken, in its proper spirit.

Para-11: Upon hearing both sides, the counsel for the JDR has raised the objection for filing the E.P. and contended that the EP is not at all maintainable.

Para-12: As far as the contentions of the JDRs, with regard to the limitation point he submitted that the decree in OS 544/75 was passed on 26-12-78.

Para-13: The learned Counsel for the DHR denied the contentions of the JDR.

Para-14: On perusal of the material the counsel for the DHR filed the rejoinder for the objections filed by the JDRs.

Para-15: The other objections raised by the JDR is that the DHRs have failed to comply the conditions imposed in CCCA No. 49/79 to deposit the balance of sale consideration with interest within 2 months from the date of appeal i.e. on 09-09-86.

Para-16: The contention of the JDR is denied by the DHR.

Para-17: Upon hearing both sides, the counsel for the DHR submitted that in pursuance of the CCCA No. 49 of 1979, the DHR herein have deposited the decretal amount.

Para-18: Further the learned Counsel for the JDRs have filed IA1182/00 u/s 28(1) specific relief ordered to rescind agreement of sale dt. 28-01 -74.

Para-19: The counsel for the JDR further submitted that the EP schedule property is a part of the ancestral joint family property.

Para-20: He further submitted that there is no prohibition whatsoever under ULC Act.

19. Thus, in all these paragraphs, the Executing Court has taken note of the contentions and arguments advanced on behalf of the parties, and its conclusions were reflected only in paragraphs 21 and 22. It is not at all the intention of this Court to criticize the form and content of the judgment under revision. The effort is only to drive home the point, that a judgment rendered by a Court is known, more for its conclusions and the reasons there for, than the reproduction of the facts and grounds, urged by the parties. If a Court is faced with a situation that warrants the reduction of the size of the judgment, it can afford to be precise, in the matter of stating the facts and contentions of the parties. Choosing to be

precise, in recording the conclusions, or stating reasons there for would naturally tell upon the effectiveness of the adjudication. In some cases, apart from terminating the dispute between the parties, such a judgment is likely to widen the controversy, and create new avenues of litigation.

20. It is not without any underlying object, that Rule 5 of Order XX of C.P.C., mandates that the Court shall state its findings or decision on all the issues, and furnish reasons, in support of its conclusions.

21. It has already been pointed out that the bone of contention between the parties was on the question of limitation and compliance of the conditions of the decree. Though the petitioners urged a ground, referable to the provisions of the Urban Land (Ceiling and Regulation) Act, it was virtually outside the scope of the E.P. Unfortunately, the Executing Court had chosen to deal with that question alone, by keeping the actual points of controversy aside. Further, no evidence was adduced by the parties.

22. The whole proceedings are bereft of any oral or documentary evidence.

23. When the petitioners filed an application to review the order passed in the E.P., it was rejected by observing that no new points were urged. It is on account of improper approach to the matter, that a litigation, which was started more than 30 years ago remains virtually at the same stage, except that it has assumed more number of complications, over the period. The Executing Court ought to have bestowed its attention to the important questions raised by the parties.

24. For the foregoing reasons, the C.R.P is allowed, and the order dated 03-02-2006, passed in E.P. No. 81 of 1999, is set aside. The matter is remanded to the Executing Court, for fresh consideration and disposal, on the following points, viz.,

(a) whether the E.P. is filed within the limitation, and

(b) whether the respondents/decreet-holders have complied with the condition of depositing the balance of the decretal amount, as directed by this Court, in the decree dated 09-09-1986, in CCCA No. 49 of 1979.

25. It is also made clear that the burden to prove both the points is squarely upon the respondents by leading oral and documentary evidence. The Executing Court shall record specific findings on these points, and shall not take any other aspects into account. This exercise shall be completed within four months from today.

There shall be no order as to costs.