
(1993) 03 AP CK 0004

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3341 of 1989

Rapolu Rama Rao

APPELLANT

Vs

Thummapalli Kamaiah

RESPONDENT

Date of Decision : 04-03-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 16, Order 21 Rule 37, 115

Citation : (1993) 3 ALT 284 : (1993) 2 APLJ 98

Hon'ble Judges : G.V.L. Narasimha Rao, J

Bench : Single Bench

Advocate : M. Ramaiah and D. Krishna Murthy, for the Appellant; None appeared, for the Respondent

Judgement

G.V.L. Narasimha Rao, J.—This revision petition is filed against the order in E.P. No. 132/88 in O.S. No. 369/82 dismissing the application filed by the petitioner under Order 21, Rule 16 and Order 21, Rule 37 C.P.C.

2. Two affidavits have been filed in support of the present execution petition, one by the original decree holder, according to whom the consideration of Rs. 4,000/- was received by the original decree-holder from the transferee decree-holder and deed of transfer was executed on 19-11-88 and the original decree holder has no objection for the transferee decree holder executing the decree. The second affidavit filed by the transferee decree holder is to the effect that he has paid cast and the original decree holder transferred the decree in his favour and that the judgment-debtor is evading to pay the decretal amount in spite of being in possession of each and means. He, therefore, prayed to order arrest of the judgment-debtor.

3. The judgment-debtor filed a counter stating that he has no means to discharge the decretal debt and he is not doing any business. He further stated that he is aged and unwell and as such, he could not be detained in civil prison.

4. The Lower Court framed the following points for consideration viz., whether

the transfer in favour of P.W.1 could be recognised, and whether the E.P. is not maintainable? On the evidence on record the lower Court held that transfer in favour of P.W.1 is nothing but sham and nominal and he cannot be recognised a transferee of valid decree and that he has not established the means of the judgment-debtor, and as such the judgment-debtor cannot be committed to civil prison. Finally the lower Court dismissed the execution petition as not maintainable on the ground that the objections of the judgment-debtor are tenable. This revision arises against the order of the trial Court dismissing the said application.

5. The decree holder in support of his case examined P.Ws. 1 to 2 and marked Ex. A-1, whereas the respondent-judgment-debtor examined himself as R.W.1.

6. The evidence of P.W.1, who is no other than the petitioner, is that the original decree holder obtained a decree against the judgment-debtor and the said decree has been transferred under Ex. A-1 to P.W.1 for Rs. 4,000/-. Chekuri Koteswararao (P.W.2) attested Ex. A-1 while one Anjaneyulu is the scribe of Ex.A-1. In the cross-examination P.W.1 categorically states that he is working as Pleader is Clerk and the Original decree holder is a big businessman of Narasaraopet.

7. The evidence of P.W.2 is that he is the attestor of Ex.A-1 and P.W.1 paid Rs. 4,000/- to Dodla Subbarao and Ex. A-1 was executed at P.W.1's house and Anjaneyulu is the scribe of Ex.A.1. Though a suggestion was put to him that Ex. A-1 was nominal and got up document, he denied the same.

8. The evidence of P.W. 3 is that he is the original decree holder and the decree was transferred in favour of P.W.1 for Rs. 4,000/- under Ex. A-1. P.W.2 attested Ex. A-1. In the cross-examination he categorically stated that he is a businessman and he is not indebted to P.W.1.

9. P.W.1 is the judgment-debtor who deposed that he has no means or property to discharge the decretal debt. He further stated that to avoid payment to other creditors the original decree holder got the decree transferred nominally in favour of P.W.1. He denied the suggestion that he is having cash of Rs. 20,000/-.

10. Sri M. Ramaiah the learned Counsel for the petitioner, submits that taking into consideration the evidence of P.Ws. 1 to 3 coupled with the documentary evidence (Ex. A-1), it has to be construed that P.W.1 is a transferee-decree-holder and as such, the transfer has to be recognised and further submits that the evidence of P.Ws. 1 to 3 establishes the means of the judgment-debtor. The stand taken by the respondent in the objections and the evidence is that since there is no convincing evidence about the means and properties possessed by the judgment-debtor, no arrest could be ordered taking into consideration the ill-health of the judgment-debtor.

11. A thorough verification of both the affidavits filed in support of the application and the oral evidence of P.Ws. 1 and 3 establishes that it is a valid

transfer in favour of P.W. 1.

12. The learned Counsel for the petitioner contended that the mere non-payment of the consideration for an assignment of a decree if it is not coupled with some such allegation that the assignment itself was nominal or invalid for some other reason, is a purely irrelevant question when the Court comes to consider under Order 21, Rule 16 C.P.C, whether that assignment should be recognised or not. The learned Counsel relied upon the decision in (Makarla) Venkataramanujamma Vs. (Kodavanlapalli) Chinna Venkata Reddi and Another, in support of his contention. He further contended that the judgment-debtor cannot prevent the assignee from executing the decree on the ground of inadequacy or absence of consideration. He relied upon the decision in Uttan Chand v. Sheolal AIR 1954 Nag 234.

13. In view of the above discussion, I have no hesitation in holding that P.Ws. 1's transfer can be recognised. I, therefore, allow the C.R.P. and set aside the order passed by the lower Court to that extent.

14. In view of the evidence of P.Ws. 1 to 3, I hold that the judgment-debtor has no sufficient means to discharge the suit debt for the present.

15. In the result the objections of judgment debtor are not sustainable but the judgment-debtor has no means to discharge the debt as on today.

16. The revision petition is accordingly allowed in part. No Costs.