

(2005) 01 AP CK 0041
In the Andhra Pradesh High Court
Case No : CRP No. 4128 of 2004

S. Kristappa

APPELLANT

Vs

K. Gopala Chari and Others

RESPONDENT

Date of Decision : 24-01-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A, 151, 48

Citation : (2005) 2 ALD 499 : (2005) 3 ALT 7

Hon'ble Judges : Elipe Dharma Rao, J

Bench : Single Bench

Advocate : N. Ranga Reddy, for the Appellant; O. Manohar Reddy, for the Respondent No. 1, for the Respondent

Judgement

Elipe Dharma Rao, J.—This civil revision petition is filed under Article 227 of the Constitution of India. The petitioner herein is the appellant-fourth respondent, who seeks to assail the order dated 29-7-2004 passed in CMA No. 37 of 2003 on the file of the Court of Senior Civil Judge, Hindupur, confirming the order and decretal order dated 16-10-2003 passed in I.A. No. 723 of 2001 in O.S. No. 247 of 1997 on the file of the Court of Junior Civil Judge, Hindupur, allowing the application filed under Order 39, Rule 2 (A) read with Section 151 of CPC seeking to punish the respondent therein for violation of the order passed in I.A. No. 740 of 1997.

2. Originally the suit was filed for specific performance of the agreement of sale. In the main suit, the first respondent-plaintiff filed I.A. No. 740 of 1997 seeking to restrain the petitioner herein and three others, who are respondents therein from alienating the suit schedule property pending disposal of the main suit. The Trial Court ordered interim injunction restraining the petitioner herein and others who are respondents in I.A. No. 740 of 1997 from alienating the plaint schedule property. The respondents therein have colluded together and alienated the suit schedule property by violating the injunction order and executed registered sale deed dated 1-6-2001 in favour of one Mr. M. Krishna Reddy.

3. On the other hand, the Respondents 1 to 3 therein filed counter and denied the averments made by the petitioner. It is submitted that the Trial Court closed the petition on 1-8-2000 without prejudice to the contention of the parties and that itself amounts to no temporary injunction is in force as prayed by the petitioner. With regard to other allegation that the respondents in collusion with the fourth respondent alienated the suit property in the name of Mr. Krishnareddy of Beerepalli by violating the injunction order passed by the Court in I.A.No. 740 of 1997 is not correct. The other allegation is that they have no respect in the Court is not correct. The petitioner filed Photostat copy of the alleged sale deed. The respondents never executed any sale deed and they are innocents. In the reply notice the respondents therein have mentioned that they have no right over the suit schedule property and prayed to dismiss the petition.

4. The Respondent No. 4 filed his counter admitting the factum of obtaining injunction. The respondents have filed the counter and the said petition was closed on 1-8-2000 by the Court without prejudice to the contention of the parties that amounts to no order as to the temporary injunction as prayed by the petitioner. The other allegation is that the respondent executed registered sale deed in favour of Mr. M. Krishna Reddy son of Sanjeevareddy is not correct. He stated that he never executed any sale deed in favour of Krishnareddy only to harass the respondents the petitioner in collusion with M. Krishna Reddy has created the alleged sale deed filed the petition. There are no merits in the petition and prayed to dismiss the same.

5. After hearing the Counsel appearing on either side, the Junior Civil Judge, Hindupur, held that it is evident on record that Ex.A1 discloses that the fourth respondent, Mr. S.Kristappa had executed registered sale deed in favour of Mr.S. Krishnappa son of Narayanappa by alienating the suit schedule property. The trial Judge observed that when the suit is pending before the Court, the fourth respondent is not supposed to execute registered sale deed in respect of suit schedule property without the leave of the Court. But the respondent No. 4 deliberately knowing fully well about the consequences had executed Ex.A1 registered sale deed by alienating the suit schedule property in favour of S.Krishnappa. In two aspects the acts of the fourth respondent is questionable. Firstly, he is not supposed to execute the sale deed when temporary injunction is granted restraining him not to execute the registered sale deed and secondly he executed registered sale deed under Ex.A1 during pendency of suit. Therefore, the trial Judge held that the fourth respondent had deliberately violated the order of temporary injunction granted in IA No. 740 of 1997 on 4-12-1997 restraining the respondents not to alienate the suit schedule property. Further in the said order, there is no mention about passing of order till such time and it is deemed that the order is in force. Ultimately, the Junior Civil Judge exonerated respondents 1 to 3 therein on the ground that there is no evidence put forth by the petitioner to come to conclusion that R1 to R3 colluded with R4 in execution of sale deed and ordered issue of warrant on payment of process against Respondent No. 4 therein for violating the order of the Court. Questioning the

correctness of the order and decretal order dated 16-10-2003 passed in I.A. No. 723 of 2001 in O.S. No. 247 of 1997 on the file of the Court of Junior Civil Judge, Hindupur, allowing the application filed under Order 39, Rule 2(A) read with Section 151 of CPC seeking to punishing the respondents therein for violation of the order passed in I.A. No. 740 of 1997, the Respondent No. 4 therein filed CMA No. 37 of 2003 on the file of the Court of Senior Civil Judge, Hindupur contending that the Court below ought to have seen that the petitioner therein has not proved the execution of alleged sale deed dated 1-6-2001 and that I.A. No. 740 of 1997 is not disposed of on merits and the same was closed on 4-8-2000 without prejudice to the contention of both parties. Further it is contended that the Trial Court ought to have seen that injunction order is not in force and that the order of the Trial Court is erroneous and not sustainable and therefore prayed to set aside the order and decretal order of the Trial Court.

6. In view of the rival contentions raised by the parties, the first appellate Court framed two points for determination of civil miscellaneous appeal; firstly, whether the ad interim injunction granted in IA No. 740 of 1997 dated 4-12-1997 is in force; and secondly, whether R4 executed Ex.A1 registered sale deed dated 1-6-2001 in favour of Mr. S.Kristappa ?

7. On Point No. 1 the first Appellate Court held that the petitioner filed IA No. 740 of 1997 for grant of temporary injunction restraining R4 and three others from alienating the suit properties pending disposal of the suit and ad-interim injunction was granted on 4-12-1997. Admittedly the lower Court closed IA.No. 740 of 1997 on 4-8-2000 without prejudice to the contention of both parties to the suit. Taking advantage of closing of IA No. 740 of 1997 on 4-8-2000, R4 contended that ad-interim injunction is no longer in force. The contention of R4 is not correct. It is very significant to note that the lower Court closed IA No. 740 of 1997 without prejudice to the contention of both sides. This means the injunction order is in force. In case, R4 is interested in getting the injunction vacated, he should have insisted the lower Court for disposal of IA.No. 740 of 1997 for final disposal. The acceptance of R4 for closing of IA No. 740 of 1997 shows that he reconciled for subsistence of orders of injunction. Therefore, the first Appellate Court held that the order of injunction granted in IA No. 740 of 1997 dated 4-12-1997 is in force and upheld the findings of the Trial Court.

8. On Point No. 2, the first Appellate Court held that R4 executed a registered sale deed alienating the suit property dated 1-6-2001 in favour of Mr. S. Krishtappa son of Narayanappa of Sreerangarajpalli Village. To prove execution of sale deed by R4, the petitioner relied on Ex.A1 certified copy of sale deed dated 1-6-2001, since Ex.A1 is a registered extract, at this stage, there is no difficulty to believe the execution of the said sale deed by R4. R4 contended that the petitioner colluded with S.Krishtappa and brought into existence of Ex.A1. This contention of R4 is unacceptable in the face of production of Ex.A1 by the petitioner. The first appellate Court observed that there is no truth and substance in the plea of R4. The ad-interim injunction in IA No. 740 of 1997 was granted on

4-12-1997 and the same is in force and while so, on 1-6-2001, Ex.A1 was executed by R4 alienating the suit properties in violation of orders of injunction. The fact of execution of Ex.A1 by R4 is established. The lower Court came to the conclusion that during subsistence of injunction order, R4 in violation, executed Ex.A1 and ordered to be sent him to civil prison. After deciding the second point, the first appellate Court observed that as seen from the operative portion of the lower Court R4 was ordered to be sent him to civil prison and to issue warrant on payment of process. No period of imprisonment in civil prison is stated in the order of lower Court. Under Order 39, Rule 2(A) of the CPC maximum of three months period is provided to send a person to civil prison. Since no period is fixed in the order of the lower Court, the first Appellate Court while dismissing the civil miscellaneous appeal and confirmed the order of the Trial Court and found the aforesaid lacuna and corrected the same and thereafter decided to send R4 to civil prison for a month is just and reasonable in the facts and circumstances of the case. Assailing the said order, R4 filed this civil revision petition.

9. Mr. N. Ranga Reddy, the learned Counsel for the revision petitioner contended that the Courts below ought to have seen that when IA No. 740 of 1997 stands closed, there is no question of subsistence of interim injunction; consequently violation of injunction order does not arise. The findings of the lower Appellate Court that when IA No. 740 of 1997 was closed by Trial Court without prejudice to the contention of both sides that means the injunction order is in force is wholly incorrect. The further finding of the lower appellate Court that acceptance of petitioner herein for closing of IA No. 740 of 1997 shows that he reconciled for subsistence of injunction is without any basis. When IA No. 740 of 1997 was closed without prejudice to contention of both parties, either the question of subsistence of interim injunction or the question of petitioner herein violating the said injunction order does not arise at all. Further the Courts below ought to have seen that the alleged sale deed was brought into existence not at the instance of petitioner herein but at the instance of Respondent No. 1 herein who colluded with the alleged purchaser to see that petitioner is sent to civil prison. Even assuming without admitting that the petitioner executed any such sale deed herein, when IA No. 740 of 1997 itself was closed, execution of sale deed does not amount to violation of injunction order, warranting arrest of the petitioner herein. He contended that when the original Court has failed to impose the term of imprisonment as contemplated under Order 39, Rule 2(A) of CPC the Appellate Court has committed illegality in imposing the sentence of imprisonment for a period of one month.

10. He contended that in the order of Trial Court, no period has been specified and as such, the lower appellate Court ought to have set aside the same for the said lacunae. In view of the above, the learned Counsel for the petitioner prayed to set aside the order and decree dated 29-7-2004 passed in CMA No. 37 of 2003 on the file of the Court of Senior Civil Judge, Hindupur, confirming the order and decree dated 16-10-2003 passed in LA No. 723 of 2001 in OS No. 247 of 1997

on the file of the Court of Junior Civil Judge, Hindupur.

11. Now the main contention raised by the learned Counsel for the revision petitioner is that when the original Court has failed to impose the term of imprisonment as contemplated under Order 39, Rule 2(A) of CPC the Appellate Court ought not to have committed illegality in imposing the sentence of imprisonment for a period of one month.

12. On the other hand, Mr. O. Manohar Reddy the learned Senior Counsel for the Respondent No. 1 seeks to contend that the Trial Court has considered that I.A. is closed means without prejudice to both parties that the order is in subsistence and the Interlocutory Application was closed for statistical purpose and therefore, the Respondent No. 4 is not permitted to alienate the suit schedule property.

13. Reliance has also been placed on the judgment of the Apex Court in Pentapati Chinna Venkanna and Others Vs. Pentapati Bengararaju and Others, . The Hon''ble Supreme Court in Para Nos. 4, 5, 6, 9 and 10 of the said judgment held thus:

(a) CPC (1908), Section 48 - Fresh application, what constitutes -Previous application closed for statistical purposes - subsequent application to continue previous application not a fresh application.

The application mentioned in Section 48 is a fresh substantive application and not an application to revive or continue a substantive application already pending on the file of the Court. Where the previous execution petition is "closed" for statistical purposes because the High Court stayed the execution pending the appeal filed by the judgment-debtors, and the decree holders were not in a position to proceed with the execution petition, the execution petition must be held to be pending on the file of the Executing Court and the subsequent application is only an application to continue the previous application and not a fresh one.

(b) CPC (1908) - Power of Court to close execution application for statistical purposes.

It is true that Courts have condemned the practice of Executing Courts using expressions like "closed", "closed for statistical purposes", "struck off", "recorded" etc., and they also pointed out that there was no provisions in the CPC for making such orders; but assuming that the Court has no such power, the passing of such an order cannot tantamount to an order of dismissal, for the intention of the Court in making an order "closed" for statistical purposes is manifest. It is intended not to finally dispose of the application but to keep it pending. Whether the order was without jurisdiction or whether it was valid, the legal position would be the same; in one case it would be ignored and in the other, it would mean what it stated. In either case, the execution petition would be pending on the file of the Court. That apart, it is not the phraseology used by the Executing Court that really matters, but it is really the Court that really

matters, but it is really the substance of the order that is material. Whatever terminology may be used, it is for the Court to ascertain, having regard to the circumstances under which the said order was made. Whether the Court intended to finally terminate the execution proceedings. If it did not intend to do so, it must be held that the execution proceedings were pending on the file of the Court. That apart, it is not the phraseology used by the Executing Court that really matters, but it is really the substance of the order that is material. Whatever terminology may be used, it is for the Court to ascertain, having regard to the circumstances under which the said order was made. Whether the Court intended to finally terminate the execution proceedings. If it did not intend to do so, it must be held that the execution proceedings were pending on the file of the Court.

(c) CPC (1908), Section 48 - Fresh application what constitutes -Parties substantially same in both applications -Decree holder omitting some of the properties in subsequent application - Subsequent application not fresh application.

An application made after 12 years from the date of the decree would be a fresh application within the meaning of Section 48 if the previous application was finally disposed of. It would also be a fresh application if it asked, for a relief against parties or properties different from those proceeded against in the previous execution petition or asked for a relief substantially different from that asked for in the earlier petition.

Where the new parties added in the subsequent execution petition are either the legal representatives of the deceased parties or the representative of a party who has become insolvent, so also the decree-holders are not proceeding against any property against which they did not seek to proceed in the earlier proceedings it must be held that the parties are substantially the same in both the proceedings, and properties included in the previous application. It cannot, therefore, be treated as a fresh application within the meaning of Section 48.

14. Heard the learned Counsel on either side and perused the material placed on record and the order dated 29-7-2004 passed in CMA No. 37 of 2003 on the file of the Court of Senior Civil Judge, Hindupur, confirming the order and decretal order dated 16-10-2003 passed in I.A. No. 723 of 2001 in O.S. No. 247 of 1997 on the file of the Court of Junior Civil Judge, Hindupur, allowing the application filed under Order 39 Rule 2(A) read with Section 151 of CPC seeking to punishing the respondents therein for violation of the order passed in I.A. No. 740 of 1997.

15. While parting with this civil revision petition, let us examine the provisions of Order 39, Rule 2(A) of the Code of Civil Procedure.

ORDER-XXXIX

TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS:

TEMPORARY INJUNCTIONS

Cases in which temporary injunction may be granted

1. (1) Where in any suit it is proved by affidavit or otherwise

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to (defrauding) his creditors, or

(c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property (or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit) as the Court thinks fit, until the disposal of the suit or until further orders.

(2) The Court shall, while granting a temporary injunction to restrain such act or to make such other order for the purposes of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property under disposition in the suit under Sub-rule (1), direct the plaintiff to give security or otherwise as the Court thinks fit.

Injunction to restrain repetition or continuance of breach.

2. (1) In any suit for restraining the defendant for committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury for a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

(3) And (4) [Omitted by Amendment Act, 1976]

[Consequence of disobedience or breach of injunction.

2A. (1) In the case of disobedience of any injunction granted or other order made under Rule 1 or Rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be

attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.]

16. After examining the provisions of Order XXXIX, and Rule 2A of CPC i.e., consequence of disobedience or breach of injunction, and from the conspectus of the above decision, the Hon"ble Supreme Court held that u/s 48 of CPC the Court has got the power to close the execution proceedings for statistical purpose. In view of the above proposition laid down by the Supreme Court, the order passed by both the Courts in the Interlocutory Application and appeal, it appears that the original Court intended that ad-interim injunction in I.A. No. 740 of 1997 on 14.12.1997 is pending operation. Therefore, it cannot be said that the Interlocutory Application is closed or closure of Interlocutory Application tantamount to an order of dismissal for vacating the order of ad-interim injunction. Therefore, the Respondent No. 4 is not permitted to alienate the suit property. After considering the rival contentions, I am satisfied that as held by the Hon"ble Supreme Court though the word "closed" is not used in the CPC for statistical purpose but the Courts are using the words "closed". Therefore it does not mean closure of Interlocutory Application for statistical purpose amounts to vacating the order of ad-interim injunction or dismissing the Interlocutory Application as held by the Hon"ble Supreme Court that we have to see the substance of the order passed by the Court below. In the present case, it is appropriate to consider the dictum of the Apex Court in *Pentapati China Venkanna and Ors. v. Pentapati Bangararaju and Ors.*, referred supra, the intention of the trial Judge is that the revision petitioner has to undergo imprisonment for a period not exceeding three months. But when the matter carried in appeal, the appellate Court after considering the facts and circumstances of the case came to a conclusion that sending the revision petitioner (R4) to the civil prison for a month is just and reasonable in the facts and circumstances of the case. Actually the revision petitioner has to be send to the civil prison for three months but the appellate Court restricted and fixed the period of imprisonment in civil prison is for one month. For all the above reasons, I do not see any illegality in passing the said order. The CRP accordingly fails, however, taking into consideration the age of the revision petitioner (R4), I deem it appropriate to reduce the period of imprisonment in civil prison to fifteen days. Moreover, the main case is posted for trial and for which both parties are ready to adduce evidence. In the circumstances, I hope that the disposal of the suit may not take much time inasmuch as the trial Judge had therefore closed the Interlocutory application. However, the intention of the Court below is not to vacate the ad-interim injunction already granted or dismissing of the

Interlocutory application but it is closed for statistical purpose. Thus, the intention of the Court below can be viewed that the ad-interim injunction granted on 4-2-1997 is pending operation.

17. In the result, the CRP is accordingly disposed of. No costs.