
(2005) 04 AP CK 0027

In the Andhra Pradesh High Court

Case No : C.R.P. No's. 1526 and 1529 of 2005

Soora Ramachadra Reddy (died) and Others

APPELLANT

Vs

G. Paradesi and Others

RESPONDENT

Date of Decision : 05-04-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 151, 47
Transfer of Property Act, 1882 — Section 108

Citation : (2005) 3 ALT 420 : (2005) 2 ALT 420

Hon'ble Judges : R. Subhash Reddy, J

Bench : Single Bench

Advocate : Koka Raghava Rao, for the Appellant; D. Seshadri Naidu, for the Respondent

Final Decision : Dismissed

Judgement

R. Subhash Reddy, J.—These two Civil Revision Petitions are filed u/s 115 of Code of Civil Procedure, aggrieved by the interlocutory orders passed in execution proceedings in E.A.No. 546 of 1997 and E.A.No. 544 of 1997 respectively in OEP.No. 66 of 1997 in O.S.No. 46 of 1977 on the file of the Additional Senior Civil Judge, Tirupathi.

2. Civil Revision Petition No. 1526 of 2005 filed against the orders passed by the Court below in E.A.No. 546 of 1997, dismissing the application filed u/s 47 read with Section 151 CPC; whereas, Civil Revision Petition No. 1529 of 2005 is filed against the order in E.A.No. 544 of 1997, allowing the application filed by the respondents-decree holders for police aid, to execute the decree in O.S.No. 46 of 1977.

3. Originally one Guduru Chenga Reddy has filed suit in O.S.No. 46 of 1977 against the petitioners herein for delivery of vacant possession of the suit schedule property, i.e. Ac.0.94 cents of land, situated on Tiruchunur road, in Chittoor District. During the pendency of the said suit, the said Gudur Chenga Reddy died and, respondents 1 to 3 came on record as legatees and successors

in interest of the said Gudur Chenga Reddy. As stated in the plaint filed in support of the said suit, it was the case of the plaintiffs that one Late Atchamma was the original owner of the suit schedule property, as it fell to her share in the registered partition deed dated 14-7-1956. It was their case that the petitioners herein, who are the defendants in the suit, had taken the said land on lease to run business in petrol and diesel, in the name and style of "Sri Venkateswara Oil Company, Tirupathi". The said Atchamma died on 24-5-1971 leaving the original plaintiff-Gudur Chengareddy, who was her son. On the ground that the rents were not properly paid, after terminating the lease, the said suit was filed for delivery of vacant possession of the suit schedule property, for payment of arrears of rent and damages. The said suit was decreed on 17-7-1987, which was confirmed by the learned Single Judge of this Court by judgment dated 18-10-1996 in A.S.No. 2144 of 1984, further, by the Division Bench of this Court by judgment dated 29-11-2001 in L.P.A.No. 95 of 1997. Ultimately, the matter was carried to Supreme Court in SLP No. 8718 of 2002, which was dismissed by order dated 9-5-2002. In view of the dismissal of the Special Leave Petition, on a representation made by the learned Counsel for the petitioners therein, the Apex Court granted time till 31-12-2002 to vacate the premises, subject to filing the undertaking within four weeks. But, however, such undertaking was not filed. When the respondents- decree holders have taken steps to execute the decree, the petitioners-judgment debtors have filed E.A.No. 546 of 1997 u/s 47, read with Section 151 CPC to declare that the judgment and decree in O.S.No. 46 of 1977 is unenforceable against them. At the same time, on the ground that some structures were made during the pendency of the suit, the respondents-decree holders have filed E.A.No. 543 of 1997 for removal of the structures and E.A.No. 544 of 1997 seeking police aid, pleading, that the judgment debtors are resisting, to execute the decree. By impugned orders, the Court below has dismissed the application filed by the petitioners-judgment debtors u/s 47, read with Section 151 CPC and allowed the application filed by the respondents-decree holders for grant of police aid.

4. In these revision petitions, it is submitted by Sri Koka Raghava Rao, the learned Counsel appearing for the petitioners, that the respondents-decree holders have obtained decree by, showing the suit schedule property only, i.e. Ac.0.94 cents of land, and though structures were in existence, by that time, the same were not shown; as such, as the decree was not obtained by the respondents- decree holders for removal of the structures, the same cannot be enforced against the petitioners-judgment debtors. It is submitted that when the application filed by the respondents-decree holders in E.A.No. 543 of 1997 is still pending consideration, the Court below erred in rejecting the application filed by the petitioners-judgment debtors u/s 47 CPC. It is further submitted that as the petitioners herein are in possession of the suit schedule property by virtue of the will executed by Soora Venkat Reddy, the judgment and decree obtained by the respondents-decree holders in O.S.No. 46 of 1977 is not binding on the petitioners as there was no declaration of title to the suit schedule property.

Further, it is submitted, in any event, in view of the provision u/s 108 of the Transfer of Property Act, 1882, they are entitled to continue in possession. At the same time, with regard to grant of police aid, the learned Counsel submits that without hearing in detail and without recording valid reasons, the Court below passed the orders granting police aid to the decree-holders in E.A.No. 544 of 1997.

5. On the other hand, it is submitted by Sri D. Seshadri Naidu, the learned Counsel appearing for the caveators-decree holders, that though the respondents-decree holders have succeeded and obtained decree as early as in the year 1987, the same is not being allowed to be executed, by raising one objection or the other. It is submitted that if the questions sought to be raised in the petition filed u/s 47 CPC are allowed, it amounts to going beyond the scope of decree passed. Further, it is submitted that lease was granted for running petrol pump and the relief sought for in the suit was delivery of vacant possession of the suit schedule property; as such, the petitioners-judgment debtors cannot resist for execution of the decree on the ground that the decree is not obtained for removal of the structures. It is the case of the learned Counsel, that the petitioners are not entitled to any protection, as per provision u/s 108 of the Transfer of Property Act, 1882, also, as much as structures were raised subsequent to obtaining the lease from the original lessor.

6. With reference to the above submissions of the learned Counsels, in this case, it is to be seen, that the suit was resisted mainly on the ground, that title to the suit property was vested with the third party, by name, Sooram Venkat Reddy, who was subsequently impleaded as Defendant No. 5 in the suit. In the judgment in O.S.No. 46 of 1977, a finding was recorded by the Court below to the effect that the said Sooram Venkat Reddy was not the owner of the suit schedule property, which is up-held by this court in the First Appeal, Letters Patent Appeal and also by the Apex Court. In that view of the matter, the question regarding, claiming of possession again, by virtue of the will alleged to have been executed by the said Sooram Venkat Reddy, cannot be allowed to be raised in the petition filed u/s 47 of CPC. The words "all questions arising" as worded u/s 47 CPC would mean that all questions which properly arise in execution proceedings. As such, the said Will was never projected during the pendency of the suit, and, after losing the battle up to the Supreme Court, the petitioners-judgment debtors cannot raise such questions at this juncture, which were available as defences during the pendency of the suit and also appeals before this Court. Further the Executing Court cannot go beyond the scope of the decree passed, on the questions raised u/s 47 of CPC.

7. Further, with regard to the submission of the learned Counsel for the petitioners, that there was no decree for removal of the structures, it is to be seen, during the pendency of the Letters Patent Appeal, the Division Bench of this Court called for finding on the following issues:

"(1) Whether the defendants 1 to 3 and 5 have perfected their title by adverse

possession?

(2) Whether the right of Achamma and that of the plaintiffs over the suit schedule property got extinguished as pleaded by the defendants"

8. While answering the said questions, the Trial Court recorded the finding that the constructions are made subsequent to filing of the suit and the written statements of Defendant No. 3 and Defendant No. 5 are silent regarding constructions. Even according to the petitioners, structures were existing even by the time of filing the suit, but at no point of time, such ground was taken to defend the suit. Ultimately, when the decree obtained by the respondents/ plaintiffs was confirmed by the Apex Court, the petitioners-judgment debtors cannot be allowed to raise such plea for grant of relief as sought for, with regard to un-enforcement of decree obtained by the respondents- decree holders. Further, in this case, the decree was obtained by the decree-holders, with a specific prayer, for delivery of vacant possession of the suit schedule property, in the same condition as it was let out to the defendants. The very decree obtained by the decree holders gives right to take possession of the property by removing the structures, if any raised subsequent to obtaining the lease. In any event, having failed to take such defence at any point of time, earlier, such question cannot be allowed to be raised in a petition filed u/s 47 CPC at this juncture. Even with regard to grant of police aid, having regard to the resistance, from the side of the judgment debtors, in the circumstances, the Court below rightly granted relief after hearing both the parties. The petitioners also cannot put-forth any resistance to execute the decree, taking shelter u/s 108 of the Transfer of Property Act. As per the said provision, they have to remove the structures in time before determination of the lease, but, in this case, having failed to remove the structures even after dismissal of the SLP by the Honourable Supreme Court, they cannot seek any protection. The application filed by the decree holders in E.A. No. 543 of 1997 for removal of the structures is pending consideration, but, the pendency of the said application by itself, is no ground, for, not to decide the questions raised in E.A.No. 546 of 1997. Further, in view of the resistance for execution of the decree, the Court below has rightly granted relief, for police aid to execute the decree.

9. For the foregoing reasons, I do not find any valid ground warranting interference with the orders of the Court below, in exercise of powers u/s 115 CPC.

10. However, the learned Counsel appearing for the petitioners requested time for removal of the structures, namely, underground tank etc.,. In this regard it is to be seen, undisputedly the suit schedule property was granted on lease for doing business in oil, and, all along, the said land was used by raising structures to run the retail out let by constructing underground tanks etc.,. In that view of the matter, having regard to the facts and circumstances of the case, I consider it just and appropriate to grant two months" time for removal of the structures, if any, raised by the petitioners herein in the suit schedule property. If the

structures are not removed, as referred to above, within the time stipulated, it is open for the respondents-decree holders to execute the decree.

The Civil Revision Petitions are dismissed. No order as to costs.