
(2010) 03 AP CK 0071

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 99 of 2010

Udayagiri Ramija Begum and Another

APPELLANT

Vs

Mulla Ali Baig and Another

RESPONDENT

Date of Decision : 31-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 6, Order 21 Rule 43, Order 21 Rule 43A, Order 21 Rule 43A(2), 145

Citation : (2010) 4 ALD 220 : (2010) 4 ALT 272

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : M.N. Narasimha Reddy, for the Appellant; P. Veera Reddy, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioners filed O.S. No. 656 of 2001 in the Court of Principal Junior Civil Judge, Proddatur against the 1st respondent for eviction from the suit schedule premises. The suit was decreed on 19.02.2003. The petitioners filed E.P. No. 56 of 2004. The E.P. was allowed and the 1st respondent was evicted and the petitioners were put in possession on 01.08.2004. The delivery of possession was recorded in the E.P. on 13.08.2004. Since the 1st respondent did not remove the articles that were present in the premises, at the time of eviction, the bailiff of the Court removed the same and entrusted them to the 2nd respondent, for safe custody. The 1st respondent filed E.A. No. 529 of 2004 in E.P. No. 56 of 2004 for re-delivery of the articles belonging to him. The Executing Court allowed the E.A. and directed that the articles be handed over to him.

2. Stating that the order in E.A. No. 529 of 2004 was not complied with, the 1st respondent filed E.P. No. 200 of 2008. It was mentioned in the E.P. that he is entitled for decretal amount of Rs. 4,20,000/- and interest of Rs. 1,87,000/-. He prayed for attachment and sale of landed property and house of the petitioner.

An objection was raised by the office of the Executing Court as to the maintainability of the E.P. Through its order, dated 20.06.2008, the learned Judge overruled the objection by making reference to Order 21 Rule 42-A C.P.C. and directed that the E.P. be numbered. It was also observed that the first respondent is entitled to be awarded compensation against the custodian of the property i.e. the 2nd respondent. Accordingly, the E.P. was numbered as E.P. No. 200 of 2008.

3. The executing Court took up the E.P. for hearing. The petitioners opposed the same and questioned its very maintainability. The E.P. was allowed through order, dated 27.11.2009. A finding was recorded to the effect that the properties belonging to the 1st respondent were misappropriated by the petitioners herein. For realization of the value of the said goods, the executing Court directed attachment of the properties owned by the petitioners. Further directions were issued for sale of the attached properties. The petitioners challenge the said order.

4. Sri M.N. Narasimha Reddy, learned Counsel for the petitioners submits that the E.P. filed by the first respondent is not at all maintainable in law, since there was no decree in his favour. He contends that there was not even an adjudication as to the articles that were found missing in the hands of the 2nd respondent, much less the value thereof and the order under revision cannot be sustained in law or on facts.

5. Sri P. Veera Reddy, learned Counsel for the 1st respondent submits that his client was forcibly evicted and the articles found in the premises were entrusted to the custody of the 2nd respondent. According to him, Rule 43-A of Order 21 C.P.C. confers right upon the 1st respondent to recover the goods owned by him or value thereof and viewed in that context, the E.P. as well as the order passed therein are very much valid and legal.

6. Filing of an E.P. by a defendant in a suit is rare phenomenon. It is only when a decree grants specific relief in favour of a defendant, such as by accepting the counter claim, or awarding costs in favour of the defendant while dismissing the suit, that an occasion would arise for the defendant to file an E.P. Other instances include the decrees in suits for partition, where irrespective of the nature of array of parties, another party to it can seek enforcement or where mutual obligations are placed upon the decree holder as well as the Judgment debtor.

7. The 1st respondent is tenant of premises owned by the petitioners. He was running an automobile shop. The petitioners filed O.S. No. 656 of 2001 for the relief of eviction from the premises and recovery of arrears of rent. The suit was decreed on 19.02.2003 after trial. The first respondent no doubt filed A.S. No. 21 of 2003 in the Court of II Additional District Judge, Proddatur against the said decree. It appears that no order of stay in his favour was in operation. The petitioners filed E.P. No. 56 of 2004. The Executing Court issued a delivery warrant. When the Amin of the Court faced resistance from the 1st respondent,

he approached the executing Court for grant of police aid. Orders were passed and with the help of police, the Amin evicted the first respondent and delivered vacant possession of the premises. The 1st respondent was very much in the premises when the execution has taken place. Obviously when he refused to remove the articles, an inventory was drawn and they were entrusted to the 2nd respondent for safe custody. The items include automobile spare parts.

8. After the eviction had become complete, the first respondent filed E.A. No. 529 of 2004 u/s 151 C.P.C. with a prayer to direct the 2nd respondent herein to hand over the petition schedule properties. As many as 116 items were listed. It is not known as to whether the list corresponds with the one prepared while entrusting the custody of the articles to the 2nd respondent. The executing Court allowed the application ex parte. The entire order passed on 16.09.2004 reads as under:

Considering the circumstances of the case the petition is allowed. Hand over the property through Amin

9. It is rather surprising to note that the learned Judge did not even issue a notice to the 2nd respondent much less made an attempt to verify whether the list furnished by the 1st respondent accords with the official records.

10. Two years after the order in E.A. No. 529 of 2004 was passed, the 1st respondent filed an execution petition under Order 21 Rule 43-A C.P.C. It is said to be for execution of the order, dated 16.09.2004 in E.A. No. 529 of 2004. In Column 9 of the application, which relates to the decretal amount, he mentioned it as Rs. 4,20,000/- with interest of Rs. 1,87,000/-, in all Rs. 6,07,600/-. In the schedule, he furnished the particulars of the immovable property i.e., land admeasuring Ac.1.48 cents in Survey No. 497/2 of Rameswaram Village, and the house property of the petitioners in D. No. 14/67-A of Proddatur Municipality. The office of the executing Court raised an objection as to the very maintainability of the E.P. Not being satisfied with the reasons furnished by the 1st respondent, it placed the matter before the Court. The learned Principal Junior Civil Judge passed the following order on 20.06.2008:

Heard.

The petitioner filed this E.P. for recover of money from D.Hr. and 3rd party who is the custodian of the movable property of the petitioner as the said property which was handed over to the custodian was damaged as per the report of the Amin. This Court passed an order in favour of the petitioner in E.A. No. 529/04 and 16-9-2004 for re-entrustment of property. Basing on the said order the petitioner filed this E.P. The order in E.A. No. 529/04 dated 16-9-2004 is deemed to be decretal order. For every order there must be decretal order but due to the fault of the steno the decretal order was not prepared. A party should not make to be suffered due to the fault of court staff. Hence the office is objection is overrule. The office is directed to number this E.P., if it is otherwise in order. As Order 21 Rule Order 21 Rule 43A of C.P.C. It is pray the mentioned that the J.D.R

is entitled for compensation from the custodian who cause loss or damage to the movable property of the J.Dr.

(Note: Verbatim reproduction)

11. On the basis of this order, the E.P. was numbered. The petitioners filed their counter affidavit and opposed the E.P. on several grounds. On behalf of the first respondent, P.W.s.1 to 3 were examined and Exs.A.1 to A.5 were filed. On behalf of the petitioners, no oral evidence was adduced and Exs.R.1 to R.3 were filed. The executing Court framed only one point for its consideration viz., whether the petitioner/deGREE holder is entitled for attachment and sale of petition schedule property for realisation of E.P. amount. It accepted the contention of the 1st respondent and rejected the plea raised by the petitioners in their counter affidavit, on the ground that they did not depose in support of their pleadings. Ultimately, it ordered attachment and sale of the properties owned by the petitioners.

12. The facts narrated above reveal the level, to which the perversity can reach, if it steps into, at a particular stage of the proceedings. It also exhibits the level of propensity of an individual irrespective of the position occupied by him, to push through all the obstacles, once he is determined to do something, unmindful of its permissibility in law.

13. It is the first respondent who invited the situation for execution of the decree through police aid. Any prudent man in his place would have taken the articles in the shop, even while reserving his liberty to fight for his rights if any. First he tried to offer resistance, which had to be overcome by taking the police aid. Thereafter, he refused to take his articles, obviously to put the blame on the Court, and exhibited defiance. The goods were entrusted to the 2nd respondent.

14. One month after he was evicted, he filed E.A. No. 529 of 2004 for returning the goods. The Executing Court did not undertake the basic verification of the record and straightaway allowed the LA. for delivery of possession of as many as 115 items. Be that as it may, in case, the articles taken from him and entrusted to the custody of the 2nd respondent were not returned, he ought to have brought the same to the notice of the Court itself.

15. The 1st respondent has taken resort to an ingenious method of filing of E.P., that too, after two years from the date of order in E.A. No. 529 of 2004. He proceeded as though there was a decree in his favour. The curious part of the matter is that the E.P. was filed not for the delivery of the items mentioned in E.A. No. 529 of 2004. It was for recovery of principal of Rs. 4,20,000/- and interest of Rs. 1,87,000/-. The Office of the executing Court exhibited caution and prudence and refused to number the E.P. The Presiding Officer however exhibited his legal acumen and experience and directed that the E.P. be numbered.

16. The basic facts, such as existence of a decree, the decree being for an

adjudicated amount, interest having been awarded by the Court itself, to enable an individual to file an execution petition, were left to winds. The half baked, unverified and non-existent facts pleaded by the 1st respondent were taken as gospel truth. In the course of adjudication, the learned Presiding Officer did not pause for a minute and verify as to what he is proposing to execute.

17. Rule 43-A of Order 21 C.P.C. deals with the situations, where any property, attached in the course of execution, is entrusted to the custody of a respectable person. It also prescribes the procedure for realisation of such property in the event of the custodian failing to restore the same. It reads as under:

43-A. Custody of movable property

(1) Where the property attached consists of live-stock, agricultural implements or other articles which cannot conveniently be removed and the attaching officer does not act under the proviso to Rule 43, he may, at the instance of the judgment-debtor or of the decree-holder or of any other person claiming to be interested in such property, leave it in the village or place where it has been attached, in the custody of any respectable person (hereinafter referred to as the "custodian").

(2) If the custodian fails, after due notice, to produce such property at the place named by the Court before the officer deputed for the purpose or to restore it to the person in whose favour restoration is ordered by the Court, or if the property, though so produced or restored, is not in the same condition as it was when it was entrusted to him,:

(a) the custodian shall be liable to pay compensation to the decree-holder, judgment-debtor or any other person who is found to be entitled to the restoration thereof, for any loss or damage caused by his default; and

(b) such liability may be enforced:

(i) at the instance of the decree-holder, as if the custodian were a surety u/s 145;

(ii) at the instance of the judgment-debtor or such other person, on an application in execution; and

(c) any order determining such liability shall be appealable as a decree.

18. It is clear that Order 21 Rule 43-A of C.P.C. would get attracted, only when an item of movable property that is under attachment, is entrusted to the custody of a respectable person. The Rule does not at all cover the entrustment of a property, which is not attached. Parliament has exhibited care and caution in keeping unattached properties, outside the scope of the Rule. The reason is that the Court or for that matter, any person acting on its behalf cannot be made accountable for a property, which is not under attachment. If the owner of goods, which were required to be removed, fails or neglects to take them during the course of execution, it is no part of duty of the executing Court, to preserve or protect them. The owner of such goods would be running the risk of not being

able to recover them in full or in part, if he neglects or refuses to take them at the relevant point of time.

19. Even where the custodian as mentioned in Rule 43-A fails to restore the properties as provided for under Sub-rule (2) thereof, it is only an application for necessary directions, that can be filed, but not an independent execution petition. It is settled principle of law that what becomes executable is a decree. Rule 6 of Order 20 C.P.C. indicates the contents of a decree. If no decree is drawn either on the basis of a judgment or an order, the occasion to file an execution petition does not arise.

20. In the instant case, admittedly there was no decree. This was acknowledged by the learned Presiding Officer, in his order, dated 20.06.2008. He brushed aside this requirement with an observation that cannot be sustained in law. In the order, dated 16.09.2004 directing the delivery of possession of the articles mentioned in E.A. No. 529 of 2004, what became executable, if at all, was the delivery of those articles, that too, against the 2nd respondent. At no point of time, the Court below has passed any order quantifying the value of the articles, much less placing the petitioners under obligation to pay that amount. Assuming that there existed a liability for payment of value of the articles to the first respondent, it was upon the 2nd respondent. The petitioners herein were nowhere in the picture. The executing Court has proceeded on totally impermissible (sic. impermissible) lines and adopted a typical perverse reasoning in ordering attachment and sale of the properties of the petitioners. This is one case, where the Court has penalized the persons who approached it for grant of relief, though they were successful in the suit.

21. It is just unimaginable that a Judicial Officer who is supposed to be conversant with law, before he was selected for that office and who has been imparted rigorous training for one year by the Judicial Academy, would faultier on such basics. In a way, the type of adjudication undertaken in the order under revision would reflect upon the quality of education in the law colleges, the nature of experience he has acquired at the Bar, and the type of training he has received in judicial academy (by the officer) if not his experience on the bench. The judgment written or order passed by the Court of first instance happens to be the basis for the adjudication at subsequent stages. Having regard to the fact that the scope of interference in a revision and Second Appeal is very limited, the trial Judges are required to be circumspect, cautious and careful, not only in analyzing the facts, but also in applying the correct principles of law.

22. Till not long ago, it used to be a pleasure to read the judgments rendered by Judges functioning even at the bottom of the hierarchy, and Appellate Courts used to find it difficult to interfere with them. Hardly there used to be any mistakes, grammatical or factual, or as regards reference to an analysis of the relevant provisions of law and precedents. The occasion to interfere with them was only when a different view on the same facts was possible. It was hoped that, with the establishment of Academies and making the Training compulsory,

the quality of adjudication would further improve. Though substantial number of the officers are making every effort to improve the quality of adjudication, the orders or judgments similar to the one, dealt with in this revision, are not rarity. It cannot be said that all the orders passed by an officer are of the same quality. However, it must not be forgotten that a chain is as strong as its weakest link. This applies to the individuals who are part of the system as well as to the institution in general. When everything is becoming competitive now-a-days, there is no reason why, those associated with an important and respected institution should lag behind. What is needed, is just an amount of conviction to the task undertaken, and an element of anxiety to excel. It is hoped that relapse, if any, in this regard is shed at the earliest.

23. The civil revision petition is accordingly allowed and the impugned order is set aside. There shall be no order as to costs.