

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF
ANDHARA PRADESH

C.R.P.No.3649 of 2013

Between:

G.Anjaneyulu

.....Petitioner

and

B.,Radhakrishna and others.

.....Respondents

Date of Judgment pronounced : 11-08-2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked :
Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.3649 of 2013

ORDER:

Heard Sri M.Jayaram Reddy, learned counsel for the
petitioner and Sri N.Aswartha Narayana, learned counsel

for the respondents.

2. This Revision Petition is filed challenging the Order dt.28-06-2013 in I.A.No.91 of 2013 in O.S.No.132 of 2011 of the Senior Civil Judge, Dharmavaram.

3. Petitioner herein is the defendant No.2 in the above suit. The respondent Nos.1 to 4 filed the said suit against the petitioner and 5th respondent contending that a mortgage deed dt.16-11-2009 allegedly executed by 5th respondent in favour of the petitioner is a fraudulent transaction and executed to defraud the general body of creditor.

4. It is not disputed that on the basis of said mortgage deed, a suit O.S.No.68 of 2010 had been filed by 2nd respondent against 1st respondent to recover the money due under the mortgage deed dt.16-11-2009 and the said suit had been decreed on 30-08-2010. In the plaint filed by respondent Nos.1 to 4, they have specifically raised the contention that even the decree obtained on 30-08-2010 in O.S.No.68 of 2010 by 2nd respondent is collusive decree.

5. Written Statement was filed by the petitioner opposing the suit claim. The 6th respondent however did not file Written Statement.

6. Issues were framed, trial commenced and

concluded and the matter was posted for hearing of arguments.

7. At that stage, the respondent Nos.1 to 4 filed I.A.No.91 of 2013 under Order 6 Rule 17 CPC seeking permission to amend the plaint by seeking an additional prayer that the decree in O.S.No.68 of 2010 is a collusive decree and was obtained to defraud genuine creditors.

8. The petitioner herein opposed the said contention contending that when the matter is posted for arguments and arguments were also partly heard, this application had been filed by respondent Nos.1 to 4 as if they had no knowledge of the decree in O.S.No.68 of 2010 which had been decreed in August 2010. He therefore contended that the application to reopen the suit and to entertain the application for amendment by allowing the respondent Nos.1 to 4 to raise the plea about the collusive nature of decree in O.S.No.68 of 2010 cannot be allowed and the application is therefore to be rejected.

9. By order dt.28-06-2013, the Court below held that application for amendment can be allowed at any stage and that the respondent Nos.1 to 4 have not introduced any new facts but are seeking to add a new relief (i.e. to set aside the decree in O.S.No.68 of 2010 on the ground that the petitioner had obtained the said

decree in a collusive manner). It held that to adjudicate the dispute completely between the parties, the application for amendment needs to be allowed subject to payment of costs of Rs.1000/- to the petitioner.

10. Challenging the same, this Revision Petition is filed.

11. Learned counsel for the petitioner contended that the respondent Nos.1 to 4 had even mentioned about the decree obtained by the petitioner in O.S.No.68 of 2010 against 5th respondent in the plaint itself; therefore, they were aware of the said decree; but they had kept quiet till the evidence in the suit concluded; and then they have filed the I.A.No.91 of 2013 seeking amendment of the plaint by adding relief that the decree is collusive decree. He contended that in view of the proviso to Order 6 Rule 17 CPC, the said application could not have been allowed since the respondent Nos.1 to 4 have not shown that in spite of due diligence, they could not have raised the issue before commencement of trial.

12. Learned counsel for the respondent Nos.1 to 4 on the other hand refuted the above contentions and supported the order passed by the Court below.

13. I have noted the submissions of both sides.

14. Section 44 of the Evidence Act, 1872 states:

“Section 44: Fraud or collusion in obtaining

*judgment, or incompetency of Court, may be proved.
—Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 40, 41 or 42 and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.”*

15. In **Gram Panchayat of Village Naulakha**

Vs. Ujagar Singh and others^[1], the Apex Court held that under Section 44, a party can, in a collateral proceeding in which fraud may be set up as a defence, show that a decree or order obtained by the opposite party against him was passed by a Court without jurisdiction or was obtained by fraud or collusion and it is not necessary to bring an independent suit for setting it aside. It held that in order to contend in a latter suit or proceeding that an earlier judgment was obtained by collusion, it is not necessary to file an independent suit for a declaration as to its collusive nature or for setting it aside, as a condition precedent. It therefore held that no independent suit seeking a declaration as to collusive nature of a decree is necessary as a condition precedent to contend in a latter suit that the earlier judgment was obtained by collusion.

16. A reading of the plaint filed by respondent Nos.1 to 4 indicates that in para-9 thereof, there is specific plea raised by respondent Nos.1 to 4 not only that the mortgage deed dt.16-11-2009 executed by 5th respondent in favour of the petitioner is a fraudulent transaction but also that the decree dt.30-08-2010 in

O.S.No.68 of 2010 of the Senior Civil Judge, Penukonda obtained by the petitioner against 5th respondent was a collusive *ex parte* decree.

17. Once such a plea is taken by respondent Nos.1 to 4, strictly speaking it was not even necessary for them to seek an amendment to the plaint by seeking a relief of cancellation of a decree and to pay a Court Fee thereon. However, by way of abundant caution, it appears that respondent Nos.1 to 4 have sought to seek an additional relief that the decree in O.S.No.68 of 2010 is a collusive decree and was obtained to defraud genuine creditors and that it was liable to be set aside.

18. Since respondent Nos.1 to 4 are entitled to raise the plea that the decree in O.S.No.68 of 2010 is a collusive decree even without seeking a declaration to that effect, the mere fact that by way of abundant caution, they sought to seek the additional relief to declare the said decree as a collusive one, cannot be put against them.

19. In this view of the matter, I am not inclined to interfere with the Order dt.28-06-2013 in I.A.No.91 of 2013. Therefore, the Civil Revision Petition is dismissed. It is made clear that no further evidence need be adduced in the matter and the Court should proceed to decide the suit as early as possible preferably within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs.

20. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 11-08-2015

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[\[1\]](#) AIR 2000 S.C. 3272