

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH
WEDNESDAY, THE EIGHTEENTH DAY OF MARCH
TWO THOUSAND AND FIFTEEN
PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

CIVIL REVISION PETITION No.4272 of 2014

BETWEEN

Ayinabathina Krishnaiah.

... PETITIONER

AND

Yeluri Subba Rao.

...RESPONDENT

Counsel for the Petitioner: MR. VENKATSWARLU SANISETTY

Counsel for the Respondents: --NONE APPEARED--

The Court made the following:

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ORDER:

Petitioner is the judgment debtor in EP.No.51 of 2013 in O.S.No.206 of 2011 on the file of the I Additional District Judge, Ongole. The EP was filed by the respondent for execution of the award of the Lok Adalat dated 10.10.2012 and in execution thereof, items 1 and 3 of the EP schedule were

sought to be attached under Order 21 Rules 54, 64 and 66 of the Code of Civil Procedure for recovery of decretal amount of Rs.27,60,209/-. Petitioner/judgment debtor contested the same and contended that with regard to item 1, the son of the petitioner has filed a suit and has obtained an injunction not to alienate the said property. To the extent of item 2, petitioner states that he has already executed a registered gift deed dated 08.06.2009, which is prior to the Lok Adalat award dated 10.10.2012. To the extent of item 3, petitioner states that the said property was also alienated under an agreement of sale cum GPA in favour of one Chinni Sreeramulu. Hence, none of the three items are available for attachment.

2. The Court below considered the said objection and on finding that gift deed relating to item 2, executed by the petitioner, was prior to the award of the Lok Adalat, has deleted item 2 from the attachment, as proposed by the decree holder. To the extent of items 1 and 3, however, the Court below found that the contentions of the petitioner are not tenable inasmuch as so far as item 3 is concerned, the title continues to vest with the petitioner. However, the contention of the petitioner regarding item 1 is not dealt with in the order impugned dated 18.09.2014. The order impugned, which confirmed the attachment to the extent of items 1 and 3, is assailed in this revision petition.

3. Learned counsel for the petitioner submits that item 1 is also affected by injunction passed by the civil Court restraining the petitioner from alienating the said property and that the said order is prior to the award of the Lok Adalat. To the extent of item 2, learned counsel states that it is already alienated to third party under a registered agreement of sale cum GPA and as such, it does not any more belong to the petitioner. The registered agreement of sale cum GPA is produced in support of the said claim.

4. Even assuming that there is a restraint order by way of injunction against the petitioner, in the suit filed by the petitioner's son, the said order, in

my view, will not affect the power of the Court below to attach the property, as an order of injunction restraining alienation only restrains the voluntary alienation by the petitioner. Secondly, even if the agreement of sale cum GPA is accepted, I find it difficult to hold that there is transfer of title, as no sale deed is executed by the petitioner in favour of third party. Hence, the order impugned does not call for interference.

The civil revision petition is dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

March 19, 2015
DSK