

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

C.R.P.No.2949 of 2012

ORDER :

This Civil Revision Petition is filed challenging the order dt.23.04.2012 in E.P.No.378 of 2008 in ATC.No.35 of 1986 of the I Additional Junior Civil Judge, Elugu.

2. The petitioners herein are judgment debtors(J.Drs.) in the above ATC. The said ATC was filed by the respondents 1 to 5 against the 1st petitioner and his father for their eviction from the petition schedule land.

3. After contest, the said ATC was decreed on 08.10.1990.

4. Challenging the same, 1st petitioner and his father filed ATA.No.114 of 1990 before the District Court, Eluru.

5. The said appeal was dismissed on 05.08.2007.

6. Thereafter, E.P.No.378 of 2008 was filed on 01.09.2008 by the respondents 1 to 5 and their legal representatives for eviction of the petitioners.

7. This application was opposed by the 3rd petitioner herein on the ground that the 1st petitioner has only a share in the EP schedule property and he cannot claim the entire EP schedule property. He also stated that the 8th respondent had filed EA.No.11 of 2007 in unnumbered EP of 2007 in ATC No.35 of 1986 seeking permission of the Court to file EP in respect of EP schedule property and the same is pending before the Court. It was also alleged that the undivided share of the some of the decree holders have been sold to certain third parties and therefore the execution petition be dismissed.

8. Similar stand was taken by the 4th petitioner.

9. Before the Court below it was further contended that EP having been filed on 02.09.2008 is barred by limitation since during pendency of appeal, there was no stay granted.

10. The Court below allowed the said EP rejecting the contention of the petitioners that the EP is barred by limitation. It referred to Division Bench judgment of this Court in ***Posani Ramachandraiah v. Daggupati Sashamma*** wherein this Court has held that as per Article 136 of the present Limitation Act, 1963 period of limitation is to be reckoned from the date of judgment of appellate Court even though there was no stay in the appeal for the purpose of execution of decree and held that it is only the appellate Court's decree which is enforceable and not the judgment of the trial Court if the appeal is decided on merits. It distinguished the judgments cited on behalf of the petitioners on the ground that the decisions cited by the petitioners deal with delay in preparation of decree and issued regarding pendency of appeal is not questioned in the said decisions.

11. Challenging the same, this Revision is filed.

12. Heard Sri Srinivas Emani, Counsel for the petitioners and Sri G.Ram Gopal counsel for 6th and 7th respondents.

13. Counsel for the petitioners contended that once the trial Court decided the ATC on 08.10.1990, there was no impediment for execution of the decree passed therein, after expiry of the one month period granted to the petitioners to vacate the premises had expired and that the decree became enforceable from 08.11.1990. He contended that notwithstanding the fact that there was an appeal pending, because EP was not filed within 12 years from 08.11.1990, the EP ought to have been dismissed. He relied upon the judgments in ***Ratansingh v. Vijay Singh & Ors*** and

Antonyysami v. Arulanandam Pillai (D) by L.Rs. and another..

14. Counsel for the respondents on the other hand refuted the above contentions and supported the order passed by the Court below. He relied upon a three judge judgment of the Supreme Court in ***Chandi Prasad and others v. Jagdish Prasad and others*** which had held that once a decree is appealed and the appeal is decided on merits, there is merger of the decree of the trial Court with the decree of the appellate court and that the executable decree is only the decree of the appellate Court, irrespective of the fact whether the appellate Court confirmed or modified or reversed the decree passed by the trial Court.

15. I have noted the submissions of both sides.

16. In ***Posani Ramachandraiah***'s case(1 supra) a Division Bench of this Court interpreted Article 136 of the Limitation Act, 1963 and held that period of limitation for execution of a decree commences from the date of decree of the appellate Court even though there was no stay in the appeal and that if there is an appeal, the decree that can be enforced is only that of the appellate Court and the period of limitation has to be reckoned from the date of that decree.

17. In ***Chandi Prasad***'s case(4 supra), the Supreme Court also took a similar view and clarified that the reason of introducing amended Article 136 in the Limitation Act, 1963 was to simplify the filing of the execution petition and after the Article 136 has been enacted, the difficulties faced for computation, which used to arise by grant of stay or absence of stay, have now become immaterial. The Court reiterated that when a judgment is pronounced by the High Court in exercise of its appellate power, upon entertaining the appeal and after full hearing in the presence of both parties, the same would replace the judgment of the lower Court and only the judgment of the High Court would be treated as final. It clarified that when an appellate Court passes a decree, the decree of the trial Court merges with the decree of the appellate Court, even if subject to any modification that was made by the appellate Court and that the decree of the appellate Court supersedes the decree of the trial

Court. It held that merger of the decree takes place irrespective of the fact as to whether the appellate Court confirms, modifies or reverses the decree passed by the trial Court. It however clarified that if the appeal is dismissed by not condoning the delay in filing the same, then the doctrine of mandatory will not apply. It distinguished the decision in **Ratansingh's** case (2 supra) relied upon by the counsel for the petitioners on the ground that in that case, the Second Appeal preferred by the judgment debtor had been dismissed on the ground that the delay in filing the appeal was not properly explained and in such an event there was no merger. It held that consequently, the executable decree in that case was the decree of the first appellate Court rendered on 01.08.1973 and the execution petition having been filed in that case on 24.03.1998, was filed beyond limitation. The said judgment also reiterated that if an appeal is dismissed on the ground that no ground for condonation of delay in filing the appeal is made out, such a dismissal of the appeal would not be a decree. It held that where application for condonation of delay is dismissed, consequent order rejecting the memorandum of appeal is only an incidental order and there would not be any merger.

18. Since in the present case, admittedly the ATA has been decided on merits, the decree of the Special Officer in the ATC merged with the judgment of the appellate authority and only the appellate judgment became executable.

19. The other decision in **Antonysami v. Arulanandam Pillai (D) by L.Rs.** quoted by the counsel for the petitioners also has no application. In that case, the Court dealing with a decree for specific performance wherein the decree directed the judgment debtor to measure and demarcate the subject land on or before 23.09.1966 and it also directed the decree holder to deposit in the Court on or before the said date the balance of sale price. It held that in such circumstances, it was not a conditional decree and that its executability cannot be said to be stalled by the judgment debtor not carrying out the decree directing him to measure and demarcate the land and that the decree was enforceable immediately after 23.09.1966, since the execution petition in that case was filed in 1980, beyond the period of 12 years from 23.09.1966. The execution petition was thus time barred. The observations in the said judgment quoting **W.B. Essential Commodities Supply Corpn. V. Swadesh Agro Farming & Storage Pvt. Ltd.** Regarding the executability of the

decree cannot in any way come to the assistance of the petitioners in the present case.

20. So, I do not find any merit in this Civil Revision Petition and it is accordingly dismissed. There shall be no order as to costs.

21. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

01st October, 2015.

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