

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.424 of 2013

ORDER :

This Civil Revision Petition is filed challenging the order dt.11.12.2012 in E.P.No.20 of 2003 in O.S.No.648 of 1985 of the Additional Motor Accidents Claims Tribunal-cum-XVIII Additional Chief Judge-cum-IV Additional Metropolitan Sessions Judge, Hyderabad.

2. Petitioner herein is the judgment debtor in the above suit. One K.Mangamma filed the said suit for specific performance of an agreement of sale on the file of Additional Special Judge-for SPE & ACB cases-cum-V Additional Chief Judge, City Civil Court, Hyderabad against the petitioner.

3. The said suit was decreed on 06.08.1993.

4. Against the same, petitioner preferred CCC.Appeal.No.6 of 1994 before this court. The said appeal was dismissed on 23.12.2002.

5. Then, petitioner filed Civil A.No.8866-8868 of 2003 before the Supreme Court of India and the said appeals were also dismissed on 09.02.2010.

6. Pending the CCCA, the decree holder had filed E.P.No.20 of 2003 under Order XXI Rule 31 CPC requesting the Court to register the sale deed.

7. After the judgment in CCCA, decree was assigned in favour of the

respondent vide order dt.29.09.2010 in E.A.No.8 of 2010 in E.P.No.20 of 2003, who is none other than the original plaintiff's son-in-law. The respondent, who was the assignee of the decree, was therefore permitted to execute the decree and he filed E.A.11 of 2010 for amendment of the execution petition and to enable him to execute the decree. That application was allowed on 21.08.2012. Thus the assignee proceeded to prosecute the E.P. No.20 of 2003.

8. The petitioner filed counter in the said EP contending that the decree is in-executable at the instance of assignee/respondent without compliance with law; that the deed of assignment is forged and fabricated; the decree is a nullity, since the A.P. Housing Board Act, 1956 prohibits alienation by the petitioner, who is an allottee; that the petitioner therefore could not have executed Ex.A2 Agreement of Sale dt.05.12.1970, in favour of the decree holder and therefore the said agreement of sale is nullity and void *ab initio*; and consequently, the decree dt.06.08.1993 in O.S.No.648 of 1985 is also a nullity.

9. By order dt.11.12.2012, the Court below allowed the E.P. and overruled the objections raised by the petitioner. It observed that the contention that decree was a nullity on the ground that it violated the A.P. Housing Board Act, 1956 was rejected by the Hon'ble Supreme Court of India in the Civil Appeals mentioned above; that such a contention was not raised pending suit, and so the petitioner is precluded from raising the same point before the Executing court, since the Executing court cannot go beyond the decree. It further held that the assignment of the decree was proper and in accordance with law, since the assignee has been impleaded in the execution petition in terms of Order XXI Rule 16 CPC. It also held that the respondent had served a copy of the draft sale deed on the petitioner and the petitioner had not raised any objection to its contents and therefore, the respondent is entitled to have the sale deed registered.

10. After the said order was passed, on 31.01.2013 the registered sale deed was also executed by the Court in favour of the respondent.

11. Challenging the order dt.11.12.2012 in E.P.No.20 of 2003 allowing the EP and directing registration of the sale deed by the petitioner on 31.01.2013 (or in default directing that the Court will then execute the sale deed), this Revision is filed.

12. Although counsel for the petitioner sought to contend that the decree is a nullity being violative of A.P. Housing Board Act, 1956, this contention was admittedly not raised before the trial Court and even though it appears to have been argued in the Supreme Court, the Supreme Court had declined to entertain the said contention. Since the Executing Court cannot go beyond the decree, I am of the opinion that the Court below was right in rejecting the said contention.

13. Although it is urged that assignment of the decree was improper and not in accordance with law, the said issue has been considered by the Court below and it had applied the Full Bench judgment in ***Arvapally Rama Rao v. Kanumarla Pudi Ranga Nayakulu*** and held that there was no error in the assignment of the decree in favour of the respondent.

14. In this view of the matter, I do not find any error of jurisdiction in the order passed by the Court below warranting interference of this Court.

15. Therefore, this Civil Revision Petition fails and it is accordingly dismissed. There shall be no order as to costs.

16. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

18th September, 2015.

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