

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

-

—

-
CIVIL MISCELLANEOUS SECOND APPEAL No.21 of 2015

Between:

Nannesabgari Mahaboob Saheb @
Bodemmagari Mabu sab.

...Appellant

and

Mulla Ghouse Mohiddin and others.

... Respondents

DATE OF JUDGMENT PRONOUNCED: **10.08.2015**

SUBMITTED FOR APPROVAL:

-
-

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

- | | |
|--|--------|
| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals? | Yes/No |
| 3. Whether his Lordship wish to
see the fair copy of the Judgment? | Yes/No |

-

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

-
-

CIVIL MISCELLANEOUS SECOND APPEAL No.21 of 2015

-

JUDGMENT:

This appeal is preferred by the appellant-debtor challenging the concurrent findings recorded by both the Courts i.e., Senior Civil Judge's Court, Allagadda and III Additional District Judge's Court, Kurnool, whereby, I.P.No.58 of 2002 filed under Section 10 of the Provincial Insolvency Act, 1920 (for short, 'the Act') was dismissed on 11.03.2008 as confirmed by the appellant Court, vide decree and judgment, dated 02.06.2011, in A.S.No.36 of 2008. Both the Courts below recorded concurrent findings that the appellant-debtor suppressed the property that devolved upon him after death of his father late Pedda Babu Sa, who admittedly died five months prior to filing of I.P.No.58 of 2002.

2. The appellant-debtor filed I.P.No.58 of 2002 on the file of Senior Civil Judge, Allagadda, under Section 10 of the Act to adjudge him as an insolvent on the sole ground that the value of liabilities is far exceeding the value of the property he own and possessed.

3. Respondent No.1 filed counter denying material allegations *inter alia* contended that the properties own and possessed by the appellant-debtor is more value than the debts due to the creditors, suppressed the property that devolved upon him after death of his father and hence, he prays to dismiss the appeal.

4. During enquiry, before the trial Court the appellant-debtor himself was examined as P.W.1 besides examining Sri G.Bala Rangaiah as P.W.2, but no documents were marked. On behalf of the respondents, R.Ws.1 to 3 were examined and Exs.B.1 to B.5 were marked.

5. Upon hearing the argument of both the counsel, the trial Court dismissed the petition holding that the appellant suppressed the property he own and possessed as on the date of filing of I.P.No.58 of 2002 and it is a good ground to dismiss the petition and accordingly dismissed the petition.

6. Aggrieved by the said dismissal order, the appellant-debtor preferred an appeal before III Additional District Judge, Kurnool in A.S.No.36

of 2008. Upon hearing the argument of both the counsel and after reappraisal of entire evidence with reference to law, the appellate Court dismissed the appeal confirming the order and decree, dated 11.03.2008, in I.P.No.58 of 2002 recording concurrent findings that the appellant suppressed the property he own and possessed as on the date of filing of I.P.No.58 of 2002 before the trial Court.

7. Aggrieved by the concurrent findings recorded by both the Courts below, the present appeal is filed raising several contentions and the following substantial questions of law:

“A) Whether the Courts below did not arrive a wrong conclusion in the judgment on misreading of evidence?

B) Whether the Courts below by giving perverse findings did not commit any error, which resulted in miscarriage of justice?

C) Whether the Courts below gave a finding of suppression of properties and assets, ignoring the contradictions and inconsistencies in the evidence of RW1 to RW3?

D) Whether a certified copy of No.3 Adangal can be treated as conclusive proof of the properties and title to the properties of the person, whose name was mentioned therein?

E) Whether a petitioner has to prove the Act of insolvency under Sections 6, 10 and 14 of the provisions of Insolvency Act conclusively and beyond any reasonable doubt.”

Out of alleged substantial questions of law A to E, questions A, B and E of ground No.2 of Grounds of appeal are not the substantial questions of law they are only substantial questions of fact, but grounds C & D are substantial questions of law, which read as follows:

“C) Whether the Courts below gave a finding of suppression of properties and assets, ignoring the contradictions and inconsistencies in the evidence of RW1 to RW3?

D) Whether a certified copy of No.3 Adangal can be treated as conclusive proof of properties and title to the properties of the person, whose name was mentioned therein?”

8. During the course of hearing, learned counsel for the appellant submitted that all the grounds raised in the grounds of appeal are substantial questions of law. But, on perusal of entire material available on record, the only substantial question of law that arises for consideration is as follows:

Whether the appellant-debtor got *prima facie* title, if so, whether non disclosure of the properties he own and possessed amounts to suppression under Section 13 (1) (e) of the Act and if so, the petition is liable for dismissal?

9. Admittedly, the appellant-debtor indebted to the respondents, but, the only contention of appellant-debtor is that the value of the liabilities is far exceeding the value of the assets he own and possessed and thereby he was unable to discharge the debts due to the respondents.

10. Section 10 of the Act deals with the conditions on which the debtor may file petition, according to it a debtor shall not be entitled to present the insolvency petition, unless he is unable to pay his debts and his debts amount to five hundred rupees; or he is under arrest or imprisonment in execution of the decree of any Court for payment of money; or an order of attachment in execution of such a decree has been made and is subsisting against his property. Sections 6 and 7 of the Act deal with the Acts of Insolvency.

11. The contention of learned counsel for the appellant-debtor is that the value of liabilities is far exceeding the value of the properties he own and possessed and he is unable to pay the debts due to the creditors. On the other hand, learned counsel for the respondents contended that the appellant-debtor own and possessed other properties, adduced evidence in support of his contention and marked Ex.B.3-certified copy of No.3 Adangal and Ex.B.4- Original Panchayat Certificate. He also filed Ex.B.5-Originla Death certificate, which shows that late Pedda Babu Sa, who is father of the appellant died five months prior to filing of I.P. Moreover, the contention of the appellant before the trial Court is that when he separated from his father and he got three more brothers and two sisters, the question of non-disclosure of property, if any, devolved upon him does not amount to suppression under Section 13 (1) (e) of the Act. But, the said fact was not accepted by both the Courts below and based on Exs.B.3 and B.4 concluded that the appellant-debtor is the only son, who succeeded the estate of the deceased Pedda Babu Sa. This finding is now under challenge on the ground that the entries made in Ex.B.3-certified copy of No.3 Adangal are not

sufficient to believe that the appellant alone succeeded the property of deceased Pedda Babu Sa while the respondents admitting that the wife of late Pedda Babu Sa i.e., mother of the appellant is alive.

12. No doubt, there is material on record to establish that wife of late Pedda Babu Sa is alive. But, the appellant contended that he got three more brothers and two sisters, who are also entitled to claim share in the property. The appellant has to prove the said fact, but, for the reasons best known to him, he did not examine any one of his brothers or sisters or at least his mother to substantiate his contention that his brothers and sisters are also entitled to claim share in the property of his father and the said property is undivided. In fact, the appellant alone is competent to prove the said fact, for the reason that he is the only person having knowledge about his brothers and sisters etc. But, obviously for the reasons best known to him, he did not examine any one to support his contention. In the entire cross-examination, the stand of the respondents is that the appellant alone succeeded the property of his father and non disclosure of factum of succeeding his father's estate, entails dismissal of petition under Section 13 (1) (e) of the Act. If for any reason, the appellant is able to establish that the property was not only devolved upon him, but also on his brothers and sisters, then the onus shifts to the respondents to establish the same by adducing satisfactory evidence. Here, the appellant miserably failed to establish that his brothers and sisters, who are five in number, are also entitled to claim share in the property and the property remained undivided. In the absence of proof of devolution of right on his brothers and sisters when he separated from joint family, it can be said that after death of his father late Pedda Babu Sa, the property was devolved upon him and his mother. But, conveniently he did not even disclose about the death of his father. In such a case, it amounts to suppression of property he own, which disentitles him from claiming relief under Section 10 of the Act.

13. As per Section 13 (1) (e) of the Act, both the Courts below based on the evidence available on record coupled with the law declared by the Division Bench of this Court in **Dasari Srihari Rao V. Talluri Harinadha Babu**^[1] held that suppression of property is a ground for dismissal of a

petition under Section 13 (1) (e) of the Act.

14. The major dispute is with regard to entries made in Exs.B3 and B.4. According to Exs.B.3 and B.4, Pedda Babu Sa, who is father of the appellant died five months prior to filing of I.P and the name of cultivator in Column No.12 of Exs.B.3 and B.4 was recorded as appellant-debtor. In fact, after death of

late Pedda Babu Sa, the question of cultivating the land by

late Pedda Babu Sa may not arise in any event. More so, the legal heirs of late Pedda Babu Sa alone are entitled to cultivate the land. As the appellant alone is cultivating the land being the legal heir and in the absence of any proof that the other legal heirs of

late Pedda Babu Sa are also cultivating the land, the question of cultivating the land by other legal heirs may not arise. Though in No.3 adangal or entries made in the revenue record would not create or confer any title in immovable property, in case of succession of property, no other proof will be available to prove succession and cultivation of the property. Therefore, taking into consideration the facts and circumstances of the case, I find that the documents Exs.B.3 and B.4 are suffice to conclude that the appellant succeeded the property of his father late Pedda Babu Sa after his death and he did not disclose the said fact. Therefore, in view of law declared by the Division Bench of this Court in **Dasari Srihari Rao's** case, dismissal of petition by the trial Court as confirmed by the appellant Court does not call for interference, since, I find no legal infirmity warranting interference by this Court.

15. In view of my foregoing discussion, I find no error muchless, illegality in the concurrent findings recorded by both the Courts below, the appeal deserves to be dismissed.

16. In the result, the Civil Miscellaneous Second Appeal is dismissed at the stage of admission confirming the order and decree, dated 11.03.2008, in I.P.No.58 of 2002 on the file of Senior Civil Judge, Allagadda as confirmed by III Additional District Judge, Kurnool vide decree and judgment, dated 02.06.2011, in A.S.No.36 of 2008. Miscellaneous petitions, if any, pending in this appeal shall stand closed. There shall be no order as

to costs.

M.SATYANARAYANA MURTHY,J

AUGUST 10, 2015

YVL

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

—

—

—

—

—

—

—

—

CIVIL MISCELLANEOUS SECOND APPEAL No.21 of 2015

—

Dt: 10.08.2015

YVL

[\[1\]](#) 2002 (3) ALT 484