

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5801 of 2015 & 2570 of 2015

COMMON ORDER:

The C.R.P.no.2570 of 2015 under Article 227 of the Constitution of India filed by the original decree holder is directed against the order dated 29th September, 2010 of the learned IV Additional Metropolitan Sessions Judge-cum-XVIII Additional Chief Judge, City Civil Court, Hyderabad passed in E.A.no.8 of 2010 in E.P.no.20 of 2003 in O.S.no.648 of 1985 filed under Order XXI Rule 15 read with Section 151 of the Code.

The C.R.P.no.5801 of 2015 under Article 227 of the Constitution of India by the said original decree holder is directed against the order dated 11.12.2012 of the said learned Additional Chief Judge passed in the aforementioned EP filed under Order XXI Rule 32 of the Code requesting the Court to execute a registered sale deed in favour of the transferee Decree Holder in terms of the decree in the aforementioned suit.

2. I have heard the submissions of the learned counsel for both the sides. I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this common order, in brief, are as follows:

The petitioner is the original Decree holder. She had obtained a decree against the 2nd respondent herein/judgment debtor ('JDr', for brevity) for specific performance. Against the said decree dated 08.09.1993 in the said suit for specific performance, the JDr had preferred an appeal in CCCA 6 of 1994 before this Court. The said appeal was dismissed on 23.12.2002. The JDr filed a Special Leave to Appeal in SLPs nos.8866 and 8868 of 2003 before the Supreme Court of India; and, the said appeals were also dismissed on 09.02.2010. However, during the pendency of the above said CCCA, the DHr had filed E.P.no.20 of 2003 under Order XXI Rule 32 of the Code requesting the Court to execute and register the sale deed. After the

judgment in CCCA, the decree obtained by the original DHr was assigned in favour of the 1st respondent herein (hereinafter referred to as 'the 1st respondent or assignee DHr', for brevity) by way of a deed of assignment dated 20.04.2010 executed by the original Decree Holder in favour of the 1st respondent. Pursuant to the said deed of assignment, the original Decree Holder filed an execution application under Order XXI Rule 16 read with Section 151 of the Code requesting to transfer the decree obtained by the original Decree Holder in favour of the 1st respondent/assignee. The said E.A.8 of 2010 was allowed, vide order dated 29.09.2010 and the decree was thus assigned in favour of the 1st respondent, who is none other than the son-in-law of the original DHr. Thus, the 1st respondent who was the assignee of the decree was permitted to execute the decree. He had, therefore, filed E.A.no.11 of 2010 for amendment of the execution petition to permit him to come on record as the 2nd DHr and to enable him to execute the decree which was assigned in his favour. The said application was allowed by the Court below on 21.08.2012. After that application was allowed on 21.08.2012, the 1st respondent/assignee DHr prosecuted the EP 20 of 2003. The JDr resisted the EP *inter alia* contending that the decree for specific performance is inexecutable at the instance of the assignee/the 1st respondent herein; and that the deed of assignment is forged and fabricated; and that the decree is a nullity since A.P. Housing Board Act, 1956 prohibits alienation of the property involved in the *lis* as the property was allotted to the JDr under the provisions of the said Act. It was also further contended that the JDr could not have executed the suit agreement of sale dated 05.12.1970 in favour of the original Decree Holder and that therefore, the suit agreement of sale is a nullity and *void ab initio* and consequently, the decree being sought to be executed is also a nullity. The Court below, by orders dated 11.12.2012 allowed the EP after overruling the objections raised by the JDr. After the said order was passed on 11.12.2012, the registered sale deed dated 31.01.2013 was executed by the Court in favour of the 1st respondent/the assignee Decree Holder.

4. Now, these two revisions are filed by the original decree-holder. In one revision she is assailing the orders dated 29.09.2010 in E.A.no.8 of 2010, whereby she, who is the original decree holder, was permitted to assign the decree in favour of the assignee decree holder/1st respondent herein and the 1st respondent herein was permitted to execute the decree against the judgment debtor. In the other revision she is assailing the orders dated 11.12.2012 passed in the EP, where by the Court executed the registered sale deed in favour of the 1st respondent/the assignee of the decree. In this backdrop it is necessary to refer to the respective cases of the parties.

5. The case of the original Decree Holder in these two revisions may be stated, in brief, as follows:

The original Decree Holder is a lady aged 85 years. The 1st respondent/assignee DHr is no other than her son-in-law. Being an aged lady, the original DHr has executed the deed of assignment in order to authorize the 1st respondent to appear on her behalf in the execution proceedings. She had no intention to forgo her right over the property. Her intention was only to give the 1st respondent the authority to appear on her behalf. The reasons assigned in the deed of assignment for transfer of the decree in favour of the 1st respondent are illogical and no person with ordinary prudence would ever transfer the property because of one's old age and poor vision. The original decree holder was made to believe by the 1st respondent that he is acting as an agent only. The 1st respondent played fraud on the original DHr by not disclosing to her that the property is being transferred with absolute rights under the deed of assignment. The Court of execution had recorded her sworn statement. However, by then she was a woman of very advanced age. The Court below did not make an effort to make her understand the consequences of assignment of decree and the statement was recorded monotonously and the application in EA no.8 of 2010 was allowed without application of mind. Later, EP was also allowed without application of mind. Therefore, the orders impugned in these two revisions resulted in grave injustice to the original DHr. The Court below

ought to have seen that the deed of assignment is an unregistered document and therefore, the Court below ought to have examined as to whether such a deed would give the 1st respondent/assignee DHr any rights over the property. The Court below ought to have seen that the deed of assignment of a decree for specific performance in regard to an immovable property is a compulsorily registerable document as per Section 17(1)(c) of the Registration Act. The Court below had failed to see that the A. P Amendment to Section 17(1)(f) of the Registration Act, 1908 stipulates that any decree or order or award creating or declaring or assigning any right, title or interest is a compulsorily registerable document. The Court below ought to have seen that the deed of assignment, which is unregistered, is inadmissible in evidence. The Court below had failed to properly appreciate the facts and the law applicable to the case, while passing the orders impugned in these revisions.

6. On the other hand, the case of the 1st respondent/assignee DHr, in brief, is this:

There is no truth or force in the contention of the original DHr that the deed of assignment is invalid and not true. The contention of the original DHr that the reason for assignment of decree is illogical and that no person with ordinary prudence would ever transfer the property because of one's old age and poor vision is untenable. The deed of assignment was executed by the original DHr after she had received a sum of Rs.40 lakhs from the 1st respondent/assignee DHr. Thus, the original DHr has relinquished/assigned her rights in the property in favour of the 1st respondent. The original DHr had appeared before the Court below on 28.9.2010 and her sworn statement was recorded by the learned Judge in open Court. The contents of the document were read over and explained in Telugu to her; and, after having understood the nature and contents of the document, she had put her signature on her statement with her free will and volition. She was hale and healthy and her mental capacity was also sound on that day. The allegation that she had no intention to forego her right over the property and that she

was under the impression that the deed only authorizes the 1st respondent to appear on her behalf in the execution proceedings and that her intention was only to authorize the 1st respondent to appear on her behalf in the execution proceedings and that she was made to believe that the 1st respondent is acting as her agent only and that the 1st respondent played fraud on her by not disclosing that the property is being transferred with absolute rights under the deed of assignment are all false and invented for the purpose of this case. The learned Judge of the Court below has given valid reasons in the orders impugned. After assigning valid reasons, permission was accorded to transfer the decree in favour of the assignee DHr/1st respondent and the 1st respondent/assignee DHr was permitted to prosecute the execution petition. Later, an execution application (EA) was filed for amendment of the EP and the Court below having allowed the amendment had permitted the 1st respondent/assignee DHr to come on record as 2nd DHr and permitted him to execute the decree. The Court below had passed a well-reasoned order overruling the objections of the JDr and had finally directed for execution of the sale deed in respect of the EP schedule property in favour of the 1st respondent/assignee DHr. Eventually, the Court of execution had executed the registered sale deed in favour of the 1st respondent/assignee DHr pursuant to its various orders supported by valid reasons. The original DHr is under the influence of another daughter's son, namely, Krishna Mohan with whom she is presently staying at Hyderabad. The original DHr had filed the revision at the instance of Krishna Mohan who is not in good terms with the 1st respondent. The signature of the petitioner/original DHr on the material papers in these revisions appear to be forged. She was under the influence of her elder daughter and children. She has not signed the vakalat and the affidavit filed in support of the revisions. The JDr had contested the execution petition on various grounds. The Court below had passed orders dated 31.01.2013 holding that the 1st respondent-assignee DHr is entitled to have the sale deed registered and accordingly a registered sale deed was executed on 31.01.2013 in favour of the assignee DHr by the Court. The JDr

had filed a revision in C.R.P.no.424 of 2013 before this Court. In the said revision, the order dated 11.12.2012 passed in the EP was challenged. The said revision filed by the JDr was dismissed by this Court, vide orders dated 18.09.2015 confirming the orders in the EP. The said orders in the EP are being challenged once again in these revisions. The present revisions are not maintainable and are liable to be dismissed being devoid of merit.

7. Both the learned counsel had advanced contentions in line with the cases of the parties, which are stated supra.

8. In the first place it is apt to note that the original DHr is assailing the orders dated 29.09.2010 passed in E.A.8 of 2010 by raising two sets of grounds. The first set of grounds is that the deed of assignment is a compulsorily registerable document as per Section 17(1)(f) of the Indian Registration Act as applicable to the State of A.P and that the said deed of assignment which is unregistered is inadmissible in evidence. In support of the said contentions, the learned counsel for the original DHr/revision petitioner had drawn the attention of this Court to the above said provision of law, which reads as under:-

17. Documents of which registration is compulsory:- (1) The following documents shall be registered, if the property to which they relate is situate in a district in which and if they have been executed on or after the date on which, Act No.XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:-

(a) xx xx xx xxx

(b) xx xx xx xxx

(c) xx xx xx xxx

(d) xx xx xx xxx

(e) xx xx xx xxx

(f) any decree or order or award or a copy thereof passed by a civil Court, on consent of the defendants or on circumstantial evidence but not on the basis of any instrument which is admissible in evidence under Section 35 of the Indian Stamp Act, 1899, such as registered title deed produced by the plaintiff, where such decree or order or award purports or operate to create, declare, assign, limit, extinguish whether in present or in future any right, title or interest whether vested or contingent of the value of one hundred rupees and upwards to or in immovable property; and

This contention was earlier raised by the JDr before the Court of execution and also in the revision in C.R.P.no.424 of 2013 *inter alia* contending that the decree is inexecutable at the instance of the assignee DHr and that the assignment is improper and not in accordance with law. While disposing of the said revision filed by the JDr, this Court in the orders dated 18.09.2015 had held as follows:

“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 [AIR 1964 AP (FB)] and held that there was no error in the assignment of the decree in favour of the respondent.”

The Court below in its orders referred to the Full Bench decision of this Court in **Arvapally Rama Rao v. Kanumarla Pudi Ranga Nayakulu** [AIR 1964 AP (FB)] wherein, it was held that a decree can be assigned but the assignee can seek execution only if his name is shown in the execution petition in terms of Order XXI Rule 16 of the Code. After referring to the said proposition, the Court below had held that in the present case that the law is properly followed and that in accordance with law E A no.8 of 2010 and E A no.11 of 2010 were filed and allowed and those orders have become final long time ago. Be that as it may.

9. Dealing further with the contention of the original DHr that the deed of assignment in favour of the 1st respondent/assignee DHr is a compulsorily registerable document, it is to be noted that the decree in question, which is assigned by the original DHr in favour of the 1st respondent-assignee DHr is only a decree for specific performance though in regard to an immovable property. As on the date the decree was assigned, the decree is yet to be executed and a sale deed is yet to be obtained by the original DHr in the pending execution proceedings. During the pendency of the execution petition, the decree was assigned in favour of the assignee DHr/1st respondent to enable him to seek the permission of the Court and then execute the decree and obtain a regular registered sale deed. Therefore,

under the decree that was obtained by the original DHr, no right, title and interest in the immovable property covered by the decree schedule vested in the original DHr as the decree is only a decree granted in a suit for specific performance. Unless such decree is executed and a sale deed is obtained pursuant to the execution of the decree, no title vests in the DHr. Therefore, the decree by itself did not create or transfer or declare any right, title or interest whether vested or contingent in the immovable property. Therefore, in the well-considered view of this Court, the deed of assignment transferring a decree for specific performance in regard to an immovable property is not compulsorily registerable. Therefore, the contention of the original DHR that the deed of assignment assigning a decree for specific performance is compulsorily registerable in view of the provision of Section 17(1)(f) of the Indian Registration Act cannot be countenanced.

10. This takes us to the next set of contentions of the original DHr. Though the said contentions are stated supra, for emphasis the same are reproduced infra:

The original Decree Holder is a lady aged 85 years. The 1st respondent/assignee DHr is no other than her son-in-law. Being an aged lady, the original DHr has executed the deed of assignment in order to authorize the 1st respondent to appear on her behalf in the execution proceedings. She had no intention to forgo her right over the property. Her intention was only to give the 1st respondent the authority to appear on her behalf. The reasons assigned in the deed of assignment for transfer of the decree in favour of the 1st respondent are illogical and no person with ordinary prudence would ever transfer the property because of one's old age and poor vision. The original decree holder was made to believe by the 1st respondent that he is acting as an agent only. The 1st respondent played fraud on the original DHr by not disclosing to her that the property is being transferred with absolute rights under the deed of assignment. The Court of execution had recorded her sworn statement. However, by then she was a woman of very advanced age. The Court below did not make an effort to

make her understand the consequences of assignment of decree and the statement was recorded monotonously and the application in EA no.8 of 2010 was allowed without application of mind. Later, EP was also allowed without application of mind. Therefore, the orders impugned in these two revisions resulted in grave injustice to the original DHr.

11. The contentions of the 1st respondent are already stated supra. Be it noted that after the deed of assignment dated 20.04.2010 was executed by the original decree holder in favour of the 1st respondent/assignee DHr, she had filed EA no.8 of 2010 in the EP under Order XXI Rule 16 of the Code. In the execution application, the Court below had recorded the sworn statement of the original decree holder. A perusal of the copy of the said statement of the original DHr would disclose that the original decree holder had stated on oath that she intended to transfer her decree in favour of her son-in-law, the 1st respondent herein and that she had voluntarily transferred the decree in his favour and that no one forced her to transfer her decree in favour of the 1st respondent and that therefore, she had prayed the Court to transfer the decree in favour of the 1st respondent. Having recorded the sworn statement to the above effect of the original decree holder, the Court below passed orders dated 29.09.2010 in the said EA and permitted the original decree holder to transfer the decree in favour of the 1st respondent/assignee DHr and permitted him to execute the decree against the JDr. In the said orders, the Court recorded satisfaction in regard to the contents of the sworn statement of the original decree holder. Subsequent thereto, the 1st respondent/assignee DHr filed EA no.11 of 2010 for amendment of the EP to enable him to come on record as 2nd DHr to execute the decree. The said application was allowed by the Court below, vide orders dated 21.08.2012. The said order has become final. Thereafter the assignee DHr/1st respondent proceeded to prosecute EP. The JDr seriously contested the EP as already noted supra. After over ruling the objections of the JDr, the orders allowing the EP were passed by the Court below. The JDr had assailed the said order in a CRP before this Court. This Court while dismissing the CRP

filed by the JDr had confirmed the orders in the EP. Now the original DHr is challenging in the 2nd revision the very same orders passed in the EP which are already confirmed by this Court while dismissing the CRP earlier filed by the JDr. In the light of all the said facts, the contention that the son-in-law i.e., the 1st respondent/assignee DHr had played fraud on the original DHr and the other contentions, which are advanced on her behalf before this Court in these revisions cannot be countenanced. When a sworn statement is recorded by the Court below and thereafter, when the Court recorded satisfaction in regard to the sworn statement and passed orders dated 29.09.2010, this Court is not inclined to give any weight to the submission that the Court below monotonously recorded the sworn statement and allowed the application in EA no.8 of 2010 without application of mind. Accordingly, the second set of contentions stand rejected.

12. What is also to be noted is that after EA no.8 of 2010 is allowed and permission was accorded to the original decree holder to transfer the decree and as a sequel permission was accorded to the assignee DHr to prosecute the EP, further orders in EA no.11 of 2010 were passed permitting the assignee DHr/1st respondent to come on record in the EP and execute the decree. After the assignee DHr was impleaded as 2nd DHr, the EP was disposed of on merits after over-ruling the objections of the JDr. In the execution petition, various contentions were raised by the JDr/2nd respondent herein. The JDr raised contentions, as already noted, to the effect that the assignment deed is forged and fabricated and that the agreement is a nullity and is *void ab initio* and consequently, the decree for specific performance is also a nullity. Although the JDr sought to contend that the decree is a nullity being violative of the provisions of the A.P. Housing Board Act, 1956, this contention was admittedly not raised before the trial Court. Even though the said contention appears to have been argued in the Supreme Court, the Supreme Court had declined to entertain the said contention. Therefore, overruling the said and the other objections of the JDr, the EP was allowed. As already noted supra, the revision petition filed by the JDr was dismissed

by this Court, by orders dated 18.09.2015. In fact, after EP 20 of 2003 was allowed, vide orders dated 11.12.2012 of the Court below, a registered sale deed dated 31.01.2013 was also executed by the Court. Having regard to the sequence of events and the discussion coupled with reasons, this Court finds that there is no merit in the revisions and the revisions are liable to be dismissed.

13. Before parting with the case, it is to be noted that after the submissions of the learned counsel for both the sides are heard and the orders are reserved in these revisions, the Registry of the Court placed on record a letter dated 15.02.2016 said to have been addressed by one Mangamma, wherein it is stated that the said Mangamma did not file any CRP before this Court by engaging a counsel and that she did not sign on the vakalath or any other papers. After perusal of the said letter, this Court directed the matter to be listed under the caption 'For Being Mentioned'. On such listing, the letter was brought to the notice of the counsel and on that, the matter was adjourned to 06.04.2016. In this background, the revision petitioner appeared before this Court. She had filed her affidavit stating that the letter aforementioned is not addressed by her to the Registry of the Court, and she had affirmed that she had engaged a counsel and filed these two revision petitions before this Court and that she wishes to prosecute the matter. Hence, her further presence is dispensed with. And, the revisions are taken up for disposal and are accordingly disposed of.

14. In the result, both the revisions are dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in these revisions shall stand closed.

M. SEETHARAMA MURTI, J

01st June, 2016
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