

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.665 OF 2016

ORDER:

Heard learned counsel for the petitioner and learned counsel for the respondent.

This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') to revise the order passed by the VIII Additional District Judge, Nizamabad, in I.A.No.1544 of 2015 in A.S.No.16 of 2014 declining to stay the execution of the decree in O.S.No.33 of 2007. The main allegation in the said I.A., before the appellate Court is that the respondent is trying to alienate the suit schedule property in view of the decree passed in O.S.No.33 of 2007 and in case the respondent is allowed to alienate the property, the petitioner would be put to irreparable loss. But, the appellate Court observed that the petitioner did not produce any material to substantiate the contention that the decree holder is trying to alienate the property.

The suit was filed for eviction of the respondent from premises bearing No.7-4-90/3 to 5 at Kumargally, Nizamabad, and for other consequential reliefs. However, the trial Court held that the plaintiff is not entitled to recover possession of the property. Now the contention of the petitioner is that the respondent is trying to alienate the property. No doubt, the apprehension of the petitioner may lead to multiplicity of proceedings and even if the property is alienated during pendency of the appeal, it is hit by Section 52 of the Transfer of Property Act and the person who purchased the property is bound by the decree, if any, passed against the respondent.

According to Order XLI Rule 5 (3) C.P.C., no order for stay of

execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied that (a) substantial loss may result to the party apply for stay of execution unless the order is made; (b) the application has been made without unreasonable delay; and (c) security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

From a bear reading of Order XLI Rule 3 C.P.C., it is clear that the petitioner has to establish that he would sustain substantial injury, if no such stay is granted. But, there is absolutely no allegation in the entire affidavit that the petitioner would sustain substantial injury or loss unless the order is passed by this Court restraining the respondent from alienating the schedule property during pendency of the appeal. Therefore, dismissal of the application by the appellate Court is in accordance with law and the petitioner failed to point out any illegality to exercise jurisdiction under Section 115 C.P.C.

Strangely the plaintiff/petitioner claimed stay of decree in the suit filed by him for eviction, moreover the suit was dismissed. In such case, question of stay of decree does not arise as no decree is passed against the plaintiff/petitioner in the suit filed by him. No decree can be passed against the plaintiff in his suit, except by way of counter claim; it is not the case of the plaintiff/petitioner that any decree was passed against him in the suit. Hence, grant of stay of decree of dismissal of suit is unknown to law. At best, his remedy is to claim interim injunction.

To exercise power under Section 115 C.P.C., the petitioner has to satisfy the Court that the appellate Court has exercised its jurisdiction not vested in it by law; or failed to exercise jurisdiction so vested; or to have acted in the exercise of its jurisdiction illegally or with material irregularity. But, the petitioner did not make out any case covering any of the Clauses under Section 115 (1) (a) (b) (c) C.P.C.,

and in the absence of the requirements under Section 115 (1) C.P.C., the order of the appellate Court needs no interference in this revision.

It is however made clear that the decree, if any, passed in favour of the petitioner in the appeal for eviction of the respondent, the property if alienated is hit by Section 52 of the Transfer of Property Act, the purchaser is bound by the decree whatever is passed in favour of the petitioner and against the respondent.

With the above observations, the Civil Revision Petition is dismissed at the stage of admission. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this revision shall stand closed.

M.SATYANARAYANA MURTHY, J

Date:12.02.2016

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