

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

+ Civil Revision Petition No.1305 of 2016

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% Dated 17-08-2016

Between:

Irukula Lalitha Devi & another

..Petitioners

And:

\$ Ramini Ramappa & another

..Respondents.

! Counsel for the petitioners : Sri Subba Rao Korrapati

^ Counsel for respondents : None

< GIST:

>HEAD NOTE:

? Cases referred:

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.1305 OF 2016

ORDER:

The revision petitioners are the Judgment Debtors in E.P No.210 of 2015 and defendants in O.S. No.504 of 2003. The said suit was filed for recovery of money on the file of Senior Civil Judge, Jangaon, Camp Court at Warangal. The decree was dated 17.07.2014 for recovery of Rs.4,30,979/- with interest at 12% per annum from the date of suit i.e., 12.11.2003 to the date of decree i.e., 17.07.2014 and @ 6% per annum on the principal sum of Rs.3,31,183/- from the date of decree i.e., 17.07.2014 till realization and for costs.

2) Pursuant to the decree E.P No.210 of 2015 was filed before the III Additional Senior Civil Judge, Warangal. It is the submission by the learned counsel for revision petitioners that the appeal is filed before the District Court Warangal impugning the legality and correctness of the decree in O.S. No.504 of 2003 dated 17.07.2014 referred supra. Two objections are raised by the J.Drs on executability of the decree in E.P. No.210 of 2015 viz., one is that there is an amendment to the decree sought for and pending the same, the decree is unexeuctable. The trial Court rightly negated the same for no stay of execution pending application for amendment sought for and granted. Thus, the only course even then is where it is chosen to amend the decree by the Original Court, it is by calling for the original decree and also the certified copy/ copies issued to the parties and then carry the amendment in original decree vis-à-vis in the copies already issued if submitted for such correction, leave about the further right to obtain fresh certified copies of the amended decree, if any, by any parties. Thereby mere pendency or even allowing of amendment is not a bar to the executability of the decree unless there is a stay against executability either by the Original Court, which passed the decree or any transferee Court either under Order XXI Rule 29 or Rule 26 C.P.C, as the case may be or by the Appellate Court as per Order LXI Rule 5 C.PC, that too, when the provision is very clear that no stay comes into operation unless stay is granted and communicated or any person having personal knowledge of the facts files an affidavit of the factum of stay granted by the superior Court before the executing the decree to consider the same.

3) So far as the second objection is concerned, the E.P is filed and pending before III Additional Senior Civil Judge, Warangal whereas the decree was passed by the Senior Civil Judge, Jangaon Camp Court at Warangal. It is not in dispute that the Senior Civil Judge, Courts of Jangaon and warangal are functioning. As per the submission of the revision petitioners/ J.Drs, the Senior Civil Judge,

Jangaon is the original Court which passed the decree to execute as per Section 38 C.P.C and without any application filed as per Section 39 of C.P.C by the D.Hr there for transmission of the decree to another Court where the property sought for execution by delivery or by attachment and sale etc. or the place where the J.Drs reside in case of arrest or in case of private salary attachment of where the J.Drs work gain, as the case may be.

4) For answering the same, it is to say, Section 38 speaks a decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

5) Section 39 (1) speaks the Court which passed a decree may on the application of, the decree holder, send it for execution to another Court of competent jurisdiction, in relation to four clauses as to person against whom or property within which local limits, the decree to be executed including for sale or delivery of property where it situates, if its jurisdiction is outside the original jurisdiction of the Court, which passed.

6) Section 39 (2) speaks the Court which passed a decree may of its own motion send it for execution to any Subordinate Court of competent jurisdiction.

7) Section 39 (3) speaks Court shall be deemed to be a Court of competent jurisdiction of, at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.

8) Section 39 (4) which is amended as per C.P.C amended Act, 2002 w.e.f., 01.07.2002, speaks nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.

9) The execution petition is filed for attachment and sale of

the residential property of the J.Drs situated at Vasavi Colony, Warangal town, within the limits of Greater Warangal Municipal Corporation. The original decree was though passed by the Senior Civil Judge, Jangaon, it was virtually as the Senior Civil Judge, Warangal as did at the Camp Court, Warangal for the matters of warangal and not of Jangaon. The Camp Court generally is to conduct now and then at different places within its local jurisdiction and in such a case, it does not change the seat of the original place of the Court from conducting such camps and for that reason the seat of the Court originally located is only the criteria and not the place of the Camp. Here it is not the case but for the Senior Civil Judge, Jangaon disposed of matters of Senior Civil Judge, Warangal by conducting camp Court at Warangal from Special orders in this regard as otherwise for Warangal matters it could not get jurisdiction generally.

10) The said objection is overruled by the impugned order dated 19.02.2016 by the Senior Civil Judge, Warangal with observation that “another contest taken by the respondents is that the Principal Senior Civil Judge’s Court (Warangal) sent the execution petition to this Court (Ill Additional Senior Civil Judge, FTC, Warangal) instead of sending the same to the Camp Court. When, once the Principal Senior Civil Judge sent the Execution Petition to this Court, it is deemed that this Court is authorized to dispose of the execution petition irrespective of fact that Camp Court passed the judgment. So, basing on the technicalities, the respondents cannot take advantage and oppose the petition. So, this Court do not find any merits for dismissal of the execution petition and objections taken by the respondents in the counter are not accepted. Hence the attachment made on 06.11.2015 is made absolute. Issue Rule 64 and 66 notices to the Judgment debtors.”

11) Here the ground raised in the revision is that the Senior Civil Judge, Jangaon at the Camp Court, Warangal passed the decree and not by Principal Senior Civil Judge, Warangal and once the

Senior Civil Judge, Jangaon passed the decree even by sitting in the Camp Court at Warangal, it is a decree of the Senior Civil Judge, Jangaon at Camp Court, Warangal and requires transfer for entertaining the execution petition by the III Additional Senior Civil Judge, Warangal much less to make over to the III Additional Senior Civil Judge, Warangal by Principal Senior Civil Judge, Warangal.

12) The D.Hr and one of the three J.Drs shown as respondents even served failed to attend. Hence taken them as heard. Heard learned counsel for the revision petitioner.

13) From what is referred on the scope of Section 38 and 39 C.P.C, if really, Senior Civil Judge Court, Warangal did not pass the decree but for the Senior Civil Judge, Jangaon with Camp Court at Warangal, such a decree of the Senior Civil Judge, Jangaon requires transfer for execution by the Senior Civil Judge, Warangal. However, when the fact remains that there is for no sufficient work to the Senior Civil Judge, Jangaon and the Senior Civil Judge, Jangaon was asked to dispose of the matters of the Senior Civil Judge, Warangal of those to made over to it by conducting Camp Court at Warangal, practically, it is a disposal by the Senior Civil Judge, Warangal. When such is the case, filing of the execution petition in the Court of Principal Senior Civil Judge, Warangal and its making over as per Section 39 (2) C.P.C to the III Additional Senior Civil Judge, Warangal are sustainable. Thereby, this revision petition, impugning the same, on that ground, is also not tenable and is liable to be dismissed.

14) Accordingly and in the result, the Civil Revision Petition is dismissed without prejudice to any other contest of the revision petitioners/ J.Drs before the executing Court below to decide in the course of the decree under execution.

15) Consequently, pending miscellaneous petitions, if any, shall stand dismissed.

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.17.08.2016

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