

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

C.R.P. No. 4774 OF 2011

ORDER:

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The revision petitioner is the judgment debtor in E.P. No.182 of 2010 filed for execution of money decree obtained against him by the decree holder/ respondent in O.S. No.28 of 2009 on the file of learned Senior Civil Judge, Kakinada. The decree holder in the execution petition sought for recovery of the decretal amount by way of sale of the property of the judgment debtor which appears to have been already attached before the judgment during pendency of the suit, and the judgment debtor filed objections to the sale sought for saying that the property does not belong to him but belongs to his wife, who was assigned under the A.P Assigned lands (Prohibition of Transfers) Act, 1977 as plot No.727 in June, 1999, vide patta reference No.193/1995 and that she constructed a house therein and that even the assigned land cannot be brought to attachment or sale and thereby the execution proceedings are unsustainable.

2) Perusal of the order under revision shows that in the course of enquiry, on behalf of decree holder, there was no person examined and the judgment debtor was examined as RW.2 though memo of evidence no way reflects that he was examined as RW.2, but para No.4 of the order shows that the VRO, Kakinada Urban was examined only as RW.1 and Exs.R1 and R2 i.e., authorization letter to VRO by MRO and the attested copy of assigned patta in favour of the wife of the J.Dr debtor, were filed. The learned Senior Civil Judge, however, by the impugned order dated 25.08.2011 did not agree with the objections of the judgment debtor and held that the schedule property is not an assigned land and it can be brought to sale and that the judgment debtor has not proved that the property belongs his wife. Once the question of alienability of the property raised, the dispute to be decided. The finding given by the Court below is that the property is not assigned land. Though, RW.1—V.R.O, in his evidence deposed that the land is heritable but cannot be sold and Ex.R.2 filed (In fact a perusal of Ex.R2 clause (9)

speaks it is only heritable and not alienable ever), he could not bring layout plan of TS No.1966 Swarnandra Colony, of Suryapet Village, Kakindada Town. The judgment debtor as RW.2 deposed of the land was assigned in favour of his wife and she constructed the house. The lower Court observed in the impugned order that the Judgment Debtor deposed as if he is residing separately in D.No.F/74 and not in the execution schedule property D.No.17-10-74/2 and from the contention raised by the judgment debtor burden is on him to prove and he did not cause examined his wife, the assignee, to prove Ex.R2 contents and the encumbrance certificate filed by the decree holder shows encumbrance in respect of the property and RW.1 deposed of two boundary holders and not other two. Apart from that, Ex.R2 referred no boundary holders' names and he could not show that the decree schedule property and Ex.R2 property is one and the same and in the electricity bill the door number is not visible and so also the municipal tax receipt shows D.No.17-10-342/222 and not 17-10-74/2 to say that the said door number and the E.P schedule property door number are not tallying. Present revision petition is assailing the same.

3) Heard both sides.

4) It is the contention of the revision petitioner/ judgment debtor that the trial Court went wrong in putting the burden on the judgment debtor instead of the decree holder to initially prove that the E.P schedule property is not an assigned land and it is executable and judgment debtor is the owner, whereas it is the contention of the counsel for respondent/ decree holder that the lower Court is correct in its order by assigning reasons and in its coming to the conclusion and the revision is not maintainable and there is nothing to interfere.

5) The A.P Assigned lands prohibition Act prohibits any transfer (voluntary or involuntary but for recovery of co-operative debt) With reference to the expression of this Court in ***Harijana Bazarappa vs H. Chakarala Ranganna***^[1], held that the assigned lands cannot be

transferred and assignee does not acquire ownership over the land even transferred.

6) From the above lis involving question of the land is assigned land or not and the trial Court did not so how it is not assigned land even there is contra evidence from RW.1 and 2 with reference to Exs.R1 and R2, this Court feels just to set-aside the order for the reasons above and further the order impugned discussed even the un-exhibited documents and not considered the burden of the decree holder to rebut atleast from the evidence supporting the contention of judgment debtor of not of him and not alienable to show that the E.P schedule property belongs to judgment debtor only and it is not an assigned land and it is not otherwise prohibited from alienation to bring to sale. In the absence of which when the property even attached before the judgment and made absolute, and no fresh attachment in execution is necessary from combined reading of Order XXI Rule 54 and Order XXXVIII Rule 5, 6, 11, 11-A of C.P.C for further steps of proclamation and sale, after settlement of terms if any under Order XXI Rules 64 to 66 C.P.C to bring the property to sale to realize the decree, it cannot be brought to sale under execution of a decree once the A.P assigned lands (Prohibition of Transfers) Act, 1977 applies to make it inalienable.

7) Having regard to the above, the revision petition is allowed setting aside the impugned order of the lower Court dated 25.08.2011 and the matter is remanded to the lower Court to permit the decree holder to adduce any evidence and also further evidence of the judgment debtor including for examination of his wife and after recording any such further evidence of decree holder and judgment debtor to decide from such evidence on record as to the property is prohibited from alienation or not and it belongs to judgment debtor or his wife as on the date and to give findings on merits, uninfluenced by the earlier order and the revision observations. This exercise shall be completed preferably within one (1) month from the date of receipt of this order. No order as to costs.

8) Miscellaneous petitions, pending if any, in this revision shall

stand closed.

B.SIVA SANKARA RAO,J

Date:03.06.2016
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THE HON’BLE DR. JUSTICE B.SIVA SANKARA RAO

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