

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

CIVIL REVISION PETITION No. 1023 of 2011

ORDER:

This Civil Revision Petition is filed by the petitioner/ judgment debtor against the order dated 04.03.2011 passed by the Senior Civil Judge, Allagadda in E.P.No.45 of 2008 in O.S.No.16 of 2003 whereby and whereunder the application filed by the respondent/decree holder seeking to arrest the petitioner/judgment debtor for realization of the decretal amount, was allowed.

Learned counsel for the petitioner submits that the suit was filed basing on a forged promissory note and that has to be decided in A.S.No.58 of 2008 filed by the petitioner on the file of the III Additional District Judge, Kurnool at Nandyal against the decree and judgment in the suit. He further submits that along with the appeal, the petitioner filed I.A.No.1451 of 2009 seeking stay of operation of the decree and judgment of the lower Court and all further proceedings in E.P.No.45 of 2008 in O.S.No.16 of 2003 and the same is still pending. He contends that while the appeal and the stay petition are pending consideration, the executing Court allowed the E.P. filed by the respondent.

On the other hand, learned counsel for the respondent submits that the executing Court after considering the merits of the case passed the impugned order on the ground that the petitioner failed to pay the decretal amount, though he had sufficient means to pay the decretal amount and, as such, no interference is required.

A perusal of the impugned order goes to show that the respondent has filed necessary documents, and basing on the same and also the evidence adduced by both parties, the executing Court came to the conclusion that though the petitioner had sufficient means to pay the decretal amount, he failed to pay the same. The operative portion of the impugned order reads as follows:

"It could be evident from Ex.A.1 certified copy of sale deed, the JDR had purchased 1.00 in Sy.No.356/2, 0.96 cents in Sy.No.356/3, 0.20 cents in Sy.No.356/5, 0.81 cents and 0.13 cents in Sy.No.356/6, 0.81 cents in Sy.No.358 and Ac.1.00 in Sy.No.357 respectively from one Chinnamma and her sons in the year 31.07.1996. It is pertinent to note that the JDR has categorically admitted in the cross-examination that he has purchased the property covered in Ex.P.1 from chinnamma and her sons and he owns Ac.3.00 land situated near the village. Therefore, the documentary evidence, Ex.P.1 and cross-examination would clinchingly prove that the JDR is having property nearly Ac.3.00 land in the village. Apart from filing Ex.P.1, R.W.2 categorically admitted in the cross-examination that the JDR is raising paddy crop on every year and JDR is distant relative. Therefore, the version of the JDR that he is not getting good yield from crop is totally incorrect and absolutely false. Therefore, the DHR has proved the means of the JDR who is having landed properties in his name.

Though JDR taken contention that he preferred an appeal before III Addl. District Judge, Nandyal. Admittedly, no stay orders passed by the appellate Court. Merely because an appeal is preferred by the JDR is not a ground to stall the proceedings unless JDR obtained any orders from the appellate Court. Therefore, any objection raised by the JDR in this aspect is to be rejected."

In view of the concurrent findings given by the executing Court, I do not find any infirmity in the order passed by it warranting interference of this Court by exercising the power under Article 227 of the Constitution of India.

Accordingly, the Civil Revision Petition is dismissed. However, since it is stated that as per the interim order of this Court dated 21.03.2011, which was modified on 05.11.2011, the petitioner has already deposited half of the decretal amount and that the stay petition in I.A.No.1451 of 2009 in A.S.No.58 of 2008 is still pending consideration, the III Additional District Judge, Kurnool at Nandyal is directed to dispose of the stay petition on merits within a period of two (2) weeks from the date of receipt of a copy of this order. Till then, the interim stay of the order dated 04.03.2011 passed by the Senior Civil Judge, Allagadda, in E.P.No.45 of 2008 in O.S.No.16 of 2003 granted by this Court on 21.03.2011 shall continue. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any, pending in the revision petition shall also stand dismissed.

A. RAJASHEKER REDDY, J.

8th February, 2016
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