

HON'BLE SMT JUSTICE ANIS
SECOND APPEAL No.574 OF 2015

J U D G M E N T:

This Second Appeal is directed against the judgment and decree dated 05.02.2015, passed in A.S.No.145 of 2014, by the XIV Additional District Judge, Rangareddy District at L.B. Nagar, whereby and whereunder the learned District Judge has dismissed the appeal confirming the order dated 18.03.2014, passed in E.A.S.R.No.2938 of 2014 in E.P.No.246 of 2010 in O.S.No.96 of 1995, by the Principal Senior Civil Judge, Rangareddy District.

Originally, the appellant herein is the claim petitioner/third party and respondents herein are the respondents in E.A.S.R.No.2938 of 2014 in E.P.No.246 of 2010 in O.S.No.96 of 1995. The parties hereinafter will be referred to as they are arrayed before the trial Court for the sake of convenience.

The case of the claim petitioner in brief is that he filed E.A.S.R.No.2938 of 2014 in E.P.No.246 of 2010 in O.S.No.96 of 1995 on the file of the Principal Senior Civil Judge, Rangareddy District under Order XXI Rules 101 & 97(1) r/w 151 of the Code of Civil Procedure, 1908 (for short 'the C.P.C') stating that he purchased the E.P schedule property from respondent No.4/judgment debtor under the unregistered sale deed dated 04.08.1992. Subsequently, on 03.10.2013, the said unregistered sale deed was validated and thereafter, the decree holders were trying to dispossess the claim petitioner from the petition schedule property. When this petition was filed before the Principal Senior Civil Judge, Rangareddy District, the said petition was returned on 03.03.2014 stating how the petition is maintainable by the claim petitioner/third party. Petition was re-submitted by the claim

petitioner and the learned Senior Civil Judge heard the claim petitioner, perused the documents filed by the claim petitioner and held that there is no legal valid dispute to be decided between the claim petitioner and respondents and there is no such legally arising question of law to be determined. Hence, the petition was rejected at the stage of S.R on 18.03.2014. Aggrieved by the said order passed by the learned Principal Senior Civil Judge, Rangareddy District, the claim petitioner filed A.S.No.145 of 2014 on the file of the XIV Additional District Court, Rangareddy District at L.B. Nagar. On 05.02.2015, the learned III Additional District Judge, FAC XIV Additional District Judge, Rangareddy District, dismissed the appeal and confirmed the order dated 18.03.2014 passed by the Principal Senior Civil Judge in E.A.S.R.No.2938 of 2014 in E.P.No.246 of 2010. Aggrieved by the order of the executing Court and also judgment passed in A.S.No.145 of 2014, the claim petitioner filed the present second appeal.

The learned counsel appearing for the appellant/claim petitioner argued that the Courts below miserably failed to follow the mandatory provisions under Order XXI Rule 101 of the C.P.C, which gives a right to the third party to adjudicate his claim. The Courts below miserably failed to appreciate the contention of the appellant/claim petitioner that the transaction of the claim petitioner is not hit by Section 52 of the Transfer of Property Act, 1882 (for short 'the T.P. Act') and the Courts below came to a wrong conclusion that the sale transaction of the appellant covers by Section 52 of the T.P. Act, but the case of the appellant is not covered by Section 52 of the T.P. Act. The sale transaction took place prior to Ex.A1 dated 07.08.1993 and prior to the institution of O.S.No.96 of 1995 and therefore, the decree and judgment passed in O.S.No.96 of 1995 is not binding on the appellant/claim

petitioner. Without providing an opportunity to adduce the evidence in respect of the claim petition, the E.A was rejected at the stage of S.R and that the Courts below are not justified in passing the order and judgment in E.A.S.R.No.2938 of 2014 and A.S.No.145 of 2014 respectively. It is also argued that the first appellate Court grossly erred in not appreciating the written arguments along with documents filed by the appellant/claim petitioner and erroneously concluded that the appellant failed to assign any reasons to set aside the order and judgment passed by both the Courts below and relied upon the case laws reported in (1) **Har Vilas v. Mahendra**

Nath and others^[1], wherein it is held as follows:

“Held: A third person claiming to be in possession of the property forming subject matter of decree in his own right can resist delivery of possession even by filing an objection under Order 21 Rule 97 CPC in the executing court itself and if that is done, the objection shall have to be determined by the executing court itself. The provisions of Rule 100 of the old CPC, the equivalent provision whereof is Rule 99 in the new CPC will not defeat the right of such person to get his objection decided under Rule 97 which is a stage prior to his dispossession. The appellant has already filed a suit for permanent injunction wherein a temporary injunction has been obtained by the plaintiff protecting his possession. The objections of the appellant should have been heard and decided by the executing court itself. The objection filed by the objector (appellant) shall not be heard and decided in accordance with Order 21 Rule 97 read with Rule 101 CPC. A separate suit is not maintainable.”

(2) **Shreenath and another v. Rajesh and others**^[2],

wherein it is held as follows:

“11. So, under Order 21 Rule 101 all disputes between the decree-holder and any such person is to be adjudicated by the executing court. A party is not thrown out to relegate

itself to the long-drawn-out arduous procedure of a fresh suit. This is to salvage the possible hardship both to the decree-holder and the other person claiming title on their own right to get it adjudicated in the very execution proceedings. We find that Order 21 Rule 35 deals with cases of delivery of possession of an immovable property to the decree-holder by delivery of actual physical possession and by removing any person in possession who is bound by a decree, while under Order 21 Rule 36 only symbolic possession is given where the tenant is in actual possession. Order 21 Rule 97, as aforesaid, conceives of cases where delivery of possession to the decree-holder or purchaser is resisted by any person. "Any person", as aforesaid, is wide enough to include even a person not bound by a decree or claiming right in the property on his own including that of a tenant including a stranger."

(3) Silverline Forum Pvt. Ltd., v. Rajiv Trust and

another^[3], wherein it is held as follows:

"The words "all questions arising between the parties to a proceeding on an application under Rule 97" would envelop only such question as would legally arise for determination between those parties. In other words, the Court is not obliged to determine a question merely because the resistor raised it. The questions which executing Court is obliged to determine under Rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration and determination between the parties, e.g., if the obstructor admits that he is a transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property. Similarly, a third party, who questions the validity of a transfer made by a decree-holder to an assignee, cannot claim that the question regarding its validity should be decided during execution proceedings. Hence, it is necessary that the questions raised by the resistor or the obstructor must legally arise between him and the decree-holder. In the adjudication process

envisaged in Order 21, Rule 97(2) of the Code, execution Court can decide whether the question raised by the resistor or obstructor legally arises between the parties. An answer to the said question also would be the result of the adjudication contemplated in the sub-section."

and finally prayed the Court to allow the appeal.

On the other hand, the learned counsel appearing for respondent Nos.1 to 3/deGREE holders argued that the original decree holder/plaintiff entered into an agreement of sale on 07.08.1993 and the judgment debtor failed to execute the registered sale deed in favour of the plaintiff/deGREE holder. The plaintiff filed O.S.No.96 of 1995 for specific performance of agreement of sale before the Principal Senior Civil Judge, Rangreddy District. During the pendency of the suit, plaintiff filled I.A.No.745 of 1997 for appointment of an Advocate Commissioner to note down the physical features and the state of construction of the suit schedule property. The Advocate Commissioner executed the warrant and filed the report before the trial Court. I.A.No.745 of 1997 was allowed on 02.06.1997 directing the judgment debtor/defendant not to construct new constructions over the suit schedule property. On 20.12.2004, suit was decreed and the defendant/judgment debtor filed A.S.No.63 of 2005 on the file of the II Additional District Judge, Rangareddy District. The said appeal was dismissed on 06.10.2009. Aggrieved by the judgment of the first appellate Court in A.S.No.63 of 2005, the judgment debtor filed S.A.No.1058 of 2010 before this Court. After contest, the second appeal was dismissed on 31.12.2010. The decree holder/plaintiff filed E.P.No.246 of 2010 before the trial Court for execution of the decree in O.S.No.96 of 1995. Thereafter, the decree holder/plaintiff assigned the decree in favour of Guru

Raghavendra Constructions vide assignment deed dated 14.08.2008. E.A.No.167 of 2012 in E.P.No.246 of 2010 was filed to recognize the said assignment deed. The said E.A.No.167 of 2012 was allowed on contest. The said assignee also filed E.A.No.58 of 2013 to deliver the E.P schedule property and the same was allowed on 02.08.2013 and respondent No.4/judgment debtor has knowledge about passing of the said order. When the warrant was executed for delivery of property, the judgment debtor and his family members obstructed the same. The bailiff submitted a report stating the same facts. On 19.11.2013, E.A.No.58 of 2013 was heard and allowed after hearing both sides. It is also argued that E.A.No.110 of 2013 was filed seeking police protection on the ground that family of the judgment debtor is preventing the bailiff from executing the decree. In the said E.A.No.110 of 2013, the judgment debtor filed the counter and contested the matter. On 26.11.2013, the executing Court granted police aid for the implementation of the order passed in E.A.No.58 of 2013. Judgment debtor filed objections in E.P.No.246 of 2010 and same were over ruled by the executing Court by its order dated 27.02.2012. Against the said order, C.R.P.No.2348 of 2012 was filed by the judgment debtor before this Court. This Court dismissed the C.R.P on 28.02.2013. Again, C.R.P.No.2827 of 2013 was filed by the judgment debtor before this Court and the same was dismissed on 03.07.2013. The judgment debtor also filed C.R.P.No.4953 of 2013 against the order made in E.A.No.58 of 2013. The learned counsel also argued that the Judgment debtor has not questioned the granting of police aid in E.A.No.110 of 2013. Further, the order passed in E.A.No.167 of 2012 has also become final. The objections raised by the judgment debtor were rejected by the executing Court and confirmed by this Court.

Thus, it is argued that the claim petitioner is not entitled to question the execution proceedings and the sale deed has been executed and property has been delivered through process of Court. It is also argued that the revision filed by the judgment debtor is pending and finally argued that the appellant/claim petitioner after dismissal of the appeal got validated the sale deed and respondent No.4/judgment debtor never told the Court or the plaintiff that he sold a part of the suit schedule property to the claim petitioner and that there is no substantial question of law involved in the present appeal and finally prayed the Court to dismiss the Second Appeal.

Now the point for consideration is whether there is any substantial question of law in this case to be decided by this Court?

A perusal of the record shows that the appellant is the claim petitioner in E.A.S.R.No.2938 of 2014 filed in E.P.No.246 of 2010. Respondent Nos.1 to 3 are the decree holders. Respondent No.4 is the judgment debtor in the said above E.P. There is no dispute that plaintiff/decreed holder filed the suit O.S.No.96 of 1995 for specific performance of an agreement of sale. The said suit was decreed in favour of the decree holder/plaintiff. Thereafter, the judgment debtor/ respondent No.4 filed A.S.No.63 of 2005 and the same was dismissed. He also filed S.A.No.1058 of 2010 before this Court and the same was dismissed on 31.12.2010. The decree holder/plaintiff filed E.P.No.246 of 2010 for execution of the judgment and decree passed in O.S.No.96 of 1995. The claim petitioner is a third party to the entire above proceedings. He filed E.A.S.R.No.1938 of 2014 under Order XXI Rules 97(1) & 101 r/w 151 C.P.C claiming that he purchased the E.P. schedule property from respondent No.4 under an unregistered sale deed dated

04.08.1992 and subsequently, the said unregistered sale deed was validated on 03.10.2013 and he is in possession of the said property. The said E.A.S.R.No.2938 of 2014 was dismissed by the Principal Senior Civil Judge, Rangareddy District on 18.03.2014. Aggrieved by the said order, the claim petitioner/third party filed A.S.No.145 of 2014. The III Additional District Judge, Rangareddy District dismissed the appeal on 05.02.2015. Against the concurrent findings of both the Courts, the claim petitioner/third petitioner filed the present second appeal. A perusal of the record also shows that at no point of time, the judgment debtor informed the trial Court as well as the first appellate Court and second appellate Court about his executing the unregistered sale deed in favour of the claim petitioner/third party on 04.08.1992. It is also an admitted fact that after the dismissal of E.A.S.R.No.2938 of 2014, the claim petitioner/third party filed C.R.P.No.892 of 2014 before this Court and the same was dismissed on 22.07.2014. Thereafter, he filed the present S.A.No.574 of 2015. The appellant/claim petitioner is claiming his right through an unregistered sale deed dated 04.08.1992 through the judgment debtor/defendant. The trial Court as well as the first appellate Court clearly gave a finding that the judgment debtor/defendant was not in a position to dispose of the property. Further, plaintiff filed the suit and during the pendency of the suit, judgment debtor/defendant occupied the property and constructed the building even though there is an injunction order passed against the judgment debtor/defendant.

The other claim of the appellant/claim petitioner is that he got the title through the judgment debtor and also possession under an unregistered lease deed dated 04.08.1992 for a period of 25 years. But, he kept quiet without initializing legal procedure

against judgment debtor. Thus, the documents *prima facie* establish that the transaction has taken place during the pendency of the litigation between the decree holder and judgment debtor and the appellant/claim petitioner must have purchased the property pending litigation. There is no dispute that the third party can also invoke the law laid down under Order XXI Rule 101 of the C.P.C. for adjudication of the claimants. It is not the case of the appellant/claim petitioner that he has no knowledge about the litigation because he purchased the property from the judgment debtor, who was contesting the litigation since 1995 and judgment debtor also participated in the execution petition filed by the decree holder by filing the counters in various petitions. Thus, it is evident that the appellant/claim petitioner has not approached this Court with clean hands. Further, there is no substantial question of law involved in this appeal and there is no such legal valid dispute between the appellant and the decree holders. Therefore, I am of the view that the appeal is liable to be dismissed since there is no substantial question of law involved in this appeal.

Accordingly, the second appeal is dismissed at the stage of admission confirming the judgment and decree dated 05.02.2015, passed in A.S.No.145 of 2014, by the XIV Additional District Judge, Rangareddy District at L.B. Nagar. No order as to costs.

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

ANIS, J

Date: 27.06.2016
sr

[\[1\]](#) (2011) 15 Supreme Court Cases 377

[\[2\]](#) (1998) 4 Supreme Court Cases 543

[\[3\]](#) AIR 1998 Supreme Court 1754(1)